

**This is the “Amendment of the Whole” that was passed by the  
Omaha City Council and signed into law by Mayor Mike Fahey.  
It took effect on July 5, 2006**

ORDINANCE NO. 37412

1 AN ORDINANCE to add to Chapter 12, “Health and Sanitation”, a new Article VIII. entitled  
2 “Prohibition on Smoking in Workplaces and Public Gathering Places” to prohibit  
3 smoking in workplaces and public gathering places; to state findings and intent; to  
4 specify definitions; to create exceptions, to require signage; to prohibit retaliation; to  
5 provide duties and procedures for enforcement; to create penalties; to add a severability  
6 clause; to repeal sections 20-274 and 20-275 of Chapter 20 of the Omaha Municipal  
7 Code; and to provide an effective date.

8 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

9 Section 1. That a new Article VIII. entitled “Prohibition on Smoking in Workplaces and  
10 Public Gathering Places” shall be added to Chapter 12, “Health and Sanitation”, which shall read  
11 as follows:

12 “Article VIII. Prohibition on Smoking in Workplaces and Public Gathering Places  
13 Sec. 12-160. Intent.

14 The city council hereby declares that the purposes of this ordinance are: (1) to protect the  
15 public health and welfare by prohibiting smoking in public gathering places and places of  
16 employment; and (2) to guarantee the right of employees, residents, and visitors to breathe  
17 smoke free air, and to recognize that the need to breathe smoke free air shall have priority over  
18 the desire to smoke.

19 Sec. 12-161. Definitions.

20 For the purposes of this article, the following words and phrases, whenever used in this article,  
21 shall have the meaning specified herein:

22 1. Bar means a Business establishment that serves alcoholic beverages and may or may  
23 not provide Limited Food Service, including but not limited to, taverns, nightclubs,  
24 cocktail lounges, and cabarets.

- 1     2.     Business means a sole proprietorship, partnership, joint venture, corporation, or other  
2     such entity, either for-profit or not-for-profit, including retail establishments where  
3     goods or services are sold; professional corporations and other entities where legal,  
4     medical, dental, engineering, architectural, or other professional services are delivered;  
5     and Private Clubs.
  
- 6     3.     Employee means a person who is employed by an Employer in consideration for direct  
7     or indirect monetary wages or profit, and a person who volunteers his or her services  
8     for a non-profit entity.
  
- 9     4.     Employer means a person, Business, partnership, association, corporation, including a  
10    municipal corporation, trust, or non-profit entity that employs the services of one or  
11    more individual persons.
  
- 12   5.     Enclosed Area means all space between a floor and ceiling that is contained on all sides  
13    by walls (exclusive of doorways) or windows, either permanent or temporary, which  
14    extend from the floor to the ceiling.
  
- 15   6.     Health Care Facility means an office or institution providing care or treatment of  
16    diseases, whether physical, mental, or emotional, or other medical, physiological, or  
17    psychological conditions, including but not limited to, hospitals, rehabilitation hospitals  
18    or other clinics, including weight control clinics, nursing homes, homes for the aging or  
19    chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists,  
20    massage therapists, physicians, dentists, and all specialists within these professions.  
21    This definition shall include all waiting rooms, hallways, private rooms, semiprivate  
22    rooms, and wards.
  
- 23   7.     Limited Food Service means serving or otherwise providing only snack items or  
24    commercially prepared and wrapped foods that require little or no preparation.
  
- 25   8.     Place of Employment means an area under the control of a public or private Employer  
26    that Employees normally frequent during the course of employment, including, but not  
27    limited to, work areas, employee lounges, restrooms, conference rooms, meeting  
28    rooms, classrooms, employee cafeterias, hallways, and commercial vehicles. A private  
29    residence is not a "Place of Employment" unless it is used as a childcare, adult day  
30    care, or Health Care Facility.
  
