

An Amended Ordinance regulating smoking in Public Buildings, Offices and Establishments

WHEREAS, 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 2000 (Monograph #10) that secondhand smoke is responsible for the early deaths of 65,000 Americans annually; and

WHEREAS, the Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen (U.S. DHHS, 2000, citing Cal. EPA, 1997); and

WHEREAS, 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. Additionally, children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

WHEREAS, 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. 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; and

WHEREAS, a significant amount of secondhand smoke exposure occurs in the workplace and 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, and

WHEREAS, pursuant to Indiana Code 36-8-2-4 the Delaware County Commissioners have the authority to regulate conduct that might endanger public health, safety or welfare, and

WHEREAS, Indiana Code 36-8-2-5 provides that the Delaware County Commissioners may provide health and community services to persons and may impose restrictions upon persons that might cause other persons to be injured or contract diseases, and

WHEREAS, Indiana Code 36-8-2-8 provides that the Delaware County Commissioners may regulate the introduction of any substance or odor into the air, and

WHEREAS, pursuant to Indiana Code 36-1-3 et. seq. it is the policy of the State of Indiana to grant to local governments all the power that they need for the effective operation of government as to local affairs, and

WHEREAS, the Delaware County Commissioners have the opportunity to promote good health and the duty by Indiana Code to protect the general public from acts and conditions which are deleterious to the public health, and

WHEREAS, the Board of Health has recommended adoption of this Ordinance and has found the purpose of this Ordinance is to protect public health.

Now Therefore be it Ordained by the Commissioners of Delaware County, Indiana that:

1. Add a new chapter 12 to Title 3 of the Delaware County Code.
2. Chapter 12:

12-1-1 Title: The Chapter shall be titled "Smoking Regulations in Public Areas".

12-1-1 . Definitions: The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

12-1-2.1 "Attached Bar" means an area of a restaurant that serves alcoholic beverages which maintains a separate outside entrance.

12-1-2.2 "Bar" means an establishment that is devoted to the serving of alcoholic beverages as defined by Indiana law for consumption by guests on the premises and in

which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets and a place where minors under age 21 are not permitted to be present by operation of law or the determination of the proprietor.

- 12-1-2.3 “Business” means a 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.
- 12-1-2.4 “Bowling Alley” shall mean a facility that provides bowling activities for the general public.
- 12-1-2.5 “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 for a non-profit entity.
- 12-1-2.6 “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- 12-1-2.7 “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.
- 12-1-2.8 “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, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

12-1-2.9 "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. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

12-1-2.10 "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

12-1-2.11 "Private Club" means a facility owned or operated by an association, or corporation which shall not be operated for monetary gain and consists of a membership formed as a nationally recognized local chapter, lodge or corresponding unit of a fraternal order, recognized on a national basis, or comprised of persons who have served in the armed forces of the United States. Said local

chapter, lodge, or fraternal order was formed and recognized as an exclusive association of persons organized for a joint or common purpose for which application for membership, the payment of dues, and the self governance by the members are distinguishing characteristics. Entry into and use of said facility is restricted to members and guests of members.

12-1-2.12 "Private Residence" means any single family dwelling owned or occupied by an individual or family. "Private Residence" shall include a private apartment in a retirement facility or multi unit residential facility.

12-1-2.13 "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant if not separated by a wall with a separate entrance.

12-1-2.14 "Retail Tobacco Store" 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.

12-1-2.15 "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.

12-1-2.16 "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

12-1-2.17 "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, plant, or other combustible substance in any manner or in any form.

12-1-2.18 "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.

12-1-2.19 "Truck Stop" means a facility that offers 24 hour rest stop services to over the road truck and semi-trailer drivers with said facility being located within 1/2 mile of an interstate highway.

12-1-3 Application to all Public Buildings. All enclosed facilities, including buildings and vehicles owned, leased, or operated by the County of Delaware and the City of Muncie, shall be subject to the provisions of this Chapter.

12-1-4 Smoking shall be prohibited in all enclosed public places within the County of Delaware, including but not limited to, the following places:

12-1-4.1 Galleries, libraries, and museums.

12-1-4.2 Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.

12-1-4.3 Bingo facilities.

12-1-4.4 Bowling Alleys

12-1-4.5 Convention facilities.

12-1-4.6 Elevators

12-1-4.7 Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.

12-1-4.8 Health care facilities.

12-1-4.9 Licensed childcare and adult day care facilities.

12-1-4.10 Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

12-1-4.11 Polling places.

12-1-4.12 Public transportation facilities, including buses and taxicabs, under the authority of the County of Delaware, and ticket, boarding, and waiting areas of public transit depots.

12-1-4.13 Restaurants, including attached bar areas.

12-1-4.14 Restrooms, lobbies, reception areas, hallways, and other common-use areas.

12-1-4.15 Retail stores.

12-1-4.16 Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the 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 County of Delaware.

12-1-4.17 Service lines.

12-1-4.18 Shopping malls.

12-1-4.19 Sports arenas, including enclosed places in outdoor arenas.

#### 12-1-5. Prohibition of Smoking in Places of Employment

12-1-5.1 Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes 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.

