

GENERAL ORDINANCE NO. _____, 2006

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer in non-smokers; and

WHEREAS, people at special risk to secondhand smoke include children, the elderly, individuals with cardiovascular disease or impaired respiratory function, including asthmatics, and those with obstructive airway disease; and

WHEREAS, health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, decreased respiratory function, and bronchospasm; and

WHEREAS, the [City or County of] _____ finds and declares that the purposes of this ordinance are: 1) to protect the public health and welfare by prohibiting smoking in public places, and places of employment; and 2) to guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

WHEREAS, The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.)

BE IT ORDAINED BY THE _____ COUNCIL OF THE
CITY OR COUNTY OF _____, INDIANA

Section 1. Definitions.

As used in this Chapter, the following have the following meanings unless otherwise designated:

- a. "Bar" means any establishment used primarily for the sale of alcoholic beverages for consumption by guests on the premises and in which the sale of food is merely incidental to the sale of alcoholic beverages, including but not limited to taverns, nightclubs, and cocktail lounges.
- b. "Person" means any individual, firm, partnership, association, corporation, company or organization of any kind.
- c. "Restaurant" means any establishment used as or held out to the public as having food available for payment to be consumed on the premises, including coffee shops, cafeterias, cafes, luncheonettes sandwich stands and soda fountains. The term "restaurant" shall include a bar area within the restaurant.
- d. "Theater" means any enclosed facility, open to the public, which is primarily used for or designed for the purpose of exhibiting any motion picture, stage drama, musical recital, dance, lecture or other similar performance.
- e. "Smoke" or "smoking" means the act of lighting, carrying, inhaling from, or leaving a lighted or smoldering cigar, cigarette, or pipe of any kind.
- f. "Public place" means any enclosed area used by the general public, including, but not limited to, retail stores and financial institutions, department stores, banks, laundromats and beauty and barber shops, retail food production and marketing establishments, retail service establishments, and other commercial establishments, regardless of whether a fee is charged for admission to the place.
- g. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- h. "Place of Employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, private offices, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways.
- i. "Retail Tobacco Store" means retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products

is merely incidental. The term does not include retail stores where food or beverages are sold for consumption on the premises or where an area has been set-aside on the premises for customers to consume food or beverages.

- j. "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.
- k. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- l. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- m. "Sports Arena" means 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.

Section 2. Application of Chapter to [City-owned or County owned] Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the _____ [City or County] of _____, shall be subject to the provisions of this Chapter.

Section 3. Smoking prohibited in public places.

Smoking shall be prohibited in all enclosed public places within the _____ [City or County] of _____, including but not limited to, the following places:

- a. Aquariums, galleries, libraries, and museums.
- b. Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.

- c. Bars.
- d. Bingo facilities.
- e. Convention facilities.
- f. Elevators.
- g. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- h. Health care facilities.
- i. Licensed childcare and adult day care facilities.
- j. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- k. Polling places.
- l. Public transportation facilities, including buses and taxicabs, under the authority of the _____ [City or County] of _____, and ticket, boarding, and waiting areas of public transit depots.
- m. Restaurants.
- n. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- o. Retail stores.
- p. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the _____ [City or County] or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the _____ [City or County].
- q. Schools.
- r. Service lines.
- s. Shopping malls.
- t. Sports arenas, including enclosed places in outdoor arenas

Section 4. Prohibition of Smoking in Places of Employment.

Smoking shall be prohibited in all enclosed areas within places of employment. This includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

Section 5. Reasonable Distance

Smoking shall be prohibited within a reasonable distance from an enclosed area where smoking is prohibited by this Chapter, so as to insure tobacco smoke does not enter into establishments designated as smokefree under this Chapter through entrances, windows, ventilation intakes or other means.

Section 6. Where Smoking is Not Regulated.

The prohibitions of Section 2 shall not apply to the following:

- a. Private residences, except when used as a licensed childcare, adult day care, or health care facility.
- b. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- c. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
- d. Outdoor areas of places of employment.

Section 7. Declaration of Establishment as Nonsmoking.

Notwithstanding any other provision of this Chapter, 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 place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 8 is posted.

Section 8. Posting of Signs.

Every public place and place of employment where smoking is prohibited by this Chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

Section 9. Enforcement.

A. This Chapter shall be enforced by the _____ [Department of Health or City Manager or County Administrator] or an authorized designee.

B. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the _____ [Department of Health or City Manager or County Administrator].

C. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.

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

Section 10. Violations and Penalties.

A. A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Chapter shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.

2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.

3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

D. Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.

Section 11. Non-retaliation.

No person or employers 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 Ordinance.

Section 12. Other applicable laws.

This Chapter shall not be interpreted to permit smoking where it is otherwise restricted by other applicable laws or to supercede any local laws which are more restrictive.

Section 13. Chapter to be broadly interpreted.

This Chapter shall be construed broadly to effectuate the purposes described in the preamble of this ordinance.

Section 14. Severability.

If any section or sentence or provision of this Ordinance, or the application thereof to any person or circumstances shall be declared unconstitutional or invalid, such invalidity shall not affect any of the other sections, sentences, provisions or application of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared to be severable.

Section 15. Effective Date.

This Ordinance shall be effective thirty (30) days from and after the date of its adoption.