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## ***NEWS RELEASE***

**Date:** August 27<sup>th</sup>, 2014

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### **Smoke-Free Ordinance Revised**

After several weeks of public input, the City of Branson has revised the proposed smoking ordinance. The initial draft language was released to the community on August 12 for consideration and review.

The revised draft text is available on the homepage of the City of Branson website – [www.BransonMO.Gov](http://www.BransonMO.Gov). The changes to the ordinance are outlined in red within the draft.

The Board of Aldermen is expected to consider the ordinance on October 14<sup>th</sup>. There will be two more Aldermen meetings in September before that date, September 9<sup>th</sup> and September 23<sup>rd</sup>. The public is invited to comment to the Board during the Public Comment section of any Board of Aldermen Meeting, following the [established procedures](#).

To participate in the Public Comment section of any Board meetings, citizens are asked to sign up before the meeting begins at 7:00 p.m. The Mayor will call up each speaker in the order that they have signed up on the sheet. Each speaker will have up to five minutes to speak to the Board. The time is allotted for the speaker only, and it not typical to ask questions of the Board.

Along with the changes to the draft ordinance, the information on the website also includes a summary of the public input received so far, and answers to frequently asked questions about the proposal.

##

# CITY OF BRANSON SMOKE FREE DRAFT ORDINANCE

## Sec. 1001. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*City park* means all grounds, recreational facilities, undeveloped properties and other property placed under the control, management and direction of the Parks and Recreation Department of the City. For the purposes of this article, the City's RV Park shall be excluded.

*E-cigarette* means any electronic oral device, such as one composed of a heating element, battery, 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.

*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.

*Open space* means any piece of land that is undeveloped and is accessible to the public.

*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, auditoriums, meeting rooms, classrooms, employee cafeterias, hallways, elevators, temporary offices, and vehicles. A private residence is a "place of employment" when used as a child care, adult day care, or health care facility.

*Private residence* means a building or portion thereof including, but not limited to, single family homes, duplex units, apartments, hotels, motels or condominium units in which a person resides for 30 consecutive days or more.

*Public place* means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bleachers, **golf courses**, grandstands, health care facilities, hotels and motels, laundromats, **museums**, **open spaces**, **playgrounds**, **pools**, public transportation vehicles and facilities, reception areas, restaurants, retail establishments, retail stores, schools, serving areas, shelters, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is a "public place" when used as a child care, adult day care, or health care facility.

***Serving area* means an area where customers and guests are served by the delivery of food and beverages as provided by an employee, whether or not the service involves the exchange of money.**

*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 article.

*Smoking lounge* means a retail business used primarily for the sale of tobacco products and accessories and where more than seventy percent (70%) of the volume of trade or business carried on there is that of the blending of tobaccos or sales of tobaccos, cigarettes, e-cigarettes, pipes, cigars or smoking sundries and in which the sale of other products is incidental. Does not include a tobacco department within a larger commercial establishment such as a department store, discount store or retail stores used primarily for the sale of smoking materials. **A smoking lounge shall satisfactorily report on an annual basis to the city on a form prescribed by the city, the revenue generated from the sale of tobacco as a percentage of annual gross revenue.**

*Tobacco products* means any product that is made from or derived from tobacco, which contains nicotine or a similar substance, and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, snuff, snus or an e-cigarette.

### **Sec. 1002. Where Smoking Shall Not be Regulated**

Notwithstanding any other provision of this article to the contrary, smoking shall not be prohibited in the following areas within the City of Branson:

- A. Private residences.
- B. Smoking lounges as defined by this article and provided that smoke does not infiltrate into areas where smoking is otherwise prohibited. This exemption shall not apply to any business that is established for the purpose of avoiding compliance with this article.
- C. **Outdoor places of employment except those areas covered by the provisions of the article.**

### **Sec. 1003. Prohibition of Smoking in Enclosed Public Places**

Smoking shall be prohibited in all enclosed public places within the City of Branson.

