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City of Branson
110 West Maddux
Branson, MO 65616
417-337-8548
ganderson@bransonmo.gov

NEWS RELEASE

Date: September 22nd, 2014

Contact: Joel Hornickel, Planning and Development Director 417-337-8546

Third Round of Revisions to Smoke-Free Ordinance Released

In response to the community's input over the past six weeks, the Branson Board of Aldermen discussed the proposed smoke free ordinance in length during their Study Session on September 18th. As a result, several revisions have been requested including less regulation for outdoor smoking in areas such as patios, RV campgrounds, and business entrances. Additionally, the new language includes a provision for up to 20% smoking rooms at hotel/motel properties.

The Board also discussed the maximum fine for violating the ordinance at \$25. This contrasts with the original drafts which used the maximum fine for a city ordinance violation, which is up to \$500.

The newest draft of the proposed ordinance is available on the homepage of the City of Branson website – www.BransonMO.Gov. Not only have the changes to the ordinance been highlighted in red within the draft again, but the proposed language has been formatted to appear the same as it will when it is presented to the Board for final consideration.

The Board of Aldermen is expected to vote on the smoke-free ordinance during their regular meeting on Tuesday, October 14th. The public is invited to make comments to the Board during that meeting or at the September 23rd meeting by following the [established procedures](#).

To participate in the Public Comment section of any Board meetings, citizens are asked to sign up before the meeting begins at 7:00 p.m. The Mayor will call up each speaker in the order that they have signed up on the sheet. Each speaker will have up to five minutes to speak to the Board, and share their comments.

The first draft was released to the community on August 12th prior to the Community Forum and the second draft was then released August 27th for further consideration.

##

1 **BILL NO.** _____

ORDINANCE NO. _____

2
3
4 **AN ORDINANCE APPROVING CHAPTER 58 OF THE BRANSON MUNICIPAL CODE**
5 **PERTAINING TO SMOKE-FREE.**
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10 **WHEREAS**, the 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary*
11 *Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and
12 premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke
13 are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear
14 infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung
15 growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on
16 the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free
17 level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective
18 way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and
19 other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand
20 smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not
21 have an adverse economic impact on the hospitality industry; and
22

23 **WHEREAS**, numerous studies have found that tobacco smoke is a major contributor to indoor air
24 pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause
25 of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer.
26 The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early
27 deaths of approximately 53,000 Americans annually; and
28

29 **WHEREAS**, there is compelling evidence that implementing 100% smoke-free environments is the
30 most effective way to protect the population from the harmful effects of exposure to secondhand smoke;
31 and
32

33 **WHEREAS**, the unregulated high-tech smoking devices, commonly referred to as electronic cigarettes,
34 or “e-cigarettes,” closely resemble and purposefully mimic the act of smoking by having users inhale
35 vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number
36 of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined
37 that various samples tested contained not only nicotine but also detectable levels of known carcinogens
38 and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical
39 used in antifreeze. The FDA’s testing also suggested that “quality control processes used to manufacture
40 these products are inconsistent or non-existent”; and
41

42 **WHEREAS**, E-cigarettes produce a vapor of undetermined and potentially harmful substances, which
43 may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and
44 public places where smoking of traditional tobacco products is prohibited creates concern and confusion
45 and leads to difficulties in enforcing the smoking prohibitions; and
46

47 **WHEREAS**, since 2010, the Branson Convention and Visitor’s Bureau has determined 87.8% of
48 convention visitors believe it is important that hotels and restaurants are smoke-free; and
49

50 **WHEREAS**, the 2012 City of Branson Community Survey submitted by the ETC Institute showed
51 72.8% of Branson residents stated a Citywide smoke free environment was important to extremely
52 important; and
53

54 **WHEREAS**, the Missouri Department of Health and Senior Services has found 88.6% of Taney County
55 residents agree that secondhand smoke is very or somewhat harmful to one's health; and
56

57 **WHEREAS**, the Taney County Health Department Tobacco Impact Assessment completed in 2013
58 stated 88.3% of Taney County residents would support a comprehensive smoke free policy; and
59

