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GRANDVIEW CLEAN INDOOR ACT OF 2011

Community Development Department – Building Services

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Sec. 17-47. Clean indoor air.

This section shall be known as the Clean Indoor Air Act of 2011.

(a) *Definitions.* The following words and phrases, whenever used in this section, shall be as defined as follows:

Bar means any establishment licensed to sell alcoholic beverages for consumption on the premises.

Business means a sole proprietorship, partnership, joint venture, corporation, limited liability company, 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.

Employee means any person who performs services for an employer, with or without compensation.

Employer means a person, partnership, association, corporation, limited liability company, trust, or other organized group of individuals, including the city or any agency thereof, which utilizes the services of one (1) or more employees.

Enclosed area means all space between a floor and ceiling that is enclosed on all sides by walls or windows (exclusive of doorways).

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 physicians, chiropractors, physical therapists, 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.

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 vehicles. A private residence is not a "place of employment" unless it is used as a licensed child care, licensed adult day care, or licensed health care facility.

Private club shall mean a not-for-profit organization incorporated under the laws of the State of Missouri for fraternal or social purposes or for a congressionally chartered veterans' organization, which has a defined membership and restricts admission to members of the club and their guests. Private club shall not include an establishment that is open to members of the general public upon payment of a nominal fee. A private club shall not be considered a "public place" except when it is the site of a meeting, event or activity that is open to the public. In addition, a "private club" must meet the following requirements:

- (1) The establishment must have a defined membership. This means:

- a) It must have a written definition and description of its membership policies, including a description of eligibility for membership, and must administer its membership system consistent with those policies;
 - b) It must structure its memberships so as to provide for membership status to be ongoing for a period of no less than one (1) year, as opposed to onetime, weekly or incidental memberships; and
 - c) It must maintain a written list of current members.
- (2) The establishment must charge a fee for membership in an amount intended to defray the ongoing cost of providing services to members (not a "cover charge" intended to pay for a single night or week's entertainment). Continued and ongoing payment of the membership fee must be required in order to maintain membership.
 - (3) The establishment must restrict admission to its premises to only members and a limited number of invited guests who are accompanied by members. The establishment must not be open to the general public, although infrequent, occasional public functions may be permissible so long as they constitute an insignificant proportion of the establishment's operation and so long as smoking is prohibited during any such public function.
 - (4) The organization cannot restrict its membership on the basis of race, color, creed, religion or national origin. Any private club's exemption from the smoke-free provisions of this section does not apply when such organization is established to avoid compliance with this section.
 - (5) The organization is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wage fixed and voted upon each year by the governing body.

Public place means an enclosed area 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 transportation facilities, reception areas, restaurants, casinos, 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 licensed child care, licensed adult day care, or licensed health care facility.

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.

Service line means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

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, or other tobacco product.

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.

(b) *Application of this section to city-owned facilities.* All enclosed facilities, including buildings owned, or operated by the City of Grandview, shall be subject to the provisions of this article

(c) *Prohibition of smoking in public places.* Smoking shall be prohibited in all enclosed public places within the City of Grandview, including but not limited to the following places:

- (1) Aquariums, galleries, libraries, and museums.
- (2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to professional offices, banks, laundromats, hotels, and motels.
- (3) Bars, except those bars described in subsection (e)(7) of this section and meeting the conditions described therein.
- (4) Bingo facilities.

- (5) Convention facilities.
- (6) Elevators.
- (7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- (8) Health care facilities.
- (9) Licensed child care and adult day care facilities.
- (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (11) Polling places.
- (12) Public transportation facilities, including buses and taxicabs under the authority of the City of Grandview, and ticketing, boarding, and waiting areas of public transit depots.
- (13) Restaurants.
- (14) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (15) Retail stores.
- (16) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or board of aldermen of the City of Grandview or a political subdivision of the state when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City of Grandview.
- (17) Service lines.
- (18) Shopping malls.
- (19) Sports arenas, including enclosed places in outdoor arenas.
- (20) Pool halls and billiard parlors.
- (21) Subdivision homeowners' association facilities.

(d) *Prohibition of smoking in places of employment.* Smoking shall be prohibited in all enclosed facilities within places of employment. This includes 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. Smoking is not prohibited in vehicles if occupied exclusively by the driver, or if all passenger(s) are smokers who consent. Smoking is not prohibited in the place of employment of a sole proprietor with no other employee(s) or in a place of employment of any individual who is the sole employee at a facility to which the public is not invited or in which the public is not permitted, provided such place of employment is located in a freestanding structure occupied solely by the business or (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of secondhand smoke into adjoining areas located in a freestanding structure.