### **Sec. 1004. Prohibition of Smoking in Outdoor Public Places**

Smoking shall be prohibited in the following outdoor public places within the City of Branson:

- A. Within **10 feet** outside entrances, **outdoor serving areas of restaurants, public transportation stops**, operable windows and ventilation systems.
- B. **In outdoor serving areas of restaurants.**
- C. In City Parks, except in designated areas.
- D. In outdoor common areas of apartment buildings, condominiums, trailer parks, RV parks, retirement facilities, nursing homes and other multiple unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which shall be located at least **ten (10) feet** beyond pools, shelters, playgrounds, outside entrances, operable windows or ventilation systems of enclosed areas.

**Sec. 1005. Prohibition of Smoking in Enclosed Places of Employment**

Smoking shall be prohibited in all enclosed places of employment within the City of Branson. This prohibition shall be communicated to all prospective employees upon their application for employment.

**Sec. 1006. Declaration of Establishment or Outdoor Area as Nonsmoking**

- A. 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 this article is posted.
- B. All vehicles, facilities, buildings and offices owned and operated by the city are declared nonsmoking places. Smoking usage of any kind within these vehicles and facilities is strictly prohibited.

**Sec. 1007. 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 Article 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 area.
- B. Remove all ashtrays from any area where smoking is prohibited by this article, except for ashtrays displayed for sale and not for use on the premises.

**Sec. 1008. 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 article or reports or attempts to prosecute 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. 1009. Responsibility to Enforce**

- A. This article shall be enforced by the City Administrator or an authorized designee.
- B. An owner, manager, operator, or employee of an area regulated by this article shall inform a person who is smoking in violation of this article of the appropriate provisions thereof. 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 a law enforcement agency.
- C. Any citizen who desires to register a complaint under this article may initiate enforcement with the City Administrator or an authorized designee.

## SUMMARY OF PUBLIC COMMENTS

Many comments have been received from the public in regards to the draft smoke free ordinance language. In an effort to provide a comprehensive summary of those comments, staff has identified the following six topics as those which were brought up most frequently along with both viewpoints for each:

- ***Golf courses***
  - In favor: All parks and greenspaces should be smoke free to prevent litter.
  - Against: Golf courses should be mentioned within the ordinance so as to allow smoking on them.
- ***Variation to entrance distance requirement - employee/private entrances***
  - In favor: All entrances should be treated the same so as to prevent smoke from entering spaces where smoking is not allowed, no matter what the volume of people using them is.
  - Against: A lesser distance requirement should be included because 20' is too excessive for entrances, especially those not available to the public.
- ***Patios***
  - In favor: Nonsmokers should have the right to enjoy an outdoor dining experience without the concern of second hand smoke. Employees should not have to be exposed to second hand smoke, regardless of working within an indoor or outdoor area.
  - Against: Smoking should be allowed within any and all outdoor spaces, especially patios as many have been created to solely provide an area for smokers.
- ***E-cigarettes***
  - In favor: E-cigarettes normalize the behavior of smoking to youth making it seem cool and acceptable. Enforcement of them would be difficult as they mimic smoking. Branson would not be the first City to address this topic. FDA does not have regulations.
  - Against: Should not be included in the ordinance because they should not be regulated the same as smoking. Several studies and documents have stated e-cigarettes are not harmful and they aid people to quit smoking. FDA does not have regulations.
- ***Distraction***
  - In favor: The City is directly responding to citizen and visitor surveys which identified smoking as a topic which should be addressed. The majority of tourist destination are already smoke free potentially already causing visitors to not choose Branson as a destination.
  - Against: The City should not be wasting their time or energy on this topic as smoking will disappear on its own within 5 years. A smoke free ordinance could deter visitors/veterans from coming in the future.
- ***Overreach***
  - In favor: Many communities have already successfully addressed the topic, most recently with the inclusion of e-cigarettes. The public health of a community, as addressed in the Community Plan 2030, is an important role for the City to take on.
  - Against: It is not the City's responsibility to tell people where they can and cannot smoke. Business and property owners should continue to have the ability to make this decision on their own.

## BRANSON SMOKEFREE DRAFT ORDINANCE FAQ's

Q: Why is the City of Branson proposing a smoke free ordinance and what is its purpose?

