Ordinance No. 3759-10

An Ordinance amending Chapter 10, Article VIII of the Ottawa Municipal Code and Conforming the Municipal Code to Kansas State Law regarding The Indoor Clean Air Act and the Regulation of Smoking on Public and Private Property.

Whereas, The Governing Body of the City of Ottawa, in conjunction with the Youth in Government, passed a Clean Air Ordinance No. 3657-07; and

Whereas, The City Commission held extensive public hearings prior to the passage of the ordinance on the issue of the regulation of smoking in public and private places, restaurants, clubs, and places of employment; and

Whereas, the City Commission restricted the scope of the ordinance to public places and restaurants as fully set forth in Ordinance No. 3657-07; and

Whereas, the Kansas Legislature and the Governor of Kansas have enacted and signed in law House Bill 2221, preempting the field of the regulation of smoking in public and private places, exemptions thereto, fines thereon, in such a matter as to require the amendment of the Ottawa Municipal Code to conform to the law of the State of Kansas.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF OTTAWA, KANSAS, THAT:

Section 1. Section 10-803 is amended to read as follows:

1. 'Access point' is defined as stated in K.S.A. 21-4009 (a);
2. 'Bar' is defined as stated in K.S.A. 21-4009 (b);
3. 'Employee' is defined as stated in K.S.A. 21-4009 (c);
4. 'Employer' is defined as stated in K.S.A. 21-4009 (d);
5. 'Enclosed area' is defined as stated in K.S.A. 21-4009 (e);
6. 'Food Service Establishment' is defined as stated in K.S.A. 21-4009 (f);
7. 'Outdoor recreational facility' is defined as stated in K.S.A. 21-4009 (i);
8. 'Place of Employment' is defined as stated in K.S.A. 21-4009 (j);
9. 'Private Club' is defined as stated in K.S.A. 21-4009 (k);
10. 'Public Building' is defined as stated in K.S.A. 21-4009 (l);
11. 'Public Place' is defined as stated in K.S.A. 21-4009 (n);

Section 2. Section 10-804 is amended to read as follows:
No person shall smoke in an enclosed area or at a public meeting, including but not limited to:

1. Public places;
2. Taxicabs and limousines;
3. Restrooms, lobbies or other common areas in public and private buildings, condominiums and other multiple residential facilities;
4. Restrooms, lobbies or other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel;
5. Access points of all buildings that are not exempt in Section 10-806;
6. Any place of employment.

Section 3. Section 10- 805 shall be amended to include the following;
Section 10-805 (3) To the extent necessary for the enforcement of this Ordinance, the provisions of K.S.A. 21-4009 (b) and (c) are incorporated into this Ordinance.

Section 10- 806 is amended to read as follows:

The provisions of this Ordinance shall not apply to:

1. Private homes or residences, except at noted in K.S.A. 21-4009 (d) (2);
2. The outdoor areas of any building or facility beyond the access point of such building or facility;
3. Hotel or motel rooms rented to one or more guests if the total percentage of such hotel or motel rooms does not exceed 20%;
4. That portion of an adult day care facility as stated in K.S.A. 21- 4009 (d) (5);
5. Tobacco shops;
6. Class A and B clubs as stated in K.S.A. 21-4009 (d) (8);
7. Private clubs in areas where minors are prohibited.

Section 4. Section 10- 807 is amended to read as follows.
Any person who violates the provisions of this Ordinance shall be guilty of a cigarette and tobacco infraction as shall be punished by a fine;

1. For the first infraction, $100.00;
2. For the second infraction, $200.00;
3. For the third and subsequent infractions, $500.00;
4. Infraction timing shall be counted by starting on the day of the first conviction or diversion of the first offense, and shall proceed for a year from that date.

Section 5. Section 10-808 is amended to include the following:
This ordinance is intended to conform to the enactment of the Kansas Legislature and shall be construed in conformance with K.S.A. 21- 4009 and any amendments thereto. To the extent necessary any provision of this Ordinance that is in conflict with K.S.A. 21-4009 shall be deemed null and void, and the provisions of the Kansas Legislature shall control.

Section 6. This Ordinance shall be in full force and effect from its adoption and after publication in the official City Newspaper.

ADOPTED this 16th day of June, 2010.

Linda C. Reed

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Mayor

Attest

Carolyn S. Snethen

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City Clerk