12-1-5.2 This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

12-1-6. Reasonable Distance: Smoking is prohibited within a reasonable distance outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or areas where persons or patrons may be exposed to prior to access to the structure.

12-1-7 Areas Exempt from this Ordinance

12-1-7.1 Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 12-1-4 and 12-1-5:

12-1-7.1.1 Bars and attached bars to restaurants where the attached bar is separated by a wall between the restaurant and the attached bar which runs from the floor to the roof and has a separate outside entrance for patrons.

12-1-7.1.2 Hotel and motel rooms that are rented to guests and are designated as smoking rooms;

12-1-7.1.3 Outdoor areas of places of employment so long as said areas comply with the provisions of Section 12-1-6.

12-1-7.1.4 Outdoor seating areas of restaurants so long as said areas comply with the provisions of Section 12-1-6.

12-1-7.1.5 Private residences, including private apartments in retirement facilities and multiple-unit residential facilities, except



when used as a licensed child care, adult day care, or health care facility.

12-1-7.1.6 Private Clubs in areas where use is restricted to 21 years of age or older.

12-1-7.1.7 Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.

12-1-7.8 Truck Stop facilities that offers 24 hour rest stop services to over the road truck and semi-trailer drivers with said facility being located within 1/2 mile of an interstate highway.

12-1-8 Declaration of Establishment as Nonsmoking. Notwithstanding any other provision of this Ordinance, 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 this chapter is posted.

#### 12-1-9 Posting of Signs

12-1-9.1 “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) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place.

12-1-9.2 All ashtrays and other smoking paraphernalia shall be removed from any public area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.

12-1-10. 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 Ordinance or reports or attempts to prosecute a violation of this Ordinance.

12-1-11. Violations and Penalties.

12-1-11.1 A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance, 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 Ordinance, and who fails to comply with the provisions of this Ordinance shall be subject to payment of a designated civil penalty of Fifty and 00/100 Dollars (\$50.00). All second and subsequent violations, in twelve consecutive month period, are subject to the same enforcement procedures, and fines for any subsequent violation shall be at least Two Hundred and 00/100 Dollars (\$200.00) and not more than Five Hundred and 00/100 Dollars (\$500.00).

12-1-11.2 In addition to the fines established by this Ordinance, multiple violations of this Ordinance, in a twelve consecutive month period, 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 Ordinance, may result in suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

12-1-11.3 Each day upon which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

12-1-12. Enforcement

12-1-12.1 This Ordinance shall be enforced by the Delaware County Department of Health or an authorized designee.

- 12-1-12.2 Any citizen who desires to register a complaint under this Ordinance shall register said complaint for enforcement with the Delaware County Health Department.
- 12-1-12.3 An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.
- 12-1-12.4 In addition to the remedies provided by the provisions of this Section, the Delaware County Department of Health may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction, and costs, including attorney fees and other litigation expenses, may be recovered by the Delaware County Department of Health.
- 12-1-12.5 The costs for enforcement of this ordinance, including attorney fees for litigation shall be paid from the proceeds received by the Health Department from the Tobacco Settlement Funds or the Local Health Maintenance fund and any fines received that have been levied as a result of this ordinance.
- 12-1-12.6 Pursuant to Indiana Code 16-41-20-9, any person aggrieved by an order of the Delaware County Department of Health, or the County Health Officer, issued pursuant to provisions of this ordinance may, not more than ten (10) days after the making of the order or determination of a violation, file with any Delaware County Circuit Court a petition seeking review of the order. The Court shall hear the appeal. The Court's decision is final.

12-1-13 Public Education.

The Delaware County Department of Health shall create a program upon adoption of this ordinance and no later than sixty days after adoption of this ordinance to explain the purposes and requirements of this Ordinance to citizens affected by it, and to guide owners, operators, and managers in their compliance

with the Ordinance. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance.

12-1-14. Other Applicable Laws

This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

12-1-15. Severability

If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions 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.

12-1-16. Repeal of Section 1-9-2J.

Upon the effective date of this ordinance section 1-9-2J of the Delaware County Code shall be repealed.

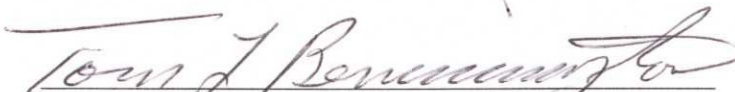
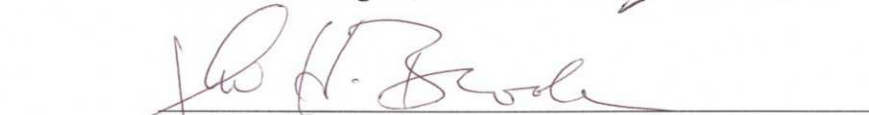
12-1-17. Effective Date

This Ordinance shall be effective one hundred and twenty (120) days after the date of its publication.

DATED this 16 day of October, 2006.



Larry Crouch, Delaware County Commissioner

  
Tom L. Bennington, Delaware County Commissioner  
John Brooke, Delaware County Commissioner

ATTEST:

  
Jane Lasater, Auditor for Delaware County