A: Research has clearly shown an improvement in public health after implementation of similar smoke free ordinances within communities across the country. Therefore, the purpose for Branson proposing a smoke free ordinance is not only to improve public health by decreasing exposure to secondhand smoke, but to also positively respond to the recent community and tourist surveys which concluded Branson becoming smoke free would be important and would be supported.

Q: What businesses and enclosed public places are impacted by passing a smoke free ordinance?

A: The proposed ordinance would mainly apply to all enclosed workplaces and enclosed public places within the City of Branson. The ordinance will exempt designated areas within parks and outdoor areas which are more than 10 feet from doorways, windows, serving areas and ventilation systems. The ordinance would also exempt smoking within private vehicles and residences unless residences are used as a day care, adult care, or health care facility.

Q: What is the definition of a 'public place'?

A: "Public Place" means an area which the public is invited or in which the public is permitted, including but not limited to, banks, bleachers, golf courses, grandstands, health care facilities, hotels and motels, laundromats, museums, open spaces, playgrounds, pools, public transportation vehicles and facilities, reception areas, restaurants, retail establishments, retail stores, schools, serving areas, shelters, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is a "public place" when used as a child care, adult day care, or health care facility.

Q: Will smoking be allowed within parks under the proposed ordinance?

A: Yes, but only within designated areas as defined by the City Administrator, or the Director of Parks & Recreation on their behalf.

Q: Will smoking be allowed within public transportation?

A: No. Both public transportation vehicles and facilities, including but not limited to 'Sparky' the downtown's trolley and the associated stops, will be considered public places and so smoking will be prohibited.

Q: What is the definition of a 'place of employment'?

A: "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, auditoriums, meeting rooms, classrooms, employee cafeterias, hallways, elevators, temporary offices, and vehicles. A private residence is a "place of employment" when used as a child care, adult day care, or health care facility.

Q: Will smoking be prohibited within taxis and limos as they are considered a place of employment?

A: Yes.

Q: What are the benefits of a smoke free workplace?

A: While a comprehensive smoke free ordinance is being considered, there are many benefits that businesses and the community will experience. A smoke free workplace will reduce fire hazards, create a cleaner environment, and improve the health of your staff and patrons at the same time as reducing health care costs. For more information on the benefits of a smoke free workplace, please visit <http://www.tobaccofreemo.org/get-informed/good-business/>

Q: What is defined as an enclosed area under the ordinance?

A: An enclosed area is defined in the proposed ordinance as “all space between a floor and 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.” If a business owner has any questions concerning how the ordinance applies to any particular facility, contact the Branson Planning & Development Department to schedule a site visit.

Q: How many walls define an enclosed area?

A: Two walls makes an area enclosed based on the proposed ordinance, whether they are open or closed.

Q: Does a half wall qualify as a wall?

A: No. A “half wall” indicates that there would be at least one wall that does not create a complete physical barrier. Therefore, the space is not bounded on all sides by walls and is not considered an enclosed area under the ordinance.

Q: How will patios at restaurants be impacted by passing a smoke free ordinance?

A: These areas will be either considered serving areas or outdoor public areas. If a restaurant chooses to have employees serve food or drinks to their customers within an outdoor space, it will be considered a serving area and smoking shall be prohibited. However, if a restaurant chooses to not serve food or drinks to their customers within an outdoor space, it will be simply considered an outdoor public area so smoking shall be permitted so long as it is done at least 10 feet from any entrance. A restaurant may additionally choose for their space to be a serving area for a portion of a day and an outdoor public area for the remaining portion. However, the area shall be designated as one or the other as it shall not be designated as both at any given time.

Q: If a restaurant builds a covered area which is used by smokers and puts in awnings or wind shields, does the area become an enclosed space?

A: A temporary wind shield will be considered a wall if it creates a physical barrier and the area is enclosed so that the space between the floor and ceiling is bounded on all sides. A “physical barrier” would include any temporary “wall” that inhibits the free flow of air through the space. If an area has temporary wind shields installed on all but one side, the area would not be considered an enclosed space. If an area has temporary wind shields installed on all sides, but just leaves one or more sides open or rolled up, the area is still included as an enclosed space under the definition of the ordinance.

