

**THE OBJECT OF THIS INITIATIVE PETITION IS TO
ENACT A CITY OF OMAHA ORDINANCE TO
PROHIBIT SMOKING IN WORKPLACES AND PUBLIC PLACES.**

TO THE CITY CLERK OF THE CITY OF OMAHA & ELECTION COMMISSIONER OF DOUGLAS COUNTY, NEBRASKA:

The undersigned duly qualified electors of the City of Omaha, and residing at the places set opposite our respective names hereto attached, do hereby respectfully request that this Initiative Petition to Enact a City of Omaha Ordinance to Prohibit Smoking In Workplaces And Public Places be presented to the City Council for enactment of such ordinance, as fully specified herein below, and if not so enacted by the City Council within 30 days of filing of this Initiative Petition, be placed on the official ballot of the City of Omaha at the next election to be held within the city.

**Smoke Free Ordinance
ORDINANCE NO. _____**

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

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

7 Section 1. That a new Article VIII. entitled "Prohibition on Smoking in Workplaces and Public Places" shall be
8 added to Chapter 12, "Health and Sanitation", which shall read as follows:

9 "Article VIII. Prohibition on Smoking in Workplaces and Public Places
10 Sec. 12-160. Findings and Intent.

11 The city council hereby declares that it is the policy of this city to affirm the scientific evidence
12 (1) that tobacco smoke is a major contributor to indoor air pollution, that breathing secondhand smoke is a cause of disease in
13 healthy nonsmokers and hazardous to the elderly, individuals with cardiovascular disease or impaired respiratory function,
14 and that children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death
15 syndrome, developmental abnormalities, and cancer;

16 (2) that separation of smokers and nonsmokers within the same air space does not eliminate the exposure to secondhand
17 smoke, and that secondhand smoke cannot be reduced to safe levels in businesses by ventilation as there is no safe level of
18 exposure to secondhand smoke; and,

19 (3) that a significant amount of secondhand smoke exposure occurs in the workplace, that smoke-filled workplaces result in
20 higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased
21 health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke; that smoking is a
22 potential cause of fires; that cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to
23 businesses, and that economic analyses examining restaurant and hotel receipts and controlling for economic variables have
24 shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke free.

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

29 Sec. 12-161. Definitions.

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

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

34 2. *Business* means a sole proprietorship, partnership, joint venture, corporation, or other such entity, either for-profit or
35 not-for-profit, including retail establishments where goods or services are sold; professional corporations and other
36 entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and
37 Private Clubs.

38 3. *Employee* means a person who is employed by an Employer in consideration for direct or indirect monetary wages
39 or profit, and a person who volunteers his or her services for a non-profit entity.

40 4. *Employer* means a person, Business, partnership, association, corporation, including a municipal corporation, trust,
41 or non-profit entity that employs the services of one or more individual persons.

