

CITY-COUNTY GENERAL ORDINANCE NO. 44, 2005
Proposal No. 45, 2005

A GENERAL ORDINANCE amending the Code by establishing nonsmoking areas.

BE IT ORDAINED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:

SECTION 1. The "Revised Code of the Consolidated City and County" is amended by adding a new Chapter 616 to read as follows:

Chapter 616
NONSMOKING AREAS

Article I. IN GENERAL

Sec. 616-101. Findings and intent.

The Council makes the following findings:

- (a) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of more than 38,000 Americans annually.
- (b) The Public Health Service's National Toxicology Program has listed secondhand smoke as a known human carcinogen.
- (c) Secondhand smoke kills 250 nonsmokers in Marion County each year. In 2002, at least \$16.7 million were spent for the hospitalization and health care of Marion County residents with secondhand smoke exposure-caused diseases.
- (d) In Marion County, the rate of lung cancer deaths is approximately 50% higher than the national lung cancer mortality rate. The rate of deaths from stroke and the percentage of people diagnosed with asthma are also higher than national averages and can be related to the persistent high prevalence of smoking and exposure to secondhand smoke in Marion County.
- (e) Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics, and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.
- (f) The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke.
- (g) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke.
- (h) The Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking.

- (i) The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.
- (j) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.
- (k) Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke.
- (l) A study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease.
- (m) Accordingly, the Council 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.

Sec. 616-102. Definitions.

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

- (a) "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including, but not limited to, retail establishments where goods or services are provided to the public, and other entities where accounting, counseling, legal, medical, dental, engineering, architectural, or other professional services are delivered.
- (b) "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services.
- (c) "Employer" means a person, business, association, municipal corporation, trust, or nonprofit entity that employs the services of one or more individual employees.
- (d) "Enclosed Area" means all space closed in by a roof, ceiling, or other overhead covering of any material, and walls or other side coverings of any material on at least two sides with appropriate openings for ingress and egress.
- (e) "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 weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. The term "Health Care Facility" shall include all waiting rooms, hallways, private rooms, semi private rooms, and wards within health care facilities.
- (f) "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles.

- (g) "Public Place" means an enclosed area, whether owned publicly or privately, to which the public is invited or in which the public is permitted.
- (h) "Retail Tobacco Store" means a retail store:
- (1) utilized primarily for the sale of tobacco and tobacco-related products including, but not limited to, cigarettes, cigars, tobacco, pipes, cigarette paper, and lighters;
 - (2) that is not licensed for the consumption of meals or alcoholic beverages on the premises or operated in conjunction with another business that is licensed for the on-premises consumption of meals or alcoholic beverages; and
 - (3) in which the sale of tobacco and tobacco-related products accounts for not less than 66% of the store's gross sales.
- "Retail Tobacco Store" does not include a tobacco department of a larger commercial establishment such as a grocery store, department store, or discount store.
- (i) "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (j) "Smoking" means the carrying or holding of a lighted cigarette, cigar, pipe, or any other lighted smoking equipment, or the inhalation or exhalation of smoke from any lighted smoking equipment. "Smoking" does not include the burning of incense.
- (k) "Sports Arena" means sports pavilions, stadiums, athletic fields, 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 or recreation, participate in athletic competition, or witness sports or other events.
- (l) "Tobacco bar" means a business that:
- (1) offers alcoholic beverages for sale to customers for consumption on the licensed premises pursuant to a Type 210 retailer permit issued by the Indiana Alcohol & Tobacco Commission;
 - (2) does not admit customers or hire employees who are less than twenty-one (21) years old;
 - (3) generated ten percent (10%) or more of its total annual gross income from the on-site sale of tobacco products in the calendar year end.

Article II. SMOKING RESTRICTIONS

Sec. 616-201. Prohibition of smoking in public places.

Smoking shall be prohibited in all public places within Consolidated City including, but not limited to, the following places:

- (a) Elevators.
- (b) Health care facilities.
- (c) Laundromats.
- (d) Licensed child care and adult day care facilities.
- (e) Lobbies, hallways, and enclosed areas in the common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (f) Polling places.
- (g) Public transportation facilities, including, but not limited to, buses and taxicabs under the authority of the city, the county, or the Indianapolis Public Transportation Corporation, and ticket, boarding, and waiting areas of public transit depots.
- (h) Restrooms, lobbies, reception areas, hallways, and other common-use areas.

- (i) Shopping malls.
- (j) Sports arenas.

Sec. 616-202. Prohibition of smoking in places of employment

(a) Smoking shall be prohibited in all enclosed areas within places of employment within the Consolidated City.

(b) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Chapter and to all prospective employees upon their application for employment.

Sec. 616-203. Prohibition of smoking in Indianapolis and/or Marion County owned facilities.

Smoking shall be prohibited in all vehicles and enclosed areas in buildings owned, leased, or operated by the city or the county, or any of their offices, agencies, or departments if those vehicles or enclosed areas are used for any governmental function.

Sec. 616-204. Exceptions.