- 31   9.     Private Club means an organization, whether incorporated or not, which is the owner,  
32    lessee, or occupant of a building or portion thereof used exclusively for club purposes  
33    at all times, which is operated solely for a recreational, fraternal, social, patriotic,  
34    political, benevolent, or athletic purpose, but not for pecuniary gain, and which only  
35    sells alcoholic beverages incidental to its operation. The affairs and management of the  
36    organization are conducted by a board of directors, executive committee, or similar

- 1           body chosen by the members at an annual meeting. The organization has established  
2           bylaws and/or a constitution to govern its activities. The organization has been granted  
3           an exemption from the payment of federal income tax as a club under 26 U.S.C.  
4           Section 501
- 5       10.    Public Gathering Place means an Enclosed Area used by the general public; or serving  
6           as a Place of Employment to which the public is invited or in which the public is  
7           permitted, including but not limited to, banks, Bars, educational facilities, Health Care  
8           Facilities, laundromats, public conveyances and public transportation facilities,  
9           reception areas, Restaurants, retail service establishments, retail stores, Shopping Malls,  
10          Sports Arenas, theaters, Private Clubs, and waiting rooms. A private residence is not a  
11          "Public Gathering Place" unless it is used as a childcare, adult day care, or Health Care  
12          Facility.
- 13       11.    Restaurant means any Public Gathering Place which is kept, used, maintained,  
14           advertised, and held out to the public as a place where meals are served and where  
15           meals are actually and regularly served for compensation; which has no sleeping  
16           accommodations; and which has kitchen and dining room equipment and Employees to  
17           prepare, cook, and serve food to customers. Restaurants do not include retail stores  
18           where food is sold. Restaurants include but are not limited to, coffee shops, cafeterias,  
19           sandwich stands, and private and public school cafeterias, which gives or offers for sale  
20           food to the public, guests, or Employees, as well as kitchens and catering facilities in  
21           which food is prepared on the premises for serving elsewhere. The term "Restaurant"  
22           shall include a Bar area within the Restaurant.
- 23       12.    Shopping Mall means an enclosed public walkway or hall area that serves to connect  
24           retail or professional establishments.
- 25       13.    Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette,  
26           pipe, plant, or other tobacco product in any manner or in any form.
- 27       14.    Sports Arena means sports pavilions, stadiums, gymnasiums, health spas, boxing  
28           arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places  
29           where members of the general public assemble to engage in physical exercise,  
30           participate in athletic competition, or witness sports or other events.
- 31       15.    Tobacco Retail Outlet means a store that sells tobacco and tobacco related products and  
32           may sell other products that are incidental to the tobacco sales.
- 33       16.    Tobacco Only Retail Outlet means a store that sells only tobacco and products directly  
34           related to tobacco. Products that are not allowed to be sold include, but are not limited  
35           to, alcohol by the drink, off-sale package alcohol, candy, pop, groceries and gasoline.

1 Sec. 12-162. Application of Article to City-Owned or Operated Facilities.

2 All enclosed facilities, including buildings and vehicles owned, leased, or operated by the  
3 city shall be subject to the provisions of this article.

4  
5 Sec. 12-163. Prohibition of Smoking in Public Gathering Places.

6  
7 Smoking shall be prohibited in all enclosed Public Gathering Places within the City from  
8 and after October 2, 2006.

9  
10 Sec. 12-164. Prohibition of Smoking in Places of Employment.

11 Smoking shall be prohibited in all enclosed facilities within Places of Employment from  
12 and after October 2, 2006. This includes common work areas, auditoriums, classrooms,  
13 conference and meeting rooms, reception areas, private offices, elevators, hallways, medical  
14 facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

15 This prohibition on Smoking shall be communicated to all existing Employees before  
16 October 2, 2006 and to all prospective Employees upon their application for employment.

