

ORDINANCE NO. 1129

AN ORDINANCE AMENDING ARTICLE 10 OF CHAPTER 4 OF THE RALSTON MUNICIPAL CODE DEALING WITH THE TOPIC OF SMOKING IN WORKPLACES AND PUBLIC GATHERING PLACES AND ENACTING ARTICLE 11 OF CHAPTER 4 PROVIDING FOR PENALTIES FOR VIOLATIONS OF THE ARTICLE AND CHAPTER; TO REPEAL PROVISIONS IN CONFLICT THEREWITH AND TO PROVIDE AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF RALSTON, NEBRASKA.

That on the _____ day of November, 2007, the Ralston City Council conducted a regularly scheduled public hearing at which it considered the amendment of Article 10, and the addition of Article 11 to Chapter 4 of the Ralston Municipal Code pertaining to the prohibition of smoking in workplaces and public gathering places within the jurisdiction of the City and upon the consideration thereof the Ralston City Council approved the following amendments and additions:

ARTICLE 10. SMOKING IN WORKPLACES AND PUBLIC GATHERING PLACES

§4-1001 **INTENT.** The city council hereby declares that the purposes of this article are: (1) to protect the public health and welfare by prohibiting smoking in public gathering places and places of employment; and (2) to guarantee the right of employees, residents, and visitors to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

§4-1002 **DEFINITIONS.** For the purposes of this article, the following words and phrases, whenever used in this article, shall have the meaning specified herein:

Bar means a business establishment that serves alcoholic beverages and may or may not provide limited food service, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

Business means a sole proprietorship, partnership, joint venture, corporation, or other such entity, either for-profit or not-for-profit, 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; and private clubs.

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

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.

Enclosed area means all space between a floor and ceiling that is contained on all sides by walls (exclusive of doorways) or windows, either permanent or temporary, which extend from the floor to the ceiling.

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, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, massage therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards.

Limited food service means serving or otherwise providing only snack items or commercially prepared and wrapped foods that require little or no preparation.

Place of employment means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and commercial vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, or health care facility.

Private 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.

Public gathering place means an enclosed area used by the general public; or serving as a place of employment to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public conveyances and public transportation facilities, reception areas, restaurants, retail service establishments, retail stores, shopping malls, sports arenas, theaters, private clubs, and waiting rooms. A private residence is not a "public gathering place" unless it is used as a childcare, adult day care, or health care facility.

Restaurant means any public gathering place which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served for compensation; which has no sleeping accommodations; and which has kitchen and dining room equipment and employees to prepare, cook, and serve food to customers. Restaurants do not include retail stores where food is sold. Restaurants include but are 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.

Shopping mall means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, plant, or other tobacco product in any manner or in any form.

Sports arena means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Tobacco retail outlet means a store that sells tobacco and tobacco related products and may sell other products that are incidental to the tobacco sales.

Tobacco only retail outlet means a store that sells only tobacco and products directly related to tobacco. Products that are not allowed to be sold include, but are not limited to, alcohol by the drink, off-sale package alcohol, candy, pop, groceries and gasoline.

§4-1003 **APPLICATION OF ARTICLE TO CITY-OWNED OR OPERATED FACILITIES.** All enclosed facilities, including buildings and vehicles owned, leased, or operated by the city shall be subject to the provisions of this article.

§4-1004 **PROHIBITION OF SMOKING IN PUBLIC GATHERING PLACES.** **Smoking** shall be prohibited in all enclosed public gathering places within the city from and after December 31, 2007.

§4-1005 **PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.** **Smoking** shall be prohibited in all enclosed facilities within places of employment from and after December 31, 2007. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, reception areas, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities. This prohibition on **smoking** shall be communicated to all existing employees before December 31, 2007 and to all prospective employees upon their application for employment.

§4-1006 **WHERE SMOKING IS NOT REGULATED.** Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of sections 4-1004 and 4-1005:

- (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 20 percent 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 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 section 4-1005.

(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) Tobacco only retail outlets that are separately housed from any entity required to be smoke free under this article are exempt from the provisions hereunder. 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. 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".