- (a) The following areas shall be exempt from the provisions of Sections 616-201 through 616-203:
- (1) Private residences, except when used as a licensed child care, adult day care, or health care facility.
 - (2) Family-owned and operated businesses in which all employees are related to the owner, and offices of self-employed persons in which all employees are related to the self-employed person, but only if the enclosed areas these businesses and offices occupy are not open to the public.
 - (3) 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.
 - (4) Retail tobacco stores.
 - (5) Private and semi private rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom have requested in writing to be placed in a room where smoking is permitted.
 - (6) Any vehicle used by an employee while in the service of an employer when the vehicle is occupied only by that employee.
 - (7) Any tobacco bar.
 - (8) Any bowling alley.
 - (9) Any bar or tavern that:
 - a. Holds a beer, liquor, or wine retailer's permit under the laws of this state;
 - b. Allows no customer to enter at any time who is under the age of eighteen (18);
 - c. Employs no person under the age of eighteen (18);
 - d. Is not physically located within a business otherwise required to be smoke free by this Chapter;
 - e. Has provided notice by sending notice to the Marion County Health Department as part of its annual application for a retail food establishment license; that it intends to allow smoking, intends to serve only customers over the age of eighteen (18), and that it is otherwise entitled to an exemption under this Section, provided however, that an election for this exemption may be made no more than once in a calendar year.
 - (10) Any business that:
 - a. Is exempt from federal income taxation under 26 U.S.C. § 501(c);
 - b. Is a "club" as that term is defined by Ind. Code § 7.1-3-20-1, or a "fraternal club" as that term is defined by Ind. Code § 7.1-3-20-7;
 - c. Holds a beer, liquor, or wine retailer's permit under the laws of this state; and
 - d. Provides food or alcoholic beverages only to its bona fide members and their guests.

(b) None of the areas in the preceding subsection shall be exempt from the provisions of Sections 616-201 through 616-203 if the smoke from smoking enters any area where smoking is otherwise prohibited by this Chapter.

(c) Any business claiming an exemption pursuant to this Section shall provide to any enforcement agency listed in Section 616-401(a), within three (3) business days of demand, adequate written proof that it qualifies for the exemption claimed. Such written proof shall be certified under the penalties for perjury by an authorized representative of the business.

Article III. ADDITIONAL REQUIREMENTS

Sec. 616-301. Posting requirements.

(a) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Chapter by the owner, operator, manager, or other person having control of the area.

(b) Any establishment exempted from the Chapter under Section 616-205(a)(4), (7), (8) or (9) shall clearly and conspicuously post the following sign at every entrance: "Warning: This is a Smoking Establishment."

Sec. 616-302. Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Chapter or reports or attempts to prosecute a violation of this Chapter.

Article IV. VIOLATIONS AND ENFORCEMENT

Sec. 616-401. Enforcement.

- (a) This Chapter shall be enforced by:
- (1) the director of the Department of Metropolitan Development defined in Section 231-211, or the director's designee,
 - (2) the administrator of the division of compliance defined in Section 231-306,
 - (3) the administrator of the environmental services defined in Section 511-302,
 - (4) fire department personnel authorized to conduct fire inspections in accordance with Section 591-221, and
 - (5) the Administrator and building inspectors defined in Section 730-501.

(b) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Corporation Counsel defined in Section 202-101, or with the City Prosecutor referred to in Section 103-5.

(c) An owner, manager, operator, or employee of an establishment regulated by this Chapter shall inform persons violating this Chapter of the appropriate provisions thereof and shall ask those persons to refrain from smoking.

(d) For a bar or tavern that elects to be exempted under the provisions of Sec. 616-205(a)(8), it shall be the duty of the owner, manager, or operator to ensure that no persons under the age of eighteen (18) are allowed to enter, except as provided in that section.

Sec. 616-402. Violations and penalties.

(a) A person who smokes in an area where smoking is prohibited by the provisions of this Chapter, or a person who owns, manages, operates, or otherwise controls a public place, place of employment, or other area where smoking is prohibited under this Chapter, and who fails to comply with the provisions of this Chapter shall be subject to admission of violation and payment of the designated civil penalty through

the ordinance violations bureau as provided in Article III of Chapter 103 of this Code for the first violation in a calendar year. All second and subsequent violations in a calendar year are subject to the enforcement procedures and penalties provided in section 103-3 of the Code, provided, however, that the minimum penalty for any subsequent violation shall be at least \$200.00.

(b) In addition to the fines established by this Section, violation of this Chapter by a person who owns, manages, operates, or otherwise controls a public place, place of employment, or other area where smoking is prohibited by this Chapter may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

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

Article V. INTERPRETATION

Sec. 616-501. Other applicable laws.

This Chapter shall not be interpreted to permit smoking where it is otherwise restricted by other applicable laws. This Chapter shall not be interpreted to prohibit any property owner from imposing on his property any smoking ban that is more restrictive than this Chapter. Smoking shall be prohibited in any place in which a property owner posts a "No Smoking" sign.

Sec. 616-502. Chapter to be broadly interpreted.

This Chapter shall be construed broadly to effectuate the purposes described in Section 616-101(m).

SECTION 2. Section 103-52 of the "Revised Code of the Consolidated City and County" regarding the Ordinance Violations Bureau is amended by the addition of the following language:

"616-402 Violation of restrictions on smoking in certain areas 100.00"

SECTION 3. This ordinance shall be in full force and effect beginning March 1, 2006 after adoption and compliance with IC 36-3-4-14.

The foregoing was passed by the City-County Council this 23rd day of May, 2005, at 8:29 p.m.

ATTEST:

Steve Talley
President, City-County Council

Jean Ann Milharcic
Clerk, City-County Council

Presented by me to the Mayor this 26th day of May, 2005, at 10:00 a.m.

Jean Ann Milharcic
Clerk, City-County Council

Approved and signed by me this _____ day of _____, 2005.

Bart Peterson, Mayor

