

<u>CITY OF LAWRENCE</u>	<u>STATE OF KANSAS</u>	<u>COMPARISON</u>
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9-802 -- Definitions	K.S.A. 21-4009 -- Definitions	
	"Access point" means the area within a ten foot radius outside of any doorway, open window or air intake leading into a building or facility that is not exempted pursuant to subsection (d) of K.S.A. 21-4010, and amendments thereto.	Access point is not defined in the Lawrence law.
	"Bar" means any indoor area that is operated and licensed for the sale and service of alcoholic beverages, including alcoholic liquor as defined in K.S.A. 41-102, and amendments thereto, or cereal malt beverages as defined in K.S.A. 41-2701, and amendments thereto, for on-premises consumption.	Bar is not defined in the Lawrence law. This definition covers those businesses referred to as licensed premises under the Lawrence law.
<u>Business</u> means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.		Not defined in Kansas law.
<u>Employee</u> means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.	"Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers their services for a nonprofit entity.	Provisions are identical.
<u>Employer</u> means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.	"Employer" means any person, partnership, corporation, association or organization, including municipal or nonprofit entities, which employs one or more individual persons.	Provisions are substantially the same. Kansas law includes the term organization, which is slightly broader than the terms used in the Lawrence ordinance and preempts the argument that businesses organized as limited liability companies or in a way other than as a partnership or corporation are covered.
<u>Enclosed area</u> means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures. For the purposes of this Article, the following shall not be considered an enclosed area: (1) Rooms or areas enclosed by walls	"Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls, windows or doorways which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid or similar structures. For purposes of this section, the following shall not be considered an "enclosed area": (1) Rooms or areas, enclosed by walls, windows or doorways, having	The definitions are very similar. The only real difference is that for a walled area not to be an enclosed area under Kansas law, 30% of the exterior wall area must be permanently open to the elements. Under the current Lawrence code provision, this number is only 20%.

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or windows having neither a ceiling nor a roof and which are completely open to the elements and weather at all times. (2) Rooms or areas, enclosed by walls or windows and a roof or ceiling, having an opening at least twenty percent (20%) of the total perimeter wall area completely and permanently open to the elements and weather.	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 and which comprise an area that is at least 30% of the total perimeter wall area of such room or area.	
<u>Food Service Establishment</u> shall mean any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order café, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.	"Food service establishment" means any place in which food is served or is prepared for sale or service on the premises. Such term shall include, but not be limited to, fixed or mobile restaurants, coffee shops, cafeterias, short-order cafes, luncheonettes, grills, tea rooms, sandwich shops, soda fountains, taverns, private clubs, roadside kitchens, commissaries and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.	The Kansas law does not include places that prepare food for off-premises consumption under their definition, but Lawrence's ordinance does. Otherwise, the provisions are identical.
	"Gaming floor" means the area of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto, where patrons engage in Class III gaming. The gaming floor shall not include any areas used for accounting, maintenance, surveillance, security, administrative offices, storage, cash or cash counting, records, food service, lodging or entertainment, except that the gaming floor may include a bar where alcoholic beverages are served so long as the bar is located entirely within the area where Class III gaming is conducted.	Lawrence's law does not define gaming floor. No gaming floors, as the term is defined in Kansas law, exist in Lawrence.
	"Medical care facility" means a physician's office, general hospital, special hospital, ambulatory surgery center or recuperation center, as defined by K.S.A. 65-425, and amendments thereto, and any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto.	Lawrence's law does not explicitly define medical care facility.
<u>Licensed Premises</u> shall mean any premises where alcoholic liquor or cereal malt beverages, or both, by the individual drink as defined by K.S.A. Chapter 41, and amendments thereto, is served or provided for consumption or use on the premises with or		Licensed premises is not defined in the Kansas law, but this definition is similar to the definition of bar under the Kansas law.