60 **WHEREAS**, the Taney County Board of Health approved a Resolution on June 6, 2014 supporting
61 adoption of an ordinance for smoke-free public places and workplaces in the City of Branson; and
62

63 **WHEREAS**, the Missouri Foundation for Health has documented that over the past ten years the number
64 of Missouri communities and counties who have implemented a smoke free policy has grown from two
65 to thirty-five; and
66

67 **WHEREAS**, the City shall provide notice of the provisions of this ordinance to all applicants for a
68 business license in the City; and
69

70 **WHEREAS**, the City shall engage in a continuing program to explain and clarify the purposes and
71 requirements of this ordinance to citizens affected by it, and to guide owners, operators and managers in
72 their compliance with it; and
73

74 **WHEREAS**, the City shall request other governmental and educational agencies having facilities within
75 the City to establish local operating procedures in cooperation and compliance with this ordinance,
76 including urging all Federal, State, County and School District agencies to update their existing smoking
77 control regulations to be consistent with the current health findings regarding secondhand smoke; and
78

79 **WHEREAS**, accordingly, the City finds and declares the purposes of this ordinance are (1) to protect
80 the public health and welfare by prohibiting smoking in enclosed public places and places of
81 employment; and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize
82 that the need to breathe smoke-free air shall have priority over the desire to smoke.
83

84
85 **NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF**
86 **BRANSON, MISSOURI, THE FOLLOWING:**
87

88
89 Section 1: It is the intention of the Board of Aldermen, and it is hereby ordained that the provisions
90 of this ordinance shall become and be made a part of the Branson Municipal Code, and
91 the sections of this ordinance may be renumbered to accomplish such intention.
92

93 Section 2: That Chapter 58 – *Offenses and Miscellaneous Provisions* – Article IV – *Offenses Against*
94 *Public Health and Safety* of the Branson Municipal Code is hereby amended to read as
95 follows:
96
97
98

99 **Division 3. Smoke-Free**

100
101 Sec. 58-126. Definitions

102
103 The following words, terms and phrases, when used in this division, shall have the meanings ascribed
104 to them in this division, except where the context clearly indicates a different meaning:

105
106 *City park* means all grounds, recreational facilities, undeveloped properties and other property
107 placed under the control, management and direction of the Parks and Recreation Department
108 of the City, with the exception of the Branson Lakeside RV Park.

109
110 *E-cigarette* means any electronic oral device, such as one composed of a heating element,
111 battery, or electronic circuit, which provides a vapor of nicotine or any other substances, and
112 the use or inhalation of which simulates smoking. The term shall include any such device,
113 whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or
114 under any other product name or descriptor.

115
116 *Enclosed area* means all space between a floor and a ceiling that is bounded on at least two
117 sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable
118 divider, garage door, or other physical barrier, whether temporary or permanent and whether
119 or not containing openings of any kind.

120
121 *Open space* means any piece of land that is undeveloped and is accessible to the public.

122
123 *Place of employment* means an area under the control of a public or private employer, including,
124 but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms,
125 auditoriums, meeting rooms, classrooms, employee cafeterias, hallways, elevators, temporary
126 offices, and vehicles **to which the public is invited**. A private residence is a “place of
127 employment” when used as a child care, adult day care, or health care facility.

128
129 *Private residence* means a building or portion thereof including, but not limited to, single family
130 homes, duplex units, apartments, hotels, motels, timeshare units, or condominium units in which
131 a person resides for 30 consecutive days or more.

