

Passed: June 8, 2010  
Published: June 16, 2010

## ORDINANCE NO. 2023

**AN ORDINANCE AMENDING §§ 8.48.020, 8.48.030, 8.48.040, 8.48.050, AND 8.48.120 OF THE DERBY MUNICIPAL CODE, PROHIBITING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYEMENT; AND REPEALING ORIGINAL §§ 8.48.020, 8.48.030, 8.48.040, 8.48.050, AND 8.48.120 OF SAID CODE.**

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

**Section 1.** Section 8.48.020 of the Derby Municipal Code is hereby amended to read as follows:

### **8.48.020 Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- A. "Access point" means the area within a ten foot radius of any window, air intake, or doorway, other than a doorway designated as a main entrance pursuant to this chapter, leading into a building or facility within any part of which smoking is prohibited pursuant to this chapter.
- B. "Business" means any nonprofit entity or any sole proprietorship, partnership, association, joint venture, corporation, professional corporation or other business entity of any kind wherein goods or services are sold or offered for sale or where legal, medical, dental, engineering, architectural or other professional services are performed.
- C. "City" means the City of Derby, Kansas.
- D. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, is an independent contractor or is a volunteer.
- E. "Employer" means any person, partnership, corporation, professional corporation, municipal corporation, or nonprofit entity having one or more employees.
- F. "Enclosed area" means that space between a floor and ceiling which, exclusive of doors or passage ways, is enclosed on all sides by solid walls or windows extending from floor to ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping or similar structures.
- G. "Food service establishment" means a place in which food is served or is prepared for sale or service on the premises or elsewhere, with or without charge, including but not limited to a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside kitchen or commissary.
- H. "Health care facility" means an institution, place, building, or agency required to be licensed under Kansas law, including but not limited to a hospital, nursing facility or nursing home, boarding home, assisted living facility, supervised living facility, or ambulatory medical and surgical center, but excluding a private residence being visited by a health care provider for the purposes of providing in-home health care.
- I. "Licensed premises" means any premises where alcoholic liquor or cereal malt beverage, or both, is served or provided by the individual drink as defined in Chapter 41 of the Kansas

Statutes Annotated (K.S.A.) and amendments thereto, for consumption or use on the premises, with or without charge. Such term shall include drinking establishments, Class A Private Clubs, Class B Private Clubs, and cereal malt beverage retailers, all as defined by K.S.A. chapter 41 and amendments thereto, and this code.

- J. "Main entrance" means each entrance to a public place or place of employment that is available for regular use by the public and designated as a main entrance by the person in charge thereof; provided that at least one main entrance shall be designated for each public place and place of employment.
- K. "Office landscaping" means an indoor office area without permanent walls, or with walls that are not floor to ceiling; open space such as waiting areas and atriums; cubicles and/or open desk seating areas.
- L. "Place of employment" means any enclosed area under the control of a public or private employer and which employees normally frequent during the course of employment, including but not limited to work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, employee lounges, eating areas, stairs and restrooms; access points; and any area outside of any such enclosed area and within twenty feet of a main entrance. A private residence is not a place of employment unless used as a childcare, adult day care or health care facility.
- M. "Private place" 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 and personal motor vehicles. A privately owned business, open to the public, is not a private place.
- N. "Public place" means any enclosed area other than a private place, to which the public is invited or in which the public is permitted, including but not limited to:
  - 1. Production and marketing establishments;
  - 2. Retail service establishments;
  - 3. Retail stores and shopping malls;
  - 4. Professional and other offices, banks, laundromats, hotels, and motels;
  - 5. Libraries, educational facilities, child care and adult day care facilities;
  - 6. Food service establishment and licensed premises;
  - 7. Galleries, libraries, aquariums, and museums;
  - 8. Health care facilities, including but not limited to hospitals, clinics, physical therapy facilities, and medical and dental offices;
  - 9. Sports arenas and convention halls, including enclosed places in outdoor arenas;
  - 10. Any facility which is primarily used for exhibiting any motion picture, play, drama, lecture, musical recital or other similar performance, except that performers may smoke when smoking is part of a stage production;
  - 11. Any place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, billiard halls, betting establishments, bowling facilities, arenas, and swimming pools;
  - 12. Every room, chamber, place of meeting or public assembly, including school buildings, under the control of any board, council, commission, committee, including a joint committee, or any agency of the city or any political subdivision of the state, to the extent such place is subject to the jurisdiction of the city, during such time as a public meeting is in progress;
  - 13. Polling places;
  - 14. Bus terminals, airports, train stations, and other public transit depots, facilities and means of public transit, and buses and taxicabs under the authority of the City, as well as ticket, boarding, and waiting areas;

15. Private residences, when used as a child care, adult day care or health care facility;
16. All enclosed spaces within any of the foregoing and customarily used or patronized by the public, including but not limited to:
  - a. Lobbies, waiting rooms, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities,
  - b. Restrooms, lobbies, reception areas, hallways, and any other common-use areas,
  - c. Service lines, and
  - d. Elevators; and

All access points and all areas outside and within twenty feet of a main entrance.