§4-1007 **WHERE SMOKING IS NOT REGULATED UNTIL MAY 14, 2011.**

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of sections 4-1004 and 4-1005 until May 14, 2011:

(1) Stand alone bars providing only limited food service that are separately housed from any entity required to be smoke free under this article are exempt from the provisions hereunder until May 14, 2011. 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. 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".

(2) Main keno and satellite keno locations meeting criteria b. through f. below are exempt from the provisions of this article until May 14, 2011. Keno locations meeting all of the following criteria shall similarly be exempt from the provisions hereunder until such date:

a. The location shall have applied to the city on or before December 15, 2007 to be a keno satellite location, provided that a transfer of ownership application filed after such date shall not terminate an exemption granted by this provision.

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

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

d. Signs notifying the public that **smoking** is permitted in the establishment must be posted conspicuously on all entrances normally used by the public. 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.

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

(3) Any public gathering place which is a private club as defined by section 4-1002, provided that it is separately housed from any entity required to be smoke free under this article is exempt from the provisions hereunder until May 14, 2011. 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. 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"

(4) Tobacco retail outlets that are separately housed from any entity required to be smoke free under this article are exempt from the provisions hereunder until May 14, 2011 (cross reference section 4-1006(6)). 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. 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".

This section shall not be interpreted or construed to permit **smoking** where **smoking** is otherwise restricted by other applicable laws. This exemptions granted by this section 4-1007 shall automatically terminate on May 14, 2011, the places described in this section shall be fully subject to sections 4-1004 and 4-1005 on and after May 14, 2011, and this section shall be of no further force or effect after May 14, 2011.

§4-1008 **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 4-1009 is posted.

§4-1009 **POSTING OF SIGNS.** From and after December 31, 2007, "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 gathering 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 as of such date from any area where **smoking** is prohibited by this article by the owner, operator, manager, or other person having control of the area.

§4-1010 **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.

§4-1011 **ENFORCEMENT.**

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

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

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

§4-1012 **VIOLATION AND PENALTIES.**

(a) Any person who smokes in an area where **smoking** is prohibited pursuant to the provisions of this article, shall be punished, upon conviction of violating the provisions of this article, as follows:

- (1) For a first offense, by a minimum fine of \$100.00;
- (2) For a second offense, by a minimum fine of \$200.00;
- (3) For a third or subsequent offense, by a fine of \$500.00.

(b) Any person that owns, manages, operates, or otherwise controls a public gathering 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:

- (1) For a first offense, by a written warning;
- (2) For a second offense, by a fine of \$100.00;
- (3) For a third offense, by a fine of \$200.00;
- (4) For a fourth or subsequent offense, by a fine of \$500.00.

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

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

§4-1013 **ADDITIONAL PENALTY.** In addition to the penalties authorized by section 4-1012, repeated violation of any provision of this article by a person who owns, manages, operates, or otherwise controls a public gathering 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.

§4-1014 **SEVERABILITY.** If any provision, clause, sentence, or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Article 11. Penal Provisions

§4-1101 **VIOLATION: PENALTY.** Any person who violates any of the prohibitions or provisions of any Article or Section of this Chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular Article or Section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not less than twenty-five (\$25.00) dollars nor more than one thousand (\$1,000.00) dollars and/or imprisonment for any length of time not to exceed three (3) months, in the discretion of the court; Provided, whenever any Section of this Chapter shall declare a nuisance, a violation of that Section shall be penalized by a fine of not more than one thousand (\$1,000.00) dollars, in which case a new violation shall be deemed to have been committed every twenty-four (24) hours of such failure to comply. *(Ref 16-225, 16-246 RS Neb.)*

§4-1102 **ABATEMENT OF NUISANCE.** Whenever a nuisance exists as defined in this Chapter, the Municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law. Whenever, in any action, it is established that a nuisance exists, the court may, together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case. *(Ref. 16-240, 18-1720 RS Neb.)*

Any and all Ordinances or portions thereof which are in conflict herewith are hereby repealed.

This Ordinance becomes effective upon passage by the Mayor and City Council of the City Council of the City of Ralston, Nebraska and upon its publication as provided by law.

DATED this _____ day of _____, 2007.

CITY OF RALSTON, NEBRASKA

Donald A. Groesser
Mayor

ATTEST:

Dolores L. Costanzo
City Clerk

Approved as to form:

Mark A. Klinker, City Attorney