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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.		
	“Outdoor recreational facility” means a hunting, fishing, shooting or golf club, business or enterprise operated primarily for the benefit of its owners, members and their guests and not normally open to the general public.	Lawrence’s law does not define this term.
<u>Place of Employment</u> means any enclosed area under the control of public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.	“Place of employment” means any enclosed area under the control of a public or private employer, including, but not limited to, work areas, auditoriums, elevators, private offices, employee lounges and restrooms, conference and meeting rooms, classrooms, employee cafeterias, stairwells and hallways, that is used by employees during the course of employment. For purposes of this section, a private residence shall not be considered a “place of employment” unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.	The Lawrence law requires that areas be normally frequented by employees during the course of their employment to be covered by the definition, while the Kansas law merely requires that areas be used by employees during the course of employment to be covered. Kansas law specifically includes stairwells as places of employment. The Lawrence code does not. Lawrence law exempts private residences as long as they are not used for child care, adult day care or as a health care facility. Kansas law instead references “day care homes” under K.S.A. 65-530. This term does not include day care for adults. The Kansas law does not specifically include residential health care facilities. Since that term is not defined in the Lawrence City Code, however, there is some question as to what it actually means.
	“Private club” means an outdoor recreational facility operated primarily for the use of its owners, members and their guests that in its ordinary course of business is not open to the general public for which use of its facilities has substantial dues or membership fee requirements for its members.	This definition seems to be limited to country clubs and shooting clubs. There is no definition of private club under Lawrence law.
<u>Private Place</u> 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 or personal motor vehicles. A privately owned business, open to the public, is not a “private place.”		There is no definition of private place in the Kansas law.
	“Public building” means any building owned or operated by: (1) The state, including any branch, department, agency, bureau, commission, authority or other instrumentality thereof;	Public building is not defined in the Lawrence law.

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	(2) any county, city, township, other political subdivision, including any commission, authority, agency or instrumentality thereof; or (3) any other separate corporate instrumentality or unit of the state or any municipality.	
	"Public meeting" means any meeting open to the public pursuant to K.S.A. 75-4317 et seq., and amendments thereto, or any other law of this state.	Lawrence's law does not explicitly define public meeting. K.S.A. 75-4317, referenced in the Kansas law, is the Kansas Open Meetings Act.
<u>Public Place</u> means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place."	"Public place" means any enclosed areas open to the public or used by the general public including, but not limited to: banks, bars, food service establishments, retail service establishments, retail stores, public means of mass transportation, passenger elevators, health care institutions or any other place where health care services are provided to the public, medical care facilities, educational facilities, libraries, courtrooms, public buildings, restrooms, grocery stores, school buses, museums, theaters, auditoriums, arenas and recreational facilities. For purposes of this section, a private residence shall not be considered a "public place" unless such residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto.	The basic definition of public place in each law is similar. The Kansas law's list of specific examples, however, is much more extensive in the definition but less extensive in the prohibitory language of the law. This would appear to make little difference in the actual scope of the two laws. The Lawrence law exempts all residences from the term public place. The Kansas law exempts all residences except for day care homes. Day care homes would be covered under the "place of employment" regulation in the Lawrence City Code in any event.
<u>Retail Tobacco Store</u> means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.	"Tobacco shop" means any indoor area operated primarily for the retail sale of tobacco, tobacco products or smoking devices or accessories, and which derives not less than 65% of its gross receipts from the sale of tobacco.	The Lawrence ordinance and the Kansas statute use slightly different terms to refer to the same type of business. There is a significant difference, however, in the scope of the two definitions. The Lawrence code only allows the sale of products that are not tobacco products or accessories if it is "merely incidental." This is a fairly high burden, and if the sale of a product that is not a tobacco product or accessory is any substantial part of a business, then that business would not be a retail tobacco shop. The Kansas definition, on the other hand, allows a business to sell anything and still be termed a tobacco shop so long as 65% of the business' sales come from tobacco, tobacco products, or smoking devices or accessories. A tobacco shop could sell food for consumption on the premises, for example, if the food only constituted 35% or less of total sales. There are many scenarios where the exemption granted to tobacco shops under Kansas law might be abused

