

BILL NO. _____ INTRODUCED BY COUNCILMAN _____

ORDINANCE NO. _____

AN ORDINANCE ADOPTING PROVISIONS TO PROHIBIT SMOKING
IN INDOOR WORKPLACES AND PUBLIC PLACES, HEREBY KNOWN AS THE
WASHINGTON SMOKE-FREE AIR ACT OF 2013.

WHEREAS, the 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry; and

WHEREAS, according to the 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke; and

WHEREAS, the Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen; and

WHEREAS, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smoke-free environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smoke-free in their entirety; and

WHEREAS, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "ecigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic

chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent"; and

WHEREAS, e-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions; and

WHEREAS, the Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Washington, Missouri, as follows:

SECTION 1: Definitions.

The following words and phrases, whenever used in this ordinance, shall be construed as defined in this Section:

A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

C. "E-cigarette" means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

D. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit.

E. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

F. "Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

G. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

H. "Hookah Lounge" means any facility or location whose whose business operation, whether as its primary use or as an ancillary use, is devoted to the on-premises smoking of tobacco or other substances through one or more pipes (commonly known as a hookah, waterpipe, shisha or narghile) designed with a tube passing through an urn of water that cools the smoke as it is drawn through it, including but not limited to establishments known variously as hookah bars, hookah lounges or hookah cafes.

I. "Membership Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

J. "Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

K. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City grounds.

L. "Public Place" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing

establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.

M. “Restaurant” means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” shall include a bar area within the restaurant.

N. “Shopping Mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

O. “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. “Smoking” also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this ordinance.

P. “Sports Arena” means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

SECTION 2: Application of Ordinance to City-Owned Facilities and Property

All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Washington, Missouri shall be subject to the provisions of this ordinance.

SECTION 3: Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the City of Washington, Missouri, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.

- I. Gaming facilities.
- J. Health care facilities.
- K. Hotels and motels except in designated private rooms allowed for smoking and rented to guests.
- L. Lobbies, hallways, and other enclosed common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Polling places.
- N. Public transportation vehicles, including buses and taxicabs, under the authority of the City, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- O. Restaurants.
- P. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- Q. Retail stores.
- R. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- S. Shopping malls.
- T. Sports arenas, including enclosed places in outdoor arenas.
- U. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

SECTION 4: Prohibition of Smoking in Enclosed Places of Employment

- A. Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this ordinance and to all prospective employees upon their application for employment.

SECTION 5: Prohibition of Smoking in Membership Clubs

Smoking shall be prohibited in all membership clubs as defined by this ordinance.

SECTION 6: Prohibition of Smoking in Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.

B. At least eighty percent (80%) of hotel and motel sleeping rooms that are rented to guests. Designated non-smoking hotel rooms shall have signage outside the hotel room saying the room is a non-smoking room.

SECTION 7: Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor public places:

- A. Within a reasonable distance of 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. In, and within 20 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- C. In, and within 20 feet of, all outdoor playgrounds.

SECTION 8: Where Smoking Not Regulated

Notwithstanding any other provision of this ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 3 and 4:

- A. Private residences, unless used as a childcare, adult day care, or health care facility.
- B. Not more than twenty percent (20%) of hotel and motel sleeping rooms rented to guests and designated as smoking rooms. 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 ordinance. The status of rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms.

SECTION 9: Declaration of Establishment or Outdoor Area as Nonsmoking

Notwithstanding any other provision of this ordinance, 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 10(A) is posted.

SECTION 10: Posting of Signs and Removal of Ashtrays

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this ordinance shall:

- A. Clearly and conspicuously post “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) in that place.

B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.

C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this ordinance at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.

D. Remove all ashtrays from any area where smoking is prohibited by this ordinance, except for ashtrays displayed for sale and not for use on the premises.

SECTION 11: Nonretaliation; Nonwaiver of Rights

A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this ordinance or reports or attempts to prosecute a violation of this ordinance. Notwithstanding Section 13, violation of this Subsection shall be punishable by a fine not to exceed \$500 for each violation.

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.

SECTION 12: Enforcement

A. Notice of the provisions of this ordinance shall be given to all applicants for a business license in the City of Washington, Missouri.

B. Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the Police Department.

C. The City Administrator, the Engineering and Building Department or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this ordinance.

D. An owner, manager, operator, or employee of an area regulated by this ordinance shall direct a person who is smoking in violation of this ordinance to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact the Police Department.

SECTION 13: Violations and Penalties

A. A person who smokes in an area where smoking is prohibited by the provisions of this ordinance shall be punishable by a fine not exceeding fifty dollars (\$50).

B. Except as otherwise provided in Section 11(A), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this ordinance shall be punishable by:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.
2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

C. In addition to the fines established by this Section, violation of this ordinance by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

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

SECTION 14: Hookah Lounges

Notwithstanding anything contained herein to the contrary, this Ordinance shall not be applicable to any hookah lounge until January 22, 2014.

SECTION 15: Severability

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

SECTION 16: Conflicting Ordinances

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 17: Effective Date

This ordinance shall be in full force and effect from and after the 15th day of April, 2013.

Passed: _____

ATTEST: _____

President of City Council

Approved: _____

ATTEST: _____

Mayor of Washington, Missouri