

1 **BOARD BILL # 2**            **INTRODUCED BY ALDERMAN STEPHEN GREGALI**

2  
3 An ordinance pertaining to smoking in food and beverage establishments; requiring the  
4 owner of any food and beverage establishment located in the City of St. Louis to  
5 designate his/her establishment as smoke-free, smoke-restricted, or smoking; establishing  
6 rules and regulations for such establishments based upon the designation; containing a  
7 penalty clause, severability clause and an emergency clause.

8 **WHEREAS**, environmental tobacco smoke is a leading public health problem in the City  
9 of St. Louis, Missouri and throughout the United States; and

10 **WHEREAS**, the use of lighted smoking products inherently creates a health hazard of  
11 second-hand smoke, which affects the public health, indoor environment, and the  
12 enjoyment of public places; and

13 **WHEREAS**, there exists conclusive evidence that environmental tobacco smoke causes  
14 cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies, and  
15 irritations to the eyes, ears, nose, and throats of both smokers and non-smokers; and

16 **WHEREAS**, environmental tobacco smoke, which includes both exhaled and side stream  
17 smoke from burning cigarettes, causes the deaths of 53,000 Americans each year; and

18 **WHEREAS**, the harmful effects of environmental tobacco smoke are not confined to  
19 smokers but also cause severe discomfort and illness to nonsmokers; and

20 **WHEREAS**, food and beverage establishments have been shown to be locations of  
21 significant exposure to environmental tobacco smoke by the citizens of the City of St.  
22 Louis; and

23 **WHEREAS**, both the Public Health Services National Toxicology Program and the  
24 World Health Organizations' International Agency for Research on Cancer identify

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1 environmental tobacco smoke as a human Class A carcinogen and state that there is no  
2 safe level of exposure; and,

3 **WHEREAS**, there are laws, ordinances and regulations in place that protect workers  
4 from other environmental hazards, including Class A carcinogens such as asbestos,  
5 arsenic and benzene, but none which regulate exposure to environmental tobacco smoke;  
6 and

7 **WHEREAS**, the United States Surgeon General, the American Cancer Society and the  
8 American Lung Association have concluded that involuntary smoking is a cause of  
9 disease, including lung cancer in non-smokers,

10 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS,**

11 **SECTION ONE. Definitions**

- 12 a. Business Agent – An individual who has been designated by the owner or operator of  
13 any establishment to be the manager or otherwise in charge of said establishment.
- 14 b. Employee – Any individual who performs services for an employer in exchange for  
15 wages or profits.
- 16 c. Enclosed – A space, structure, facility or any portion thereof, bounded by walls with  
17 or without windows, continuous from floor to ceiling or deck above and served by  
18 heating, ventilation, and air conditioning (HVAC) system (s), and through which air  
19 can circulate from one portion to another, including, but not limited to offices, rooms,  
20 hallways, customer service areas, foyers, common areas, waiting areas, restrooms,  
21 lounges, and eating areas.

- 1 d. Food and /or beverage establishment – Any establishment which is required to have a  
2 business license from the City of St. Louis, and which provides food and/or beverage  
3 under a permit from the Health Department and/or an “on premises” liquor license.
- 4 e. Smoking – Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe,  
5 or other lighted tobacco product in any manner or form.

6 **SECTION TWO – Designating Food and Beverage Establishments as SMOKE-**  
7 **FREE, SMOKE-RESTRICTED, or SMOKING.**

- 8 1. It shall be the responsibility of the owner of the food and beverage establishment to  
9 designate his/her establishment as one of the following: (1) SMOKE-FREE, (2)  
10 SMOKE-RESTRICTED, OR (3) SMOKING.
- 11 2. For establishments designated as SMOKE-FREE, no smoking by any persons,  
12 employees, or patrons, at any time will be allowed in any part of the enclosed areas of  
13 establishment, except as noted in paragraph 11 below.
- 14 3. For establishments designated as SMOKE-FREE, signage shall be posted clearly and  
15 conspicuously on or adjacent to each and every door to the establishment that is  
16 generally accessed by patrons or employees and shall be plainly visible from the  
17 exterior of the building to persons entering through the door.
- 18 4. For establishments designated as SMOKE-RESTRICTED, smoking shall be allowed  
19 within the establishment while protecting non-smokers from the effects of  
20 secondhand smoke to the extent possible.
- 21 5. For establishments designated as SMOKE-RESTRICTED, signage shall be posted  
22 conspicuously on or adjacent to each and every door to the establishment that is

- 1 generally accessed by patrons or employees and shall be plainly visible from the  
2 exterior of the building to persons entering through the door.
- 3 6. For establishments designated as SMOKING-RESTRICTED, smoking shall only be  
4 allowed in completely enclosed rooms where the air is: separately ventilated to the  
5 outside and not mixed with air circulating in any non-smoking area, or sufficiently  
6 filtered either mechanically or electronically to remove substantially all of the smoke  
7 and carcinogenic matter in the air before it is mixed with air circulating in any non-  
8 smoking area; and not require non-smokers to pass through any smoking area to reach  
9 non-smoking areas or common facilities such as restrooms, telephones, or lounges;  
10 and post appropriate signage designating smoking and non-smoking sections.
- 11 7. For establishments designated as SMOKING, smoking by patrons shall be allowed  
12 throughout all enclosed areas generally occupied by patrons.
- 13 8. For establishments designated as SMOKING, signage shall be posted clearly and  
14 conspicuously on or adjacent to each and every door to the establishment that is  
15 generally accessed by patrons or employees and shall be plainly visible from the  
16 exterior of the building to persons entering through the door.
- 17 9. For establishments designated as SMOKING, patrons shall not be offered a choice of  
18 a non-smoking section; if ashtrays are made available/distributed for patrons they  
19 shall be made available/distributed throughout all enclosed areas generally occupied  
20 by patrons.
- 21 10. Two or more food and beverage establishments operating under separate permits  
22 and/or licenses shall not be directly connected by any interior means of access  
23 including but not limited to doorways, windows, service bars or service windows,