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		under this definition.
<u>Service Line</u> means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.		No definition of service line is provided in the Kansas statute.
<u>Smoking</u> means possession of a cigarette, cigar, or pipe partially or wholly consisting of or containing burning vegetation, or possession of any other device containing burning vegetation that is used for the introduction of smoke from the burning vegetation into the human body. For the purposes of this definition, the term vegetation includes, but is not limited to, tobacco, but does not include any controlled substance listed in K.S.A. 65-4105 through K.S.A. 65-4113 inclusive, and amendments thereto.	"Smoking" means possession of a lighted cigarette, cigar, pipe or burning tobacco in any other form or device designed for the use of tobacco.	There is a significant difference in the two definitions of smoking. Under the Kansas law, smoking only involves tobacco. The Lawrence ordinance, on the other hand, includes any burning vegetation that is not a controlled substance. The state law suffers from two separate enforcement difficulties because of this. First, indoor smoking of plants other than tobacco is not illegal under the Kansas law, although the use of controlled substances is made illegal under other Kansas laws. This leaves open the possibility business owners will allow indoor use of herbal cigarettes or other tobacco substitutes. Second, there is a potential proof problem in prosecutions under the state law because the prosecution will be forced to establish beyond a reasonable doubt that the substance being smoked is tobacco. In some cases this may require laboratory analysis.
<u>Sports Arena</u> means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.		Sports arena is not defined in the Kansas law.
	"Substantial dues or membership fee requirements" means initiation costs, dues or fees proportional to the cost of membership in similarly-situated outdoor recreational facilities that are not considered nominal and implemented to otherwise avoid or evade restrictions of a statewide ban on smoking.	No such definition exists in the Lawrence City Code.
<u>Wall</u> means a side of a room, building or structure connecting the floor and ceiling or foundation and roof, including temporary, moveable, and retractable sides.		No definition of wall exists in the Kansas law.

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9-803 & 9-804– Prohibition of Smoking	K.S.A. 21-4010(a) and (b) – Prohibition of Smoking	
PROHIBITION OF SMOKING IN PUBLIC PLACES. Smoking shall be prohibited in all enclosed public places within the City of Lawrence, including, but not limited to, the following places: (A) Elevators. (B) Restrooms, lobbies, reception areas, hallways, and any other common-use areas. (C) Buses, bus terminals, taxicabs, train stations, the airport, and other facilities and means of public transit under the authority of the City of Lawrence, as well as ticket, boarding, and waiting areas of public transit depots. (D) Service lines. (E) Retail stores. (F) All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including, but not limited to, attorneys' offices, and other offices, banks, laundromats, hotels, and motels. (G) Food service establishments and licensed premises, excluding areas of a food service establishment or licensed premises that are not enclosed such as patios, outdoor dining areas, and courtyards. (H) Galleries, libraries, museums, and grounds. (I) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except that performers may smoke when the smoking is a part of a stage production. (J) Sports arenas and convention halls, including bowling facilities. (K) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City of Lawrence or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City of Lawrence. (L) Waiting rooms, hallways, wards	(a) No person shall smoke in an enclosed area or at a public meeting including, but not limited to: (1) Public places; (2) taxicabs and limousines; (3) restrooms, lobbies, hallways and other common areas in public and private buildings, condominiums and other multiple-residential facilities; (4) restrooms, lobbies and other common areas in hotels and motels and in at least 80% of the sleeping quarters within a hotel or motel that may be rented to guests; (5) access points of all buildings and facilities not exempted pursuant to subsection (d); and (6) any place of employment. (b) Each employer having a place of employment that is an enclosed area shall provide a smoke-free workplace for all employees. Such employer shall also adopt and maintain a written smoking policy which shall prohibit smoking without exception in all areas of the 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 upon request to any current or prospective employee.	Because the definition of public places is similar between the two laws, and as the Kansas statutory definition of public place incorporates many of the same examples included in Sec. 9-803 of the City Code, the coverage of the two laws is substantially equivalent. One significant difference between the two laws is that the Kansas law prohibits smoking in access points of non-exempted buildings. An access point is the area within a ten foot radius outside of any doorway, open window or air intake leading into a building or facility. While access points are not technically within an enclosed area, and although the basic prohibition of the statute only applies to enclosed areas, the inclusion of specific language referencing access points should be enough to make the ban on smoking in those areas enforceable. The Kansas statute and Lawrence ordinance prohibit smoking within any place of employment, as each law defines that term. Both laws require employers to promulgate smoking policies that prohibit smoking without exception in all places of employment.