Q: Is renting a space within a beauty parlor, as an example, considered a place of employment under the proposed smoke free ordinance?

A: A beauty parlor, whether it has rented space for individual stylists or not, falls under the definition of a place of employment because it is an enclosed area under the control of a private employer since the owner of the beauty parlor has control over renting the space. The definition specifically includes work areas and private offices which is the same idea as rented space inside a beauty parlor.

Q: Can there be a smoking area in a building where no customers are allowed where employees can smoke?

A: No.

Q: Do I need to tell my employees about the proposed smoke free ordinance?

A: Yes. As a business owner/manager or designee, it would be recommended that you adopt a formal policy for your establishment and inform your employees of that policy. Tri-Lakes Clean Air Alliance has compiled a variety of resources to assist you with this transition. You may find those, as well as a sample "Smokefree Workplace Policy" on their website at <http://www.tobaccofreemo.org/about-us/local-coalitions/tri-lakes-clean-air-alliance-branson/>.

Q: Are private residences affected by the proposed smoke free ordinance?

A: No. Private residences are not considered 'public places' nor a 'place of employment' unless the residence is used as a childcare, adult day care or health care facility.

Q: Is smoking prohibited in a home that is used for a licensed business, such as an Insurance Broker, Real Estate, Tax or other legally-authorized home businesses?

A: Private residences are exempted from the ordinance unless used as a child care, adult day care, or health care facility. However, the home business is required to meet any requirements of the City's Zoning Ordinance, including type of business, impact of business on appearance of the property or disturbance to neighbors, and no employee outside the family residing at the residence may be employed.

Q: Is a telecommuter prohibited from smoking in his home?

A: If an employee of a business is allowed to work from home, or telecommute, the employee's home is still exempted from the ordinance as a private residence.

Q: If my house is considered non-smoking due to it being used as a child care, adult day care or health care facility, and I go into my open garage to smoke, is that illegal?

A: If smoking is prohibited within the personal residence and the garage meets the definition of an "enclosed area," smoking will also be prohibited in the garage. "Enclosed area" includes "all space between a floor and ceiling that is bounded on all 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."

Q: Is a home a place of employment when service workers are present, such as housekeepers, plumbers, electrician, contractors etc.?

A: Private residences are exempted from the ordinance unless used as a child care, adult day care, or health care facility.

Q: Is smoking prohibited in homes where home health care is being provided? Is the home then a place of employment under the proposed smoke free ordinance?

A: Private residences are exempted from the ordinance unless used as a child care, adult day care, or health care facility.

Q: At what point is a home or building under construction changed from open air to enclosed qualifications?

A: For most construction projects, the building will be required to comply with the ordinance at the point where it is "dried in", or at any point in construction when the space between the floor and ceiling is bounded on all 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. Construction sites are only covered by the ordinance if they are a place of employment or open to the public.



Q: Where is smoking proposed to be allowed within apartment complexes under the proposed smoking ordinance?

A: While residents will be able to smoke within their units, designated areas within outdoor common areas of apartment complexes may also be defined so long as they do not exceed 25% of such area and are not within 10 feet of pool areas, playgrounds or shelters.

Q: Can smoking be allowed within a hotel room if it is being used as a private residence under the proposed ordinance.

A: A hotel and motel room may only be defined as private residence if a person resides within it for 30 consecutive days. Condominium units are proposed to be regulated in the same manner.

Q: Do I need to post "No Smoking" signs?

A: Yes. Signs must be posted to indicate that smoking is not allowed inside the establishment or within vehicles considered places of employment. The proposed smoke free ordinance provides clear instructions that signs should include the international "No Smoking" symbol, a picture of a burning cigarette in a red circle with a red bar across it. These signs must be clearly placed near every entrance. The Tri-Lakes Clean Air Alliance will provide a limited amount of signs free of charge on a first-come, first-served basis. Additionally, signs may be made available at City Hall and at the Taney County Health Department. For questions or more information on the sign requirements, please see the proposed ordinance printed at the end of this resource.