132
133 ***Public place, enclosed* means an area to which the public is invited or in which the public**
134 **is permitted, including but not limited to, banks, convention facilities, enclosed common**
135 **areas, enclosed shopping malls, health care facilities, hotels and motels, laundromats,**
136 **museums, public transportation vehicles and facilities, reception areas, restaurants,**
137 **retail establishments, retail stores, schools, spas, sports arenas, theaters, and waiting**
138 **rooms. A private residence is a “public place” when used as a child care, adult day care,**
139 **or health care facility.**

140
141 ***Public place, outdoor* means an area to which the public is invited or in which the public**
142 **is permitted, including but not limited to, bleachers, golf courses, grandstands, open**
143 **spaces, outdoor seating and serving areas, playgrounds, pools, recreational areas,**
144 **serving areas, shelters, and outdoor shopping malls.**

145
146 ~~[Public Place means an area to which the public is invited or in which the public is permitted,~~
147 ~~including but not limited to, banks, bleachers, golf courses, grandstands, health care facilities,~~
148 ~~hotels and motels, laundromats, museums, open spaces, playgrounds, pools, public~~
149 ~~transportation vehicles and facilities, reception areas, restaurants, retail establishments, retail~~
150 ~~stores, schools, serving areas, shelters, shopping malls, sports arenas, theaters, and waiting~~
151 ~~rooms. A private residence is a “public place” when used as a child care, adult day care, or~~

152 health care facility. For the purposes of this article, roadways, parking areas, sidewalks and
153 non-enclosed designated smoking areas shall be excluded.]
154

155 [~~Serving area means an area where customers and guests are served by the delivery of food
156 and beverages as provided by an employee, whether or not the service involves the exchange
157 of money.~~]
158

159 *Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or
160 pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any
161 manner or in any form. Smoking also includes the use of an e-cigarette which creates a vapor,
162 in any manner or in any form, or the use of any oral smoking device for the purpose of
163 circumventing the prohibition of smoking in this division.
164

165 *Smoking lounge* means a retail business used primarily for the sale of tobacco products and
166 accessories and where more than seventy percent (70%) of the volume of trade or business
167 carried on there is that of the blending of tobaccos or sales of tobaccos, cigarettes, e-
168 cigarettes, pipes, cigars or smoking sundries and in which the sale of other products is
169 incidental. Does not include a tobacco department within a larger commercial establishment
170 such as a department store, discount store or retail stores used primarily for the sale of
171 smoking materials. A smoking lounge shall satisfactorily report on an annual basis to the city
172 on a form prescribed by the city, the revenue generated from the sale of tobacco as a
173 percentage of annual gross revenue.
174

175 *Tobacco products* means any product that is made from or derived from tobacco, which
176 contains nicotine or a similar substance, and is intended for human consumption or is likely to
177 be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by
178 any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, snuff, snus or
179 an e-cigarette.
180

181 Sec. 58-127. Where Smoking Shall Not be Regulated 182

183 Notwithstanding any other provision of this division to the contrary, smoking shall not be prohibited in
184 the following areas within the City:
185

- 186 A. Private residences.
- 187
- 188 **B. Not more than twenty percent (20%) of hotel and motel rooms as defined by Appendix A**
189 **and designated as smoking rooms. All smoking rooms on the same floor must be**
190 **contiguous and smoke from these rooms must not infiltrate into areas where smoking is**
191 **prohibited under this division.**
- 192
- 193 C. Smoking lounges as defined by this division and provided that smoke does not infiltrate into
194 areas where smoking is otherwise prohibited. This exemption shall not apply to any business
195 that is established for the purpose of avoiding compliance with this division.
- 196
- 197 D. Outdoor places of employment except those areas covered by the provisions of the division.
- 198
- 199 **E. Outdoor patio spaces of restaurants.**
- 200
- 201 **F. Outside entrances from patios, balconies and decks to rooms of hotels, motels,**
202 **timeshare units or condominium units in which a person resides for twenty-nine (29)**
203 **consecutive days or less.**

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Sec. 58-128. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the City.

Sec. 58-129. Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor public places within the City:

- A. Within ~~[40]~~6 feet (6') of outside entrances, ~~[outdoor serving areas of restaurants,]~~operable windows and ventilation systems of enclosed areas where smoking is prohibited, and public transportation stops.

~~[In outdoor serving areas of restaurants.]~~

- B. In City Parks, except in designated areas.