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and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices. (M) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities. (N) Polling places. (O) Private clubs and fraternal organization facilities. PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT. (A) Smoking shall be prohibited in all enclosed places of employment within the City Lawrence. (B) It shall be the responsibility of employers to provide a smoke-free workplace for all employees. (C) Each employer having any enclosed place of employment located within the City of Lawrence shall adopt, implement, make known and maintain, a written smoking policy which shall contain the following requirements: Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas. (D) The smoking policy shall be communicated to all employees within four (4) weeks of the adoption of this ordinance. (E) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.		
9-805 – Right of Owner to Declare Otherwise Exempt Premises Nonsmoking		
Notwithstanding any other provision of this Article, any owner, operator, manager or other person who controls any establishment described in this Article may declare that entire establishment as a non-smoking		There is no equivalent provision in Kansas law, but smoking has never been held to be a right in Kansas that a person may exercise even when done in opposition to the owner's right to control his or her property.

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establishment.		Therefore, the result should be the same with or without such a provision.
9-806 – Prohibitions Apply to All Enclosed Areas Belonging to the City of Lawrence.		
All enclosed facilities owned by the City of Lawrence shall be non-smoking at all times notwithstanding other provisions of this Article.		There is no equivalent provision in Kansas statute, nor is there a need for one because the ordinance provision only references the municipal corporation's own property.
9-807 -- Exemptions	K.S.A. 21-4010 (c) and (d) -- Exemptions	
Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the smoking restrictions of this Article: (A) Private residences, except when used as a childcare, adult day care or health care facility; (B) No more than twenty-five percent (25%) of hotel and motel rooms rented to guests. (C) Retail tobacco stores. (D) Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while such places are being used for private functions except while contracted food or beverage service functions are taking place (including set-up, service and clean-up activities or when the room is used for exhibit activities). (E) Outdoor places of employment except those covered in Section 9-805 of this article. (F) Private places. (G) Smoking break rooms in businesses that do not sell goods or services directly to the general public at the business site and which meet all of the following requirements: (1) The smoking break room is enclosed on all sides by solid, impermeable walls or windows extending from the floor to ceiling with self-closing doors; and (2) Access to the smoking break room is restricted to the employees and vendors of the facility; and (3) The smoking break room maintains a negative air pressure (meaning more air is exhausted from the room than is directly supplied by the heating, ventilation, and air conditioning (HVAC) system); and (4) The smoking break room's	(c) Notwithstanding any other provision of this section, K.S.A. 21-4011 or 21-4012, and amendments thereto, the proprietor or other person in charge of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, or a medical care facility, may designate a portion of such adult care home, or the licensed long-term care unit of such medical care facility, as a smoking area, and smoking may be permitted within such designated smoking area. (d) The provisions of this section shall not apply to: (1) The outdoor areas of any building or facility beyond the access points of such building or facility; (2) private homes or residences, except when such home or residence is used as a day care home, as defined in K.S.A. 65-530, and amendments thereto; (3) a hotel or motel room rented to one or more guests if the total percentage of such hotel or motel rooms in such hotel or motel does not exceed 20%; (4) the gaming floor of a lottery gaming facility or racetrack gaming facility, as those terms are defined in K.S.A. 74-8702, and amendments thereto; (5) that portion of an adult care home, as defined in K.S.A. 39-923, and amendments thereto, that is expressly designated as a smoking area by the proprietor or other person in charge of such adult care home pursuant to subsection (c) and that is fully enclosed and ventilated; (6) that portion of a licensed long-term care unit of a medical care facility that is expressly designated as a smoking area by the proprietor or other person in charge of such	While the two laws exempt many of the same locations, the Lawrence ordinance and the Kansas statute differ markedly in some respects in the areas that they exempt from their smoking bans. Areas in which Lawrence law is more strict: The Lawrence law does not make any exception from its smoking ban for adult care homes or long-term care units. The Kansas statute, on the other hand, allows smoking areas in these facilities in designated fully enclosed and ventilated areas. The Lawrence ban applies to adult day care facilities, the Kansas statute does not. The Lawrence law does not exempt gaming floors like the Kansas statute does, but as no gaming floors exist within Lawrence this difference is not very significant. The Lawrence law does not exempt Class A or Class B private clubs that were licensed on or before January 1, 2009. The Lawrence ordinance does not exempt these clubs in any way. The Kansas law exempts country clubs and shooting clubs from its ban, which it terms "private clubs." Lawrence's law does not. Areas in which the Kansas ban is more strict: The Lawrence law allows 25% of hotel rooms in a hotel to be designated as smoking rooms. The Kansas law only allows 20% of the hotel to be so designated.

