

## Summary of the City of Omaha's Smoking Ban Ordinance

(June 2006)

The core of this ordinance is the following two sections that would be added to the City Code:

- 12-163: Smoking shall be prohibited in all enclosed Public Gathering Places within the City from and after October 2, 2006.
- 12-164: Smoking shall be prohibited in all enclosed facilities within Places of employment from and after October 2, 2006. 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.

The Ordinance goes beyond current state law, which exempts enclosed private offices occupied only by smokers from the definition of public place.

Permanent exemptions from these restrictions:

- Private residences, unless they are used for licensed day care, adult day care, or medical facilities;
- Up to twenty percent of the rooms in a hotel (they must be contiguous);
- Rooms in nursing homes and long-term care facilities when everyone residing in the room not only smokes but has requested in writing to be in a smoking room;
- Outdoor areas of employment except those covered by the provisions of section 12-164;
- Tobacco stores (those that sell only tobacco products and products that are "directly related to tobacco").

Temporary exemptions. The ordinance will affect these facilities beginning May 14, 2011:

- Stand alone bars that provide only limited food service. A "bar" is defined as an "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." Limited food service is defined as "serving or otherwise providing only snack items or commercially prepared and wrapped foods that require little or no preparation." Note that the designation "stand alone bar" means that this must be a separate facility. A section of a restaurant that is considered "the bar" is not exempt from the ban.
- Keno Locations that applied for licenses by June 8, 2006 and are actually providing keno.
- Horseracing simulcasting sites.
- Tobacco retail outlets that are separately housed from any entity required to be smoke free under this ordinance. This is different from the "tobacco only" stores that are permanently exempt and are defined as "a store that sells tobacco and tobacco related products and may sell other products that are incidental to the tobacco sales."

All of the permanent and temporary exemptions are contingent on smoke not “infiltrating” nonexempt facilities. In the case of smoke infiltration, a facility loses its exemption.

Also exempted from the ban are “outdoor places of employment except those covered by the provisions of Sections 12-164.” That section imposes the ban on “all enclosed facilities within places of employment.” An “enclosed area” is defined as “all space between a floor and a ceiling that is contained on all sides by walls (exclusive of doorways) or windows, either permanent or temporary, which extend from floor to ceiling.”

By October 2, 2006, all facilities that are covered by the ban must have no-smoking signs posted at each entrance door, and all ashtrays and “smoking paraphernalia” must be removed.

Primary enforcement powers are with the Omaha Police Department and any other law enforcement agency with jurisdiction. Citizens may initiate enforcement proceedings.

A person who smokes in an area where it is prohibited is subject to a fine of \$100 on the first offense; \$200 for a second offense; and \$500 for third and subsequent offenses.

Facility owners, operators, and managers who fail or refuse to comply with these restrictions are subject to a warning on the first offense; \$100 for a second offense; and \$200 for a third offense; and \$500 for fourth and subsequent offenses. In addition, “repeated violations” may result in the “suspension or revocation of any permit or license” issued for the premises.

An employer may not discharge, refuse to hire, or otherwise retaliate against an employee, applicant, or customer for reporting violations.