1 unless each has the same designation, either SMOKE-FREE, SMOKING-  
2 RESTRICTED, or SMOKING. If SMOKING is chosen for any but not all of the  
3 establishments, each one for which SMOKING is chosen must have HVAC system  
4 (s) which serve only that area, and the HVAC system shall be balanced so as to keep  
5 a 0% pressure environment in all doorways and windows, and be physically separated  
6 in its entirety by walls which extend from floor to ceiling or deck above and any  
7 doors to that area must be self-closing.

8 11. Food and beverage establishments may offer employees a separate smoking lounge if  
9 it is physically separated in its entirety by walls which extend from floor to ceiling or  
10 deck above, is served by HVAC system (s) which serves only that area, and the  
11 HVAC system shall be balanced so as to keep a 9% pressure environment in all  
12 doorways and windows, has a self-closing door and is available only to employees of  
13 the establishment.

14 12. Smoking may be permitted in hotel, motel, inn, bed and breakfast and lodging rooms  
15 that are rented to guests designated as “smoking rooms.” A facility which offers such  
16 rooms to guests may add additional language to the required signage after the  
17 statement “Smoking is prohibited throughout this facility at all times” stating  
18 “Lodging rooms are available for guests who smoke” in matching letters.

19 13. Food and beverage establishments will be listed in a listing by status (SMOKE-  
20 FREE, SMOKE-RESTRICTED, or SMOKING, to be published annually by the City  
21 of St. Louis Health Department no later than November 1, 2005; the first listing will  
22 be completed by December 1, 2005; the listing will be available to the public from the  
23 Office of the City Register and shall also be available on the City’s web site.

1     **SECTION THREE: Violations**

2     1. It shall be the responsibility of the owner, business agent, manager, or other person  
3         having control of the food and beverage establishment to insure compliance with all  
4         sections of this ordinance pertaining to his/her place of business. A violator of this  
5         ordinance may receive:

- 6         a. First violation – one hundred dollar (\$100.00) fine.
- 7         b. Second violation within 24 months of the first violation – five hundred dollar  
8             (\$500.00) fine
- 9         c. Three or more violations within 24 months of the second or current violation –  
10             five hundred dollar (\$500.00) fine for each violation.

11    2. No provision, clause or sentence of this section of this ordinance shall be interpreted  
12         as prohibiting the City of St. Louis from suspending or revoking any license or permit  
13         issued by and within the jurisdiction of the City of St. Louis for repeated violations of  
14         this ordinance.

15    3. If the owner, business agent, manager or other person in charge of such food and  
16         beverage establishment attempts to enforce this ordinance and a patron violates it  
17         (smokes in a SMOKE-FREE establishment) the owner, business agent, manager or  
18         other person in charge shall not be deemed to be in violation of this ordinance, and  
19         the patron shall be subject to fines as follows:

- 20         a. First violation – one hundred dollar (\$100.00) fine.
- 21         b. Second violation within 24 months of the first – five hundred dollar (\$500.00)  
22             fine.

1 c. Three or more violations within 24 months of the second or current violation –  
2 Five hundred dollar (\$500.00) fine for each violation.

3 4. Each calendar day that an owner, business agent, manager, or other person in charge  
4 of a food and beverage establishment operates in violation of any provision of this  
5 ordinance shall be deemed a separate violation; each calendar day that a patron  
6 violates this ordinance (i.e. smokes in a SMOKE-FREE establishment) shall be  
7 deemed a separate violation.

8 **SECTION FOUR. Enforcement**

9 1. Authority to enforce this ordinance shall be held by the Health Commissioner or the  
10 Commissioner's designees.

11 2. An owner, business agent, manager, operator, or employee of an establishment  
12 regulated by this ordinance shall inform persons violating this ordinance of the  
13 appropriate provisions thereof.

14 **SECTION FIVE. Non-retaliation**

15 No owner, business agent, manager or any other person having control of a food and  
16 beverage establishment shall discharge, refuse to hire, refuse to serve or in any manner  
17 retaliate or take any adverse personnel action or other adverse action against any  
18 employee, applicant, customer, or person because such employee, applicant, customer or  
19 person takes any action in furtherance of the enforcement of this ordinance or exercises  
20 any right conferred by this ordinance.

21 **SECTION SIX. Severability**

22 If any provision, clause, sentence, paragraph or word of this ordinance or the application  
23 thereof to any person, entity or circumstances shall be held invalid, such invalidity shall

1 not affect the other provisions of this ordinance which can be given effect without the  
2 invalid provisions or application, and to this end the provisions of this ordinance are  
3 declared severable.

4 **SECTION SEVEN. Effective Date**

5 Food and beverage establishments legally permitted and/or licensed shall designate their  
6 status by notifying the City's Health Commissioner in writing by November 1, 2005, and  
7 annually thereafter at the time of renewing their business license. Food and beverage  
8 establishments shall implement the provisions of this ordinance by January 1, 2006.  
9 Should an establishment opt to change its status prior to the regular annual renewal date  
10 for its business license, it will be required to purchase another business license at the  
11 same cost as the most recent regular annual one, in addition to any and all regular annual  
12 purchases