17 Sec. 12-165. Where Smoking is Not Regulated.

18 Notwithstanding any other provision of this article to the contrary, the following areas  
19 shall be exempt from the provisions of Sections 12-163 and 12-164:

- 20  
21 1. Private residences, except when used as a licensed childcare, an adult day care or  
22 Health Care Facility.  
23  
24 2. Hotel and motel rooms that are rented to guests and are designated as smoking  
25 rooms; provided, however, that not more than twenty percent (20%) of rooms  
26 rented to guests in a hotel or motel may be so designated. All smoking rooms on the  
27 same floor must be contiguous and smoke from these rooms must not infiltrate into  
28 areas where Smoking is prohibited under the provisions of this Article. The status  
29 of rooms as Smoking and nonsmoking may not be changed, except to add  
30 additional nonsmoking rooms.  
31  
32 3. Private and semiprivate rooms in nursing homes and long-term care facilities that  
33 are occupied by one (1) or more persons, all of whom are smokers and have  
34 requested in writing to be placed in a room where Smoking is permitted; provided  
35 that smoke from these places does not infiltrate into areas where Smoking is  
36 prohibited under the provisions of this Article.  
37  
38 4. Outdoor areas of places of employment except those covered by the provisions of  
39 Sections 12-164.  
40

1           5. As part of a study conducting research into the health effects of Smoking in a  
2           scientific or analytical laboratory either governed by state or federal law or at a  
3           college or university approved by the Nebraska Coordinating Commission for Post  
4           Secondary Education. The proprietor shall post a temporary sign on all entrances to  
5           the laboratory indicating that Smoking is being allowed for the purposes of  
6           research.

7  
8           6. Tobacco Only Retail Outlets that are separately housed from any entity required to  
9           be smoke free under this Ordinance are exempt from the provisions hereunder. This  
10           exemption will terminate if smoke infiltrates a nonexempt entity. Signs notifying  
11           the public that smoking is permitted in the establishment must be posted  
12           conspicuously on all entrances normally used by the public. The signs must have at  
13           least one-inch tall block lettering and be posted at a height and location easily seen  
14           by a person before entering. The signs shall say, "Smoking permitted inside".

15 Sec. 12-165.1 Where Smoking is Not Regulated until May 14, 2011.

16  
17           Notwithstanding any other provision of this article to the contrary, the following areas  
18           shall be exempt from the provisions of Sections 12-163 and 12-164 until May 14, 2011:

19  
20           1. Stand alone Bars providing only Limited Food Service that are separately housed  
21           from any entity required to be smoke free under this Ordinance are exempt from the  
22           provisions hereunder until May 14, 2011. This exemption will terminate if smoke  
23           infiltrates a nonexempt entity. Signs notifying the public that smoking is permitted  
24           in the establishment must be posted conspicuously on all entrances normally used  
25           by the public. The signs must have at least one-inch tall block lettering and be  
26           posted at a height and location easily seen by a person before entering. The signs  
27           shall say, "Smoking permitted inside".

28  
29           2. Up to two main or mini-main keno locations meeting criteria b through f below are  
30           exempt from the provisions of this ordinance until May 14, 2011. Keno sales outlet  
31           locations meeting all of the following criteria shall similarly be exempt from the  
32           provisions hereunder until such date:

33  
34           a. The location shall have applied to the City on or before June 8, 2006 to be  
35           a keno sales outlet location, provided that a transfer of ownership  
36           application filed after such date shall not terminate an exemption granted  
37           by this provision.

38           b. The location shall have been approved by the City as a keno location.

39           c. The location shall actively offer keno to its customers.

40           d. Signs notifying the public that smoking is permitted in the establishment  
41           must be posted conspicuously on all entrances normally used by the  
42           public. The signs must have at least one-inch tall block lettering and be  
43           posted at a height and location easily seen by a person before entering.  
44           The signs shall say "Smoking permitted inside.

1 e. No smoke from the location shall infiltrate a nonexempt entity.