~~[In outdoor common areas of apartment buildings, condominiums, trailer parks, RV parks, retirement facilities, nursing homes and other multiple unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which shall be located at least ten (10) feet outside entrances, operable windows and ventilation systems of enclosed areas where smoking is prohibited, pools, shelters, and playgrounds.]~~

Sec. 58-130. Prohibition of Smoking in Enclosed Places of Employment

Smoking shall be prohibited in all enclosed places of employment within the City. This prohibition shall be communicated to all prospective employees upon their application for employment.

Sec. 58-131. Declaration of a Nonsmoking Area

- A. Notwithstanding any other provision of this division, 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 area. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this division is posted.
- B. All vehicles, facilities, buildings and offices owned and operated by the City are declared nonsmoking places. Smoking usage of any kind within these vehicles and facilities is strictly prohibited.

Sec. 58-132. Posting of Signs and Removal of Ashtrays

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Division shall:

- A. Clearly and conspicuously post "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) in that area.
- B. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this division at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.**

- 257 C. Remove all ashtrays from any area where smoking is prohibited by this division, except for
258 ashtrays displayed for sale and not for use on the premises.
259

260 Sec. 58-133. Nonretaliation; Nonwaiver of Rights
261

- 262 A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an
263 employee, applicant for employment, customer, or resident of a multiple-unit residential facility
264 because that employee, applicant, customer, or resident exercises any rights afforded by this
265 division or reports or attempts to prosecute a violation of this division.
266
267 B. An employee who works in a setting where an employer allows smoking does not waive or
268 otherwise surrender any legal rights the employee may have against the employer or any other
269 party.
270

271 Sec. 58-134. Enforcement
272

- 273 A. This division shall be enforced by the City[~~Administrator or an authorized designee~~].
274
275 B. An owner, manager, operator, or employee of an area regulated by this division shall inform a
276 person who is smoking in violation of this division of the appropriate provisions thereof and direct
277 them to extinguish the product being smoked. If the person does not stop smoking, the owner,
278 manager, operator, or employee shall refuse service and shall immediately ask the person to
279 leave the premises. If the person in violation refuses to leave the premises, the owner, manager,
280 operator, or employee shall contact a law enforcement agency.
281
282 C. Any citizen who desires to register a complaint under this division may initiate enforcement with
283 the City[~~Administrator or an authorized designee~~].
284

285 **Sec. 58-135. Violations and Penalties**
286

- 287 **A. A person who smokes in an area where smoking is prohibited by the provisions of this**
288 **division and found guilty of a violation, may be punishable by a fine not exceeding \$25.00.**
289 **Notwithstanding all other provisions of law and court rules to the contrary, court costs**
290 **shall be imposed upon any person found guilty of such violation.**
291
292 **B. Except as otherwise provided in the division, a person who owns, manages, operates, or**
293 **otherwise controls an enclosed public place or place of employment and who fails to**
294 **comply with the provisions of this division and found guilty of a violation, may be**
295 **punishable by a fine not exceeding \$25.00. Notwithstanding all other provisions of law**
296 **and court rules to the contrary, court costs shall be imposed upon any person found**
297 **guilty of such violation.**
298
299 **C. Except as otherwise provided, every day any such violation shall constitute a separate**
300 **offense.**
301

302 **Sec. 58-136. Other Applicable Laws**
303

304 **This division shall not be interpreted or construed to permit smoking where it is otherwise**
305 **restricted by other applicable laws.**
306

307
308 NOTE: LANGUAGE WHICH IS **BOLD, UNDERLINED** HAS BEEN ADDED; LANGUAGE
309 WHICH IS [~~BRACKETED, STRICKEN~~] HAS BEEN REMOVED.

310 Section 3: This ordinance shall be in full force and effective July 1, 2015.

311
312 Read, this first time on this ____ day of _____, 20__.

313
314 Read, this second time, passed and truly agreed to by the Board of Aldermen of the City of Branson,
315 Missouri on this ____ day of _____, 20__.

316
317
318
319
320 _____
321 Raeanne Presley
322 Mayor

323 ATTEST: APPROVED AS TO FORM:

324
325
326
327 _____
328 Lisa K Westfall
329 City Clerk
_____ William Duston
City Attorney

