



BILL NO. 3319

ORDINANCE NO. 05-01

INTRODUCED BY ALDERMEN GATTON, POGUE and ROBINSON.

---

**AN ORDINANCE AMENDING CHAPTER 1, SECTION 1-2 ENTITLED “DEFINITIONS” BY THE ADDITION OF CERTAIN DEFINITIONS FOR REGULATION OF SMOKING IN PUBLIC AND WORK PLACES, AND BY THE ADDITION IN CHAPTER 17, OF A NEW SECTION 17-65 ENTITLED “BALLWIN CLEAN AIR ACT”.**

---

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BALLWIN, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

**Section 1. Chapter 1, Section 1-2 entitled “Definitions” is amended by adding the following:**

- A. As applied to Sec. 17-65, “Bar” means an establishment that is licensed to serve alcoholic beverages for consumption by-the-drink, including an establishment that may also be considered a restaurant and/or a Food Service Establishment that serves food and serves alcoholic beverages for consumption by-the-drink.
- B. As applied to Sec. 17-65, “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 service for a non-profit entity.
- C. “Employer” means a person, business, partnership, association, limited liability company, or corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- D. As applied to Sec. 17-65, “Enclosed Area” means all space between floor and ceiling that is enclosed on all sides by walls that extend from the floor to the ceiling, and/or windows and doorways.
- E. “Environmental Tobacco Smoke (ETS) or “secondhand smoke” means the complex mixture formed from escaping smoke of a burning tobacco product (termed as “side-stream smoke”) and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as “passive smoking” or “involuntary smoking”.
- F. As applied to Sec. 17-65, “Food Service Establishment” means an area of restaurants, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, that 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 “food establishment” shall include an establishment that 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 and is also licensed to serve alcoholic beverages for consumption by-the-drink.
- G. As applied to Sec. 17-65, “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, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms, and wards within health care facilities.

- H. As applied to Sec. 17-65, “Membership Association” means a private organization in existence prior to November 30, 2004, and where all of the duties with respect to the operation of such association, including, but not limited to the preparation of food and beverages, and service of food and beverages, reception and secretarial work, and the security services of the Membership Association are performed by members of such Membership Association who do not receive compensation of any kind from the Membership Association or any other entity for the performance of such duties; and:
- (1) Is organized primarily for the benefit of its members; and
  - (2) Its members are required to pay dues; and
  - (3) Is organized primarily as:
    - (a) a recreational association; or
    - (b) a fraternal association; or
    - (c) an athletic association; or
    - (d) a military veterans association; or
    - (e) a religious association; or
    - (f) a kindred association; and
  - (4) Is a not-for-profit organization; and
  - (5) Is managed and operated by a board consisting entirely of its members; and
  - (6) Is not primarily engaged in the preparation and serving of alcoholic beverages by-the-drink and/or food.
- I. As applied to Sec. 17-65, “Place of Employment” means an area under the control of a public or private employer in which employees of the employer perform services, and shall include, but not be limited to offices, classrooms and school grounds, retail stores, banquet facilities, theaters, food stores, banks, financial institutions, factories, warehouses, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, rooms or areas containing photocopying equipment, other office equipment used in common, and company vehicles. A private residence is not a “place of employment” unless used as a childcare, adult day care, or health care facility.
- J. As applied to Sec. 17-65, “Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.
- K. As applied to Sec. 17-65, “Sports Arenas” means any indoor or outdoor athletic fields, 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.

## **Chapter 17, Section 17-65, Clean Air Ordinance Smoking Restrictions**

### ***A. Smoking shall be prohibited in all indoor areas and sports arenas within the City of Ballwin, 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 business and non-profit entities patronized by the public, including but not limited to professional offices, banks, and laundromats;
3. Bars;
4. Bingo facilities;
5. All public and private colleges, universities, and other educational and vocational institutions;
6. Elevators;
7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;
8. Health care facilities, including health care clinics, doctor's offices or other health care related facilities;
9. Licensed child care and adult day care facilities;
10. Polling places;
11. All enclosed facilities, including buildings and vehicles owned, leased or operated by the City of Ballwin, shall be subject to the provisions of this Article;
12. Restaurants and Food Service Establishments;
13. Restrooms, lobbies, reception areas, hallways, and other common use areas;
14. Retail stores;
15. Rooms, chambers, places of meeting or public assembly under the control of the agency, board, commission, committee or council of the City of Ballwin when a public meeting is in progress.