FOR REFERENCE ONLY – NOT FOR COLLECTING SIGNATURES

- 1 5. Enclosed Area means all space between a floor and ceiling that is contained on all sides by walls (exclusive of
2 doorways) or windows, either permanent or temporary, which extend from the floor to the ceiling.
- 3 6. Health Care Facility means an office or institution providing care or treatment of diseases, whether physical,
4 mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to,
5 hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the
6 aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, massage therapists,
7 physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms,
8 hallways, private rooms, semiprivate rooms, and wards.
- 9 7. Limited Food Service means serving or otherwise providing only snack items or commercially prepared and
10 wrapped foods that require little or no preparation.
- 11 8. Place of Employment means an area under the control of a public or private Employer that Employees normally
12 frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms,
13 conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and commercial vehicles. A private
14 residence is not a "Place of Employment" unless it is used as a childcare, adult day care, or Health Care Facility.
- 15 9. Private Club means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a
16 building or portion thereof used exclusively for club purposes at all times, which is operated solely for a
17 recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and
18 which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are
19 conducted by a board of directors, executive committee, or similar body chosen by the members at an annual
20 meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has
21 been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501
- 22 10. Public Place means an Enclosed Area used by the general public; or serving as a Place of Employment to which the
23 public is invited or in which the public is permitted, including but not limited to, banks, Bars, educational facilities,
24 Health Care Facilities, laundromats, public conveyances and public transportation facilities, reception areas,
25 Restaurants, retail service establishments, retail stores, Shopping Malls, Sports Arenas, theaters, Private Clubs, and
26 waiting rooms. A private residence is not a "Public Place" unless it is used as a childcare, adult day care, or Health
27 Care Facility.
- 28 11. Restaurant means any Public Place which is kept, used, maintained, advertised, and held out to the public as a place
29 where meals are served and where meals are actually and regularly served for compensation; which has no sleeping
30 accommodations; and which has kitchen and dining room equipment and Employees to prepare, cook, and serve
31 food to customers. Restaurants do not include retail stores where food is sold. Restaurants include but are not limited
32 to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale
33 food to the public, guests, or Employees, as well as kitchens and catering facilities in which food is prepared on the
34 premises for serving elsewhere. The term "Restaurant" shall include a Bar area within the Restaurant.
- 35 12. Shopping Mall means an enclosed public walkway or hall area that serves to connect retail or professional
36 establishments.
- 37 13. Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, plant, or other tobacco
38 product in any manner or in any form.
- 39 14. Sports Arena means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and
40 ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in
41 physical exercise, participate in athletic competition, or witness sports or other events.
- 42 Sec. 12-162. Application of Article to City-Owned or Operated Facilities.
43 All enclosed facilities, including buildings and vehicles owned, leased, or operated by the city shall be subject to the
44 provisions of this article.
- 45 Sec. 12-163. Prohibition of Smoking in Public Places.
46 Smoking shall be prohibited in all enclosed Public Places within the City.
- 47 Sec. 12-164. Prohibition of Smoking in Places of Employment.
48 Smoking shall be prohibited in all enclosed facilities within places of employment except as provided. This includes
49 common work areas, auditoriums, classrooms, conference and meeting rooms, reception areas, private offices, elevators,
50 hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.
- 51 This prohibition on Smoking shall be communicated to all existing Employees by the effective date of this article
52 and to all prospective Employees upon their application for employment.
- 53 Sec. 12-165. Where Smoking Not Regulated.
54 Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the
55 provisions of Sections 12-163 and 12-164:
56 1. Private residences, except when used as a licensed childcare, an adult day care or Health Care Facility.

2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where Smoking is prohibited under the provisions of this Article. The status of rooms as Smoking and nonsmoking may not be changed, except to add additional nonsmoking rooms.
3. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where Smoking is permitted; provided that smoke from these places does not infiltrate into areas where Smoking is prohibited under the provisions of this Article.
4. Outdoor areas of places of employment except those covered by the provisions of Sections 12-164.
5. As part of a study conducting research into the health effects of Smoking in a scientific or analytical laboratory either governed by state or federal law or at a college or university approved by the Nebraska Coordinating Commission for Post Secondary Education. The proprietor shall post a temporary sign on all entrances to the laboratory indicating that Smoking is being allowed for the purposes of research.
6. Stand alone Bars providing only Limited Food Service that are separately housed from any entity required to be smoke free under this Ordinance and does not allow minors under the age of eighteen on the premises are exempt from the provisions hereunder until January 2, 2009. This exemption will terminate if smoke infiltrates a nonexempt entity. Signs notifying the public that smoking is permitted in the establishment must be posted conspicuously on all entrances normally used by the public along with a statement barring the entrance of minors under the age of 18 years old. The signs must have at least one-inch tall block lettering and be posted at a height and location easily seen by a person before entering. The signs shall say, "Smoking permitted inside, no one under the age of eighteen allowed".

This section shall not be interpreted or construed to permit Smoking where Smoking is otherwise restricted by other applicable laws.

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

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

Sec. 12-167. Posting of Signs.

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

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

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

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

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

Sec. 12-169. Enforcement.

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

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

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

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

Sec. 12-170. Violation and Penalties.

(1) Any person who smokes in an area where Smoking is prohibited pursuant to the provisions of this article, or any person that owns, manages, operates, or otherwise controls a Public Place or Place of Employment upon whom a duty is placed by the provisions of this Article who shall fail, neglect, or refuse to perform such duty or who shall knowingly violate any of the provisions hereof, shall be punished, upon conviction of violating the provisions of this Article, as follows;

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

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

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

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

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

8 Sec. 12-171. Additional Penalty.

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

12 Sec. 12-172. Severability.

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

16
17 Section 2. That Section 20-274 of Chapter 20 of the Omaha Municipal Code is hereby amended to read as follows:

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

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

25
26 Section 3. That Section 20-275 of Chapter 20 of the Omaha Municipal Code is hereby amended to read as follows:

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

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

33
34 Section 4. That Sections 20-274 and 20-275 of Chapter 20 of the Omaha Municipal Code as heretofore existing are
35 hereby repealed.

36
37 Section 5. That this Ordinance shall be in full force and take effect on January 2, 2007.