Q: Is a special size or sign required?

A: No, as long as the sign is able to be easily read.

Q: Is specific wording required on the sign?

A: No, the sign must only state that smoking is prohibited or use the international no smoking symbol.

Q: Is each business tenant (owner of such business) also required to post signs within the office suites?

A: Yes.

Q: Do signs need to be posted on employee entrances, shopping entrances, back doors, or just public entrances?

A: Signs must be posted at all entrances.

Q: Is a non-smoking sign required to be posted on all company vehicles, even if they are outside Branson? Is smoking prohibited?

A: Yes, signs need to be posted. However, the ordinance will only be enforced while the vehicle is within Branson.

Q: How will complaints against out of town based company vehicles be handled?

A: The ordinance cannot be legally enforced against vehicles from companies which do not maintain a local office. The Interstate Commerce Clause of the U.S. Constitution prohibits a city from enforcing regulations on vehicles passing through our community, which may inhibit interstate commerce.

Q: Who will enforce the Branson smoke free ordinance?

A: The Taney County Health Department will be providing an educational process over the course of the 60 days between the adoption of the ordinance and its implementation. The health department will be working with business owners to bring them into compliance after the effective date occurs and with penalty provisions as necessary. However, after the effective date, multiple departments will be able to conduct inspections and respond to complaints in an effort to address any concerns, enforce this policy and use penalties as necessary.

Q: How will an enforcement agent determine that a business is complicit instead of trying to stop a smoker?

A: This will be determined on a case by case basis.

Q: What information is needed for a complaint to be prosecuted?

A: The Municipal Prosecutor must prove beyond a reasonable doubt that a city code violation occurred. The amount of evidence needed to reach that burden of proof will be determined on a case by case basis.

Q: Will video or photographic evidence of smoking be acceptable?

A: Video and photographic evidence may be helpful when the Municipal Prosecutor's Office receives summons to review. Whether this evidence is used or not in the prosecution of a specific case will be decided on a case by case basis.

Q: What is the penalty for a violation?

A: A person who smokes in an area where smoking is prohibited by the provisions of this policy shall be guilty of an ordinance violation punishable by a fine not to exceed \$500.00 or a jail sentence not to exceed 90 days or by both such fine and jail sentence. Additionally, a 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.

Q: How many tickets can be issued to one person or business in one day?

A: Normally only one ticket is issued per day if the business is in violation of the city code. If the business is allowing smoking and there are various persons smoking within the facility, an inspector could issue both the smoker and the business owner a ticket for each violation.

Q: At what point will a business license be pulled?

A: This will be determined on a case by case basis.

Q: What should I do if a patron/employee smokes in my establishment?

A: The owner/manager or designee has the responsibility to ensure that employees and patrons are in compliance with this ordinance. If a person is found violating the ordinance within your establishment, you should ask that person to cease the behavior in violation of the ordinance. If the person refuses, you should ask that person to leave the premises. If the person refuses to leave the premises, the owner/manager, operator or employee shall contact law enforcement.

Q: Are e-cigarettes allowed in the proposed Branson smoke free ordinance?

A: No. Smoking is prohibited in all enclosed areas of places of employment. The definition of smoking used in the policy includes the use of an e-cigarette. E-cigarettes are not allowed in order to eliminate confusion for individuals and businesses. These products have caused confusion as they are similar in appearance to an actual cigarette. In addition to the confusion they could potentially cause, e-cigarettes are not FDA regulated. Without FDA regulation, there is no data to support the use of these products.

Q: Who should I contact if I have a question or a complaint?

A: Questions and complaints related to the smoke free ordinance should be directed to the City of Branson Public Information Office at 417-334-3345.

Q: Where can I find more information about the definitions in the Branson smoke free ordinance?

A: The proposed ordinance has been printed in its entirety and has been included in this resource. You may also view the ordinance on the web by visiting [www.Bransonmo.gov](http://www.Bransonmo.gov).