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smoke-contaminated air is exhausted directly to the outdoors and is not returned to the HVAC system; and (5) The smoking break room and any equipment contained therein are maintained and serviced when the room is not occupied by smokers; and (6) The employer does not require employees or vendors to enter the smoking break room when it is occupied by smokers; and (7) The owner, manager or other person having control of such building or areas shall have a conspicuously posted sign clearly stating that the room is a smoking break room; and (8) A single smoking break room shall not be larger than 1500 square feet; and (9) Non-smoking employees and vendors of the business have access to a separate, enclosed, non-smoking break room accessible only to the employees and vendors of the business which is of equal or larger size and has amenities comparable to the smoking break room; and (10) The indoor smoking area was in existence on June 30, 2004; and (11) The business has registered the indoor smoking area with the Fire Prevention Division of the Lawrence-Fire Medical Department on registration forms provided by the Department and the Department has verified compliance with the provisions of this ordinance	medical care facility pursuant to subsection (c) and that is fully enclosed and ventilated and to which access is restricted to the residents and their guests; (7) tobacco shops; and (8) a class A or class B club defined in K.S.A. 41-2601, and amendments thereto, which (A) held a license pursuant to K.S.A. 41-2606 et seq., and amendments thereto, as of January 1, 2009; and (B) notifies the secretary of health and environment in writing, not later than 90 days after the effective date of this act, that it wishes to continue to allow smoking on its premises; and (9) a private club in designated areas where minors are prohibited.	The Lawrence ordinance allows for smoking in hotel and conference meeting rooms when used for some private functions. The state law does not. The Kansas law applies to outside areas that are access points to a building. The Lawrence ordinance does not apply at all in areas that are not enclosed. The Kansas law does not provide for allowing smoking in preexisting smoking break rooms of any type. The Lawrence ordinance does in limited circumstances, but I understand that the only qualifying business in Lawrence no longer takes advantage of the exception.
9-808 – Posting of Signs	K.S.A. 21-4011 – Posting of Signs	
(A) The owner, manager or other person having control of such building or other areas where smoking is prohibited by this Article shall have a conspicuously posted sign clearly stating that smoking is prohibited at each entrance and within the building or other areas where smoking is prohibited. (B) Such "No Smoking" signs shall have bold lettering of not less than one (1) inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).	The proprietor or other person in charge of the premises of a public place, or other area where smoking is prohibited, shall 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 state law.	The two provisions are substantially equivalent, although the Lawrence ordinance provides that the no smoking signs must be posted at each entrance to a building as well as within the building. The Kansas statute, however, merely requires that signage be posted in a conspicuous place. The Kansas law requires that the signage include the international no smoking symbol, while the Lawrence ordinance only states such symbol may be used. The Lawrence law requires that sign lettering be no smaller than one inch in height, while the Kansas statute does not require any specific typeface or letter size for its signs.

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9-809 – Public Health Education		
The Lawrence-Douglas County Health Department shall promote the purposes and requirements of this ordinance to the public affected by it, and guide owners, operators and managers in their compliance with it. Such promotion may include publication of a brochure for affected businesses and individuals explaining the provisions of this Article.		The Kansas law does not require that local health departments participate in public education activities regarding its smoking law.
9-810 -- Enforcement		
(A) The Fire Chief or his or her designated agent shall be responsible for enforcing the provisions of this Article within the City, but nothing in this section shall be interpreted to prohibit any other person who would otherwise be lawfully entitled to enforce the provisions of this Article from taking enforcement action under this Article. (B) Notice of the provisions set forth in this Article shall be given to all applicants for a City retail liquor or drinking establishment license. (C) Any person may register a complaint under this Article to initiate enforcement with the Fire Chief. (D) The Lawrence-Douglas County Fire & Medical Department, the Lawrence Police Department, the Lawrence-Douglas County Health Department, and the Codes Enforcement Division of the Department of Neighborhood Resources Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this Article. (E) Any owner, manager, operator or employee of any premises regulated by this Article shall be responsible for informing persons violating this Article of the provisions through appropriate signage.		There are no special enforcement provisions in the Kansas statute. It would be enforceable by any law enforcement officer who may enforce the general criminal laws of the State of Kansas, such as sworn officers of the Lawrence Police Department. The Lawrence ordinance, on the other hand, places primary enforcement responsibility in the hands of the Fire Department, although police officers would still be able to enforce the ordinance. Any person who has a complaint about the enforcement of the current Lawrence ordinance is directed to register their complaint with the Fire Chief. Under the Lawrence law, notice of the law's provisions must be provided to any applicant for a drinking establishment or retail liquor license. Many different branches of the municipal government must inspect businesses for compliance with the law at the time that they are doing other non-related inspections. The Lawrence ordinance makes the manager, operator, owner or employee of a business responsible for notifying his or her customers about the provisions of the law through the posting of appropriate signs.
9-811 – Non-retaliation		
No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment or customer because such employee, applicant or customer exercises any right to a smoke free environment afforded by this Article.	<u>See K.S.A. 21-4012(f).</u>	The State of Kansas non-retaliation provision is found in the penalty sections, K.S.A. 21-4012(f), and is in substance identical to this provision.