### ***B. Prohibition of Smoking in Place of Employment***

Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, bars, restaurants, classrooms, conference and meeting rooms, 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 by the effective date of this Section and to all prospective employees upon their application for employment.

### ***C. Where Smoking is Not Restricted***

The following areas shall be exempt from the provisions of Sec. 17-65:

1. Private homes, private residences and private vehicles,
2. **a.** Membership Associations that were in existence and in operation on November 30, 2004; provided, however, that smoking shall only be allowed in Membership Associations in which all of the duties with respect to the operation of such association, including, but not limited to the preparation of food and beverages, the service of food and beverages, reception and secretarial work of the Membership Association are performed by members of such Membership Association who are at least eighteen years of age and who do not receive compensation of any kind from


the Membership Association or any other entity for the performance of such duties. In addition, the Membership Association shall not allow any person under the age of eighteen years of age to be present on the Membership Association premises at any time when smoking is permitted.

**b.** Membership Associations may retain and utilize non-members for professional services such as accounting and legal services and other services that are not generally within the scope of the day-to-day operation of the Membership Associations.

***D. Declaration of Establishments 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 an 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 this Section is posted.

***E. 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 in every public place of employment where smoking is prohibited by this Article, 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 Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
3. All ashtrays and other smoking paraphernalia shall be removed from any premises where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

***F. 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 Article, or reports or attempts to prosecute a violation of this Article.

***G. Enforcement***

1. This Article shall be enforced by Ballwin Police Officers, Code Enforcement Inspectors, or by an authorized designee of the City Administrator, and shall henceforth be referred to as the “enforcement officer”.
2. Notice of the provisions of this Ordinance shall be given to all applicants for a Business License in the City of Ballwin.
3. Any citizen may initiate a complaint by notice to an enforcement officer.
4. Any employee who desires to register a complaint under this Ordinance may initiate enforcement with the enforcement officer without fear of retaliation.

5. An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.

***H. Violation and Penalties***

1. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a penalty of one hundred dollars (\$100) for a first violation, and two hundred fifty dollars (\$250) for each subsequent violation.
2. A person who owns, manages, operates, or otherwise controls a public place or place of employment who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
  - a. A penalty of two hundred fifty dollars (\$250) for a first violation;
  - b. A penalty of five hundred dollars (\$500) for each additional violation.
3. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

**Section 2. Effective Date**

A. This Ordinance shall become effective, sixty (60) days from and after the date of its passage and approval, and smoking will not be permitted for all places of employment, **with the exception of Bars and Food Service Establishments that were licensed to serve alcoholic beverages for consumption by the drink on or before December 1, 2004.**

B. Smoking will not be permitted in all **Bars and Food Service Establishments that were licensed to serve alcoholic beverages for consumption by the drink on or before December 1, 2004**, effective January 2, 2006.

C. Smoking will not be permitted for all places of employment, **including Bars and Food Service Establishments that were licensed to serve alcoholic beverages for consumption by the drink on or after December 1, 2004**, and this Ordinance shall become effective, sixty (60) days from and after the date of its passage and approval.

PASSED THIS \_\_\_10th\_\_\_ DAY OF \_\_\_\_\_January\_\_\_\_\_, 2005

\_\_\_\_\_  
ROBERT E. JONES, Mayor

APPROVED THIS \_\_\_10th\_\_\_ DAY OF \_\_\_\_\_January\_\_\_\_\_, 2005

\_\_\_\_\_  
ROBERT E. JONES, Mayor

ATTEST:

\_\_\_\_\_  
Robert Kuntz, City Administrator