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THE CITY OF MAIZE, KANSAS

ORDINANCE NO. 762

**AN ORDINANCE CREATING SECTIONS 8-901, 8-902, 8-903, 8-904, 8-905, 8-906, 8-907, 8-908, 8-909 and 8-910 OF THE CODE OF THE CITY OF MAIZE, KANSAS, RELATING TO REGULATING SMOKING IN PUBLIC PLACES WITHIN THE CORPORATE LIMITS OF THE CITY OF MAIZE, KANSAS.**

WHEREAS, the Governing Body of the City of Maize, Kansas, desires to improve and protect the public's health by eliminating smoking in public places; and,

WHEREAS, the Governing Body of the City of Maize, Kansas, desires to guarantee the right of nonsmokers to breathe smoke-free air; and,

WHEREAS, the Governing Body of the City of Maize, Kansas, desires to recognize that the need to breathe smoke-free air shall have priority over the choice to smoke,

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MAIZE, KANSAS:

**Section 1. New Sections Added to the Code.** Sections 8-901, 8-902, 8-903, 8-904, 8-905, 8-906, 8-907, 8-908, 8-909 and 8-910 of the Code of the City of Maize, Kansas, shall read as follows:

8-901. DEFINITIONS. The following words and phrases, whenever used in this Article, shall be construed as defined in this Section 8-901 of the Code:

(A) **“Business(es)”** means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

(B) **“City”** means the City of Maize, Kansas.

(C) **“Employee(s)”** means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

(D) **“Employer”** means any person, partnership, corporation, including a municipal corporation, or a non-profit entity, which employs the service of one (1) or more individual persons.

(E) **“Enclosed Area”** means all space between the floor and ceiling which is enclosed on all sides by solid Walls or windows (exclusive of doors or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping” or similar structure.

For the purpose of this Article, the following shall NOT be considered an **Enclosed Area**:

(1) Rooms or areas enclosed by Walls or windows having neither a ceiling nor a roof and which are completely open to the elements and weather at all times;

(2) Rooms or areas enclosed by Walls or windows and a roof or ceiling, having an opening of at least twenty percent (20%) of the total perimeter of Wall area completely and permanently open to the elements and weather.

(F) **“Food Service Establishment”** means any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such terms shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside kitchen, commissary and other private, public or nonprofit organization or institution routinely serving food, or any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

(G) **“Licensed Premises”** shall mean any premises where alcoholic liquor or cereal malt beverages, or both, by individual drink as defined by K.S.A. Chapter 41, and amendments thereto, is served or provided for consumption or use on the premises with or without charge. Such term shall include drinking establishment, Class A Private Clubs, Class B Private Clubs, or cereal malt beverage retailers, all as defined by K.S.A. 41, and amendments thereto.

(H) **“Place(s) of Employment”** means any Enclosed Area under the control of a public or private employer which Employees frequent during the course of employment, including, but not limited to, work areas, Employee lounges and restrooms, conference rooms and classrooms, Employee cafeterias and hallways. A private residence is not a **“Place of Employment”** unless it is used as a childcare, adult day care or health care facility.

(I) **“Private Place(s)”** means any Enclosed Area to which the public is not invited or in which the public is not permitted, including, but not limited to,

personal residences or personal motor vehicles. A privately owned Business, open to the public, is not a Private Place.

(J) **“Public Place(s)”** means any Enclosed Area to which the public is invited or in which the public is permitted, including, but not limited to:

- (1) Elevators;
- (2) Restrooms, lobbies, reception areas, hallways, and any other common use areas;
- (3) Buses, bus terminals, taxicabs, train stations, airports, and other facilities and means of public transit under the authority of the City, as well as ticket, boarding, and waiting areas of public transit depots;
- (4) Vehicle sales and/or service facilities, including service stations;
- (5) Retail stores;
- (6) All areas available to and customarily used by the general public in all Business and non-profit entities patronized by the public, including, but not limited to, attorneys' offices and other offices, banks, Laundromats, hotels, and motels;
- (7) Food Service Establishments and Licensed Premises, excluding areas of a Food Service Establishment or Licensed Premises that are not enclosed, such as patios, outdoor dining areas, and courtyards;
- (8) Galleries, libraries, and museums;
- (9) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that a performer may smoke when smoking is a part of the stage production;
- (10) Sports arenas or convention halls, including bowling facilities;
- (11) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agency of the City or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City;
- (12) Waiting rooms, hallways, wards, private and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (14) Polling places;
- (15) Private clubs and fraternal organization facilities;
- (16) Drinking establishments and taverns.