(e) *Where smoking not prohibited.* Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of subsections (c) and (d) of this section:

- (1) Private residences, except when used as a licensed child care, licensed adult day care, or licensed health care facility.
- (2) Private vehicles.
- (3) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty (20) per cent of rooms rented to guests in a hotel or motel may be so designated.
- (4) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested to the management thereof in writing to be placed in a room where smoking is permitted.
- (5) Outdoor areas of places of employment.
- (6) Private clubs as defined in subsection (a) of this section. A private club may only qualify for this exemption if either (a) it is located in a freestanding structure occupied solely by the private club and throughout which entire premises smoking is permitted or (b) it (i) is completely enclosed on all sides by solid walls extending from the floor to the underside of the floor or roof deck above; (ii) complies with all applicable fire and building code requirements; and (iii) has a separate ventilation system whereby the air from such space is immediately exhausted to an outdoor area rather than being recirculated inside, and is negatively pressurized to prevent back streaming of secondhand smoke into adjoining areas located in a freestanding structure; and (c) it has posted at every entrance signage at a height

and location conspicuous to persons entering the establishment, with primary lettering of not less than one (1) inch in height clearly stating:

"WARNING!

Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States."

- (7) Bars that hold, or acquire prior to January 1, 2012, a full sales-by-drink license issued pursuant to subsections (a) or (e) of section 3-15 of the Code of Laws ("exempted bars"), but only if any such exempted bar posts signage at every entrance at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one (1) inch in height, clearly stating:

"WARNING!

Secondhand smoke causes coronary heart disease, lung cancer and premature death, according to the Surgeon General of the United States."

Furthermore, exempted bars which seat fifty (50) or more patrons must provide a contiguous nonsmoking area comprising at least seventy (70) per cent of the public space; exempted bars seating less than fifty (50) patrons may designate the entire public space as smoking provided a sign is posted at every entrance at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than an inch in height, clearly stating:

"NONSMOKING AREAS NOT AVAILABLE"

This limited exemption for bars from the prohibition of smoking in public places shall end on August 1, 2014, or earlier upon the suspension, revocation or non-renewal of the exempted bar's liquor or occupational license; a change of the exempted bar's ownership; a change of location of the exempted bar; or upon the cessation of business activity at the exempted bar for a period of more than ninety (90) days.

- (f) *Declaration of establishment as nonsmoking.* Notwithstanding any other provision of this section, 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 subsection (g) of this section is posted.
- (g) *Posting of signs.*
- (1) "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 at every public place and place of employment where smoking is prohibited by this section, by the owner, operator, manager, or other person in control of that place.
 - (2) Every public place and place of employment where smoking is prohibited by this section shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
 - (3) All ashtrays and other smoking receptacles shall be removed from any area where smoking is prohibited by this section by the owner, operator, manager, or other person having control of the area.
- (h) *Non-retaliation.* 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 section files a complaint or reports a violation of this section.
- (i) *Enforcement.*
- (1) Any person who desires to register a complaint under this article may do so with the city administrator or an authorized designee.
 - (2) In addition to the remedies provided by the laws of the State of Missouri, and the provisions of this section, the city administrator or an authorized designee or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of Section 17-47 may apply for injunctive relief to enforce the provisions of this section in any court of competent jurisdiction.

(j) *Violations and penalties.*

- (1) A person who violates Section 17-47 by smoking in an area where smoking is prohibited by the provisions of this section shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50.00) for each infraction.
- (2) 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 section shall be guilty of an infraction, punishable by:
 - a) A fine not exceeding one hundred dollars (\$100.00) for a first violation.
 - b) A fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year.
 - c) A fine not exceeding five hundred dollars (\$500.00) for each additional violation within one (1) year.
- (3) In addition to the fines established by this section, violation of this section 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 the occupation license issued to conduct business at the premises pursuant to Chapter 13 of the Code of Laws of the City of Grandview.
- (4) Each day on which a violation of Section 17-47 occurs shall be considered a separate and distinct violation.

(k) *Public education.* The city administrator or an authorized designee may engage in a continuing program to explain and clarify the purposes and requirements of Section 17-47 to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Clean Indoor Air Act of 2011.

(l) *Governmental agency cooperation.* The city administrator or an authorized designee may request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with Section 17-47. This includes urging all federal, state, city, county, and school district agencies to update their existing smoking control regulations to be consistent with this section.

(m) *Other applicable laws.* Section 17-47 shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(n) *Liberal construction.* Section 17-47 shall be liberally construed so as to further its purposes.

(o) *Severability.* If any provision, clause, sentence, or paragraph of Section 17-47 or the application thereof to any person or circumstance shall be held invalid, that invalidity shall not affect the other provisions of Section 17-47 which can be given effect without the invalid provision or application, and to this end the provisions of Section 17-47 are declared to be severable.

(Ord. No. 6475, §§ 1, 2, 7-26-11)

Editor's note—

Sections 1 and 2 of Ord. No. 6475, adopted July 26, 2011, repealed the former § 17-47, and enacted a new § 17-47 as set out herein. The former § 17-47 pertained to smoke-free air in certain areas of certain public places, and derived from Ord. No. 3731, §§ 1, 2, adopted March 29, 1988; and Ord. No. 4419, §§ 1—8, adopted Dec. 22, 1992.