- O. "Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- P. "Smoking" means possession of a cigarette, cigar, pipe or any other lighted smoking equipment burning tobacco in any other form or other device designed for the use of tobacco.
- Q. "Sports arena" means a sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley or other place where members of the public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

**Section 2.** Section 8.48.030 of the Derby Municipal Code is hereby amended to read as follows:

**8.48.030. Smoking prohibited in public places and places of employment.**

- A. Except as otherwise provided in this section, no person shall smoke in any public place or place of employment within the City.
- B. Subsection A hereof shall not apply to:
  1. Rooms or areas enclosed by walls, windows or doorways, having neither a ceiling nor a roof and which are completely open to the elements and weather at all times; and
  2. Rooms or areas enclosed by walls, fences, windows or doorways and a roof or ceiling, having openings that are permanently open to the elements and weather, the area of which is equal to at least 30% of the total perimeter wall area of such room or area.

**Section 3.** Section 8.48.040 of the Derby Municipal Code is hereby amended to read as follows:

**8.48.040 Employer responsibilities.**

It shall be the responsibility of each employer having a place of employment within the City to maintain such place of employment smoke-free for all employees. To that end, each employer shall:

- A. Adopt and maintain a written smoking policy which shall, without exception, prohibit smoking in all areas of such place of employment. Such policy shall be communicated to all current employees within one week of its adoption and shall be communicated to all new employees upon hiring. Each employer shall provide a written copy of the smoking policy to any current or prospective employee upon request.
- B. Post or cause to be posted in a conspicuous place signs displaying the international no smoking symbol and clearly stating that smoking is prohibited by City ordinance.

**Section 4.** Section 8.48.050 of the Derby Municipal Code is hereby amended to read as follows:

**8.48.050. Responsibilities of proprietors, owners and managers.**

No proprietor, owner, manager or other person having control of a public place or place of employment shall knowingly permit, cause, suffer or allow any person to violate the provisions of this chapter in such place. Such persons shall take all reasonable steps necessary to prevent or stop smoking in violation of this chapter by employees, patrons and visitors, including but not limited to:

- A. Posting or causing to be posted in a conspicuous place signs displaying the international no smoking symbol and clearly stating that smoking is prohibited by City ordinance;
- B. removing all ashtrays;
- C. Verbally asking a person who is illegally smoking to extinguish the smoking materials;
- D. Refusing service to a person who is illegally smoking;
- E. Verbally requesting that a person who is illegally smoking leave the premises; and
- F. Applying standard business procedures in the same manner as for violations of house rules or other local ordinances or state laws. Such communications, if directed to an employee, patron or visitor who is hard of hearing, may be written, in sign language or via any other effective means of communication.

**Section 5.** Section 8.48.120 of the Derby Municipal Code is hereby amended to read as follows:

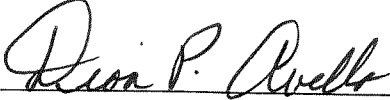
**8.48.120. Violations and penalties.**

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to fail to comply with all or any of this chapter and amendments thereto.
- B. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, to allow smoking to occur where prohibited by law. Any such person shall be deemed to allow smoking to occur under this subsection if such person:
  1. Has knowledge that smoking is occurring; and
  2. Acquiesces to the smoking under the totality of the circumstances.
- C. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
- D. Any person who violates this chapter shall be guilty of a cigarette or tobacco infraction punishable by a fine:
  1. Not exceeding one hundred dollars for the first violation;
  2. Not exceeding two hundred dollars for a second violation within a one year period after the first violation; or
  3. Not exceeding five hundred dollars for a third or subsequent violation within a one year period after the first violation.
- E. For the purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occurred.
- F. Each day that any violation of this chapter occurs shall constitute a separate offense.
- G. In addition to the fines established by this section, violation of this chapter by a person having control of a public place or place of employment shall be grounds for suspension or revocation of any permit or license issued for the premises on which the violation occurred.

**Section 6.** Original §§8.48.020, 8.48.030, 8.48.040, 8.48.050, and 8.48.120 of the Derby Municipal Code are hereby repealed.

**Section 7.** This Ordinance shall be effective from and after July 1, 2010, and its publication once in the official City newspaper.

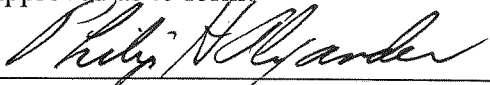
**ADOPTED BY THE GOVERNING BODY** this 8th day of June, 2010.

  
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Dion P. Avello, Mayor

ATTEST:

  
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Jean Epperson, City Clerk

Approved as to form:

  
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Philip H. Alexander, City Attorney