2 3. Any Public Gathering Place which is conducting or simulcasting horseracing at a  
3 designated place, or conducting interstate horserace simulcasting. Providing that it  
4 is separately housed from any entity required to be smoke free under this  
5 Ordinance are exempt from the provisions hereunder until May 14, 2011. This  
6 exemption will terminate if smoke infiltrates a nonexempt entity. Signs notifying  
7 the public that smoking is permitted in the establishment must be posted  
8 conspicuously on all entrances normally used by the public. The signs must have  
9 at least one-inch tall block lettering and be posted at a height and location easily  
10 seen by a person before entering. The signs shall say "Smoking permitted inside"

11  
12 4. Tobacco Retail Outlets that are separately housed from any entity required to be  
13 smoke free under this Ordinance are exempt from the provisions hereunder until  
14 May 14, 2011 (cross reference section 12-165 (6)). This exemption will terminate  
15 if smoke infiltrates a nonexempt entity. Signs notifying the public that smoking is  
16 permitted in the establishment must be posted conspicuously on all entrances  
17 normally used by the public. The signs must have at least one-inch tall block  
18 lettering and be posted at a height and location easily seen by a person before  
19 entering. The signs shall say, "Smoking permitted inside".

20  
21 This section shall not be interpreted or construed to permit Smoking where Smoking is  
22 otherwise restricted by other applicable laws. This exemptions granted by this section 12-165.1  
23 shall automatically terminate on May 14, 2011, the places described in this section shall be fully  
24 subject to Sections 12-163 and 12-164 on and after May 14, 2011, and this section shall be of no  
25 further force or effect after May 14, 2011.

26  
27 Sec. 12-166. Declaration of Establishment as Nonsmoking.

28  
29 Notwithstanding any other provision of this article, an owner, operator, manager, or other  
30 person in control of an establishment, facility, or outdoor area may declare that entire  
31 establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in  
32 any place in which a sign conforming to the requirements of Section 12-168 is posted.

33  
34 Sec. 12-167. Posting of Signs.

35  
36 From and after October 2, 2006, "No Smoking" signs or the international "No Smoking"  
37 symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle  
38 with a red bar across it) shall be clearly and conspicuously posted on each entrance door of  
39 every Public Gathering Place and Place of Employment where Smoking is prohibited by this  
40 article, by the owner, operator, manager, or other person in control of that place.

41  
42 All ashtrays and other Smoking paraphernalia shall be removed as of such date from any  
43 area where Smoking is prohibited by this article by the owner, operator, manager, or other person  
44 having control of the area.

1 Sec. 12-168. Non-retaliation; non-waiver of rights.

2 (a) No person or Employer shall discharge, refuse to hire, or in any manner retaliate  
3 against an Employee, applicant for employment, or customer because that Employee,  
4 applicant, or customer exercises any rights afforded by this Article or reports or  
5 complains of a violation of this Article.

6 (b) An Employee who works in a setting where an Employer allows Smoking does not  
7 waive or otherwise surrender any legal rights the Employee may have against the  
8 Employer or any other party.

9 Sec. 12-169. Enforcement.

10 (a) This article shall be primarily enforced by the Omaha Police Department or any other  
11 law enforcement agency that has enforcement jurisdiction.

12 (b) Notice of the provisions of this Article shall be given to all applicants for a business  
13 license in the city.

14 (c) Any citizen who desires to register a complaint under this article may initiate  
15 enforcement with the Omaha Police Department or any other law enforcement agency that has  
16 enforcement jurisdiction.

17 (d) An owner, manager, operator, or Employee of an establishment regulated by this  
18 article shall inform persons violating this article of the appropriate provisions thereof.