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9-812 – Violations and Penalties	K.S.A. 21-4012 -- Penalties	
(A) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Article to fail to comply with all of its provisions. (B) It shall be unlawful for any person who owns, manages, operates or otherwise controls any premises subject to regulation under this Article to allow smoking to occur where prohibited by this Article. Any such person allows smoking to occur under this section if he or she: 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 Article. (D) Any person who violates any provision of this Article shall be guilty of a misdemeanor, punishable by: 1. A fine not exceeding One Hundred Dollars (\$100.00) for the first violation. 2. A fine not exceeding Two Hundred Dollars (\$200.00) for a second violation within a one (1) year period of the first violation. 3. A fine not exceeding Five Hundred Dollars (\$500.00) for a third or subsequent violation within a one (1) year period of the first violation. 4. For the purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur.	(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 the provisions of K.S.A. 21-4009 through 21-4014, 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 K.S.A. 21-4010, and amendments thereto. (d) Any person who violates any provision of K.S.A. 21-4009 through 21-4014, and amendments thereto, shall be guilty of a cigarette or tobacco infraction punishable by a fine: (1) Not exceeding \$100 for the first violation; (2) not exceeding \$200 for a second violation within a one year period after the first violation; or (3) not exceeding \$500 for a third or subsequent violation within a one year period after the first violation. For purposes of this subsection, the number of violations within a year shall be measured by the date the smoking violations occur. (e) Each individual allowed to smoke by a person who owns, manages, operates or otherwise controls the use of any public place, or other area where smoking is prohibited, in violation of subsection (b) shall be considered a separate violation for purposes of determining the number of violations under subsection (d). (f) No employer shall discharge, refuse to hire or in any manner retaliate against an employee,	Both laws use virtually identical language to make it unlawful for a person to smoke in violation of the law and to hold those in control of property criminally accountable for allowing smoking to occur on their property or for otherwise failing to comply with the smoking law. The penalty structure in each law is identical, but the crimes are classified differently. Under the Kansas law, the crimes are classified as cigarette and tobacco infractions, while they are termed misdemeanors under the Lawrence City Code. This difference impacts when a person may be arrested for a violation of the provisions of each law, as misdemeanor offenders might be subject to arrest in circumstances when those who commit tobacco infractions would not be. While both laws penalize multiple convictions within a one year period of time, and both measure the number of violations within a year from the date that the smoking violations occur, the Kansas law contains an additional provision that clarifies that each individual allowed to smoke by a person in control of property constitutes a separate offense for the purposes of determining how many prior violations have occurred within a one year time period. The anti-retaliation provision in this section of the Kansas statute is substantially identical to that found in Sec. 9-811 of the Lawrence City Code.

<u>CITY OF LAWRENCE</u>	<u>STATE OF KANSAS</u>	<u>COMPARISON</u>
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	applicant for employment or customer because that employee, applicant or customer reports or attempts to prosecute a violation of any of the provisions of K.S.A. 21-4009 through 21-4014, and amendments thereto.	
9-811 – Other Applicable Laws		
This Article shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.		There is no equivalent provision in the Kansas law, but as a general legal matter the result should be the same with or without such a provision.
	K.S.A. 21-4014 – Administrative Regulations	
	The director of alcoholic beverage control is hereby authorized to promulgate rules and regulations to insure any exemption from the statewide ban on smoking is bona fide and the entity seeking such exemption is not inappropriately seeking to circumvent the smoking ban created under this act.	The City ordinance does not grant administrative rulemaking authority to any party.