(K) **“Retail Tobacco Store(s)”** means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental;

(L) **“Smoking”** means possession of a cigarette, cigar, or pipe partially or wholly consisting of, or containing burning vegetation, or possession of any other device containing burning vegetation that is used for the introduction of smoke from the burning vegetation into the human body. For the purpose of this definition, the term vegetation includes, but is not limited to, tobacco, but does not include any controlled substance listed in K.S.A. 65-4105 through K.S.A. 65-4113, inclusive, and amendments thereto;

(M) **“Sports Arena”** means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller or ice rinks, bowling alleys or other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events; and,

(N) **“Wall”** means a side of a room, building or structure connecting the floor and ceiling or foundation and roof, including temporary, moveable, and retractable sides.

8-902. PROHIBITION OF SMOKING IN PUBLIC PLACES. It shall be unlawful to smoke in an Enclosed Area within Public Places within the City.

8-903. PLACES OF EMPLOYMENT.

(A) An Employer may permit persons to smoke in Enclosed Areas in Places of Employment that are not Public Places; provided, however, smoking shall be prohibited in Enclosed Areas within a Food Service Establishment where food is being prepared.

(B) Employers will post “no smoking” signs in compliance with Section 8-906 of the Code of the City in Enclosed Areas in Places of Employment.

(C) It shall be unlawful to smoke in an Enclosed Area in a Place of Employment where a sign in compliance with Section 8-906 of the Code of the City has been posted.

8-904. SMOKING UNLAWFUL ON CITY OWNED PROPERTY OR IN FACILITIES OR IN EQUIPMENT.

It shall be unlawful to smoke on any property, in any facility or in any equipment owned and/or operated by the City

8-905. WHERE SMOKING IS NOT REGULATED; PRIVATE AND PUBLIC. Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the smoking restrictions of this Article:

- (A) Private residences, except when used as a childcare, adult day care or health care facility;
- (B) No more than twenty-five percent (25%) of hotel and motel rooms rented to guests;
- (C) Retail Tobacco Stores;
- (D) Outdoor Places of Employment;
- (E) Private Places.

8-906. POSTING OF SIGNS.

- (A) The owner, manager or other person having control of an Enclosed Area where smoking is prohibited by this Article shall have a sign, clearly stating that smoking is prohibited, conspicuously posted at each entrance and within the building or other areas where smoking is prohibited.
- (B) “No smoking” signs shall have lettering of not less than one inch (1”) in height. The international “No Smoking” symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).

8-907. PUBLIC HEALTH EDUCATION. The City shall promote the purpose and requirements of this Article to the public affected by it and guide owners, operators and managers in their compliance with it. Such promotion may include publication of a brochure for affected Businesses and individuals explaining the provisions of this Article.

8-908. ENFORCEMENT. The City Police Department and/or other City officials and/or other authorized inspectors shall inspect Businesses within the City to ensure compliance with this Article.

8-909. VIOLATIONS AND PENALTIES.

- (A) It shall be unlawful for any person who owns, manages, operates or otherwise controls any Enclosed Area where smoking is prohibited under this Article to allow smoking to occur when such person:

- (1) has knowledge that smoking is occurring, and;
- (2) acquiesces to the smoking.

(B) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Article.

(C) Any person who violates any provision of this Article shall be guilty of a misdemeanor, punishable by:

- (1) A fine not exceeding One Hundred Dollars (\$100.00) for the first violation;
- (2) A fine not exceeding Two Hundred Dollars (\$200.00) for the second violation within a one (1) year period of the first violation;
- (3) A fine not exceeding Five Hundred Dollars (\$500.00) for the third violation within a one (1) year period of the first violation.

For the purpose of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.

8-910. SEVERABILITY. If any provision, clause, sentence or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, such 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.

**Section 2. Effective Date.** This Ordinance shall take effect and be in force from and after its publication in the official City newspaper.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF MAIZE, KANSAS,  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2008.

APPROVED BY THE MAYOR OF THE CITY OF MAIZE, KANSAS, THIS \_\_\_\_\_  
DAY OF \_\_\_\_\_, 2008.

\_\_\_\_\_  
CLAIR DONNELLY, Mayor

ATTEST:

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JOCELYN REID, City Clerk