19 Sec. 12-170. Violation and Penalties.

20 (1) Any person who smokes in an area where Smoking is prohibited pursuant to the  
21 provisions of this article, shall be punished, upon conviction of violating the  
22 provisions of this Article, as follows;

23 (a) for a first offense, by a minimum fine of \$100

24 (b) for a second offense, by a minimum fine of \$200

25 (c) for a third or subsequent offense, by a fine of \$500

26 (2) Any person that owns, manages, operates, or otherwise controls a Public Gathering  
27 Place or Place of Employment upon whom a duty is placed by the provisions of this  
28 Article who shall fail, neglect, or refuse to perform such duty or who shall knowingly  
29 violate any of the provisions hereof, shall be punished, upon conviction of violating  
30 the provisions of this Article, as follows;

31 (a) for a first offense, by a written warning

32 (b) for a second offense, by a fine of \$100

33 (c) for a third offense, by a fine of \$200

34 (d) for a fourth or subsequent offense, by a fine of \$500

1           Each day on which a violation of this Article occurs shall be considered a separate and  
2           distinct violation.

3           (3) Every act or omission constituting a violation of the provisions of this Article by an  
4           officer, manager, supervisor, agent or Employee of any proprietor, if said act or  
5           omission is made with the authorization, knowledge, or approval of the proprietor,  
6           shall be deemed and held to be the act or omission of such proprietor, and said  
7           proprietor shall be punished in the same manner as if said act or omission had been  
8           committed by such proprietor personally.

9           Sec. 12-171. Additional Penalty.

10  
11           In addition to the penalties authorized by section 1-10, repeated violation of any  
12           provision of this article by a person who owns, manages, operates, or otherwise controls a Public  
13           Gathering Place or Place of Employment may result in the suspension or revocation of any  
14           permit or license issued to the person for the premises on which the violation occurred.

15  
16           Sec. 12-172. Severability.

17  
18           If any provision, clause, sentence, or paragraph of this Article or the application thereof  
19           to any person or circumstances shall be held invalid, that invalidity shall not affect the other  
20           provisions of this Article which can be given effect without the invalid provision or application,  
21           and to this end the provisions of this Article are declared to be severable.”

22  
23           Section 2. That Section 20-274 of Chapter 20 of the Omaha Municipal Code is hereby  
24 amended to read as follows:

25           ~~Sec. 20-274. Smoking in large retail stores.~~

26  
27           ~~It shall be unlawful for any person to smoke or carry a lighted cigar, cigarette, pipe, or~~  
28           ~~match or to use any fire-producing device in any retail store designed and arranged to~~  
29           ~~accommodate more than 100 persons, or in which more than 25 persons are employed;~~  
30           ~~provided, however, that this section shall not apply to designated smoking rooms or~~  
31           ~~restrooms, restaurants, executive offices, beauty parlors or barbershops located within~~  
32           ~~said retail stores and which have been approved for smoking by the fire division; and~~  
33           ~~provided, further, that this section shall not apply to fire-producing devices which have~~  
34           ~~been specially authorized by the fire division.~~

35  
36           Section 3. That Section 20-275 of Chapter 20 of the Omaha Municipal Code is hereby  
37 amended to read as follows:



1        ~~Sec. 20-275. Smoking on buses.~~

2  
3        ~~It shall be unlawful for any person, while riding in or upon a street railway car, service~~  
4        ~~car or motor bus operated upon the public streets, avenues and boulevards of the city, to~~  
5        ~~smoke any cigar, pipe, or cigarette or to burn any tobacco or carry a lighted cigar, pipe, or~~  
6        ~~cigarette in said vehicles, except that the operators of any street railway car, service car or~~  
7        ~~motor bus may smoke in said vehicles when there are no passengers on same while~~  
8        ~~waiting at the end of the line or route to resume their schedule.~~

9  
10       Section 4. That Sections 20-274 and 20-275 of Chapter 20 of the Omaha Municipal Code  
11 as heretofore existing are hereby repealed.

12       Section 5. That this Ordinance shall be in full force and take effect fifteen (15) days from  
13 and after its date of passage.

INTRODUCED BY COUNCILMEMBER

\_\_\_\_\_

APPROVED BY:

\_\_\_\_\_  
MAYOR OF THE CITY OF OMAHA    DATE

PASSED \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK OF THE CITY OF OMAHA    DATE

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY                      DATE