

ORDINANCE NO. 2011-012
REGULATING SMOKING IN ALL WORKPLACES AND PUBLIC PLACES

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, Delaware County 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 COMMISSIONERS OF THE
COUNTY OF DELAWARE, INDIANA

Sec. 1002. Definitions

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

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages 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.
- B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- C. "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.
- D. "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.
- E. "Enclosed Area" means all space between a floor and a ceiling that is bounded on all sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- F. "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, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, 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.
- G. "Place of Employment" means an enclosed area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- H. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on any government entity, both city and county-owned grounds .

I. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

J. "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, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, tobacco 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.

K. "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.

L. "Service Line" means an indoor or outdoor 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, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

M. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

N. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form.

O. "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

Sec. 1003. Application of Chapter to County-Owned Facilities

All enclosed areas, including buildings, and vehicles owned, leased, or operated by any government entity (both city and county) in Delaware County, shall be subject to the provisions of this Chapter.

Sec. 1004. Prohibition of Smoking in Enclosed Public Places

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

- A. Aquariums, galleries, libraries, and museums.
 - B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
 - C. Bars.
 - D. Bingo facilities.
 - E. Child care and adult day care facilities.
 - F. Convention facilities.
 - G. Educational facilities, both public and private.
 - H. Elevators.
 - I. Gaming facilities.
 - J. Health care facilities.
 - K. Hotels and motels.
 - L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
 - M. Polling places.
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- N. Public transportation vehicles, including buses and taxicabs, under the authority of any government entity (both city and county) in Delaware County, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
 - O. Restaurants.
 - P. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
 - Q. Retail stores, including tobacco retail stores.
 - R. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of any government entity or a political subdivision of the State, to the extent the place is subject to the jurisdiction of Delaware County.

S. Service lines.

T. Shopping malls.

U. Sports arenas, including enclosed places in outdoor arenas.

V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 1005. Prohibition of Smoking in Enclosed Places of Employment

A. Smoking shall be prohibited in all enclosed areas of 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, and all other enclosed facilities.

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. 1006. Prohibition of Smoking in Private Clubs

Smoking shall be prohibited in all private clubs.

Sec. 1007. Prohibition of Smoking in Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

A. All private and semi-private rooms in nursing homes.

B. 100% of hotel and motel rooms that are rented to guests.

Sec. 1008. Prohibition of Smoking in Outdoor Areas

Smoking shall be prohibited in the following outdoor places:

A. Within a reasonable distance of twelve (12) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.

B. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within twelve 12 feet of, bleachers and grandstands for use by spectators at sporting and other public events.

C. In, and within 12 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of any government entity (both city and county) in Delaware County.

D. In all outdoor service lines.

Sec. 1009. Where Smoking Not Regulated

Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the provisions of Sections 1004 and 1005:

- A. Private residences, unless used as a childcare, adult day care, or health care facility, and except as provided in Section 1007.
- B. Outdoor areas of places of employment except those covered by the provisions of Section 1008.

Sec. 1010. 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 1011(A) is posted.

Sec. 1011. Posting of Signs and Removal of Ashtrays

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

- A. Clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
- C. Clearly and conspicuously post on public transportation vehicles identified under Section 1004 (N) that constitutes a place of employment under this Chapter at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. Remove all ashtrays from any area where smoking is prohibited by this Chapter, except for ashtrays displayed for sale and not for use on the premises.

Sec. 1012. Nonretaliation; Nonwaiver of Rights

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Chapter or reports or attempts to prosecute a violation of this Chapter. Notwithstanding Section 1014, violation of this Subsection shall be, punishable by a fine not to exceed \$500.00 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 1013. Enforcement

A. This Chapter shall be enforced by the Delaware County Health Department or an authorized designee.

B. Notice of the provisions of this Chapter shall be given to all applicants for a business license in Delaware County.

C. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Delaware County Health Department.

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

E. An owner, manager, operator, or employee of an establishment regulated by this Chapter shall direct a person who is smoking in violation of this Chapter to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.

F. Notwithstanding any other provision of this Chapter, an employee or private citizen may bring legal action to enforce this Chapter.

G. In addition to the remedies provided by the provisions of this Section, Delaware County or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

H. In addition to the remedies provided by the provisions of this Section, the Delaware County Health Department may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction, costs, including attorney fees, and other litigation expenses, may be recovered by the Delaware County Health Department.

I. 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 of any fines received that have been levied as a result of this ordinance.

J. Pursuant to Indiana Code 16-41-20-9, any person aggrieved by an order of the Delaware County Health Department, or 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.

Sec. 1014. Violations and Penalties

A. A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be in violation of this Ordinance and, punishable by a fine not exceeding five hundred dollars (\$500.00).

B. Except as otherwise provided in Section 1012(A), 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 in violations of this Ordinance, punishable by:

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

C. 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 or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

D. Violation of this Chapter is hereby declared to be a public nuisance, which may be abated by Delaware County Health Department by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Delaware County Health Department may take action to recover the costs of the nuisance abatement.

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

Sec. 1015. Public Education

The Delaware County Health Department shall engage in a continuing program to explain and clarify the purposes and requirements of this Chapter to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 1016. Governmental Agency Cooperation

The Delaware County Health Department shall annually request other governmental and educational agencies having facilities within Delaware County to establish local operating procedures in cooperation and compliance with this Chapter. This includes urging all federal, state, local government entities, and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 1017. Other Applicable Laws

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

Sec. 1018. Broad Construction—Chapter to be interpreted broadly

This Chapter shall be liberally construed so as to further its purposes.

Sec. 1019. Severability

If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.


Sec. 1020. Repeal of Ordinance No. 2006-004

Upon the effective date of this ordinance, Delaware County Ordinance No. 2006-004A shall be repealed.

Sec. 1021. Effective Date

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

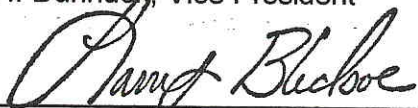
Adopted this day 6 Day of June Month, 2011




Todd Donati, President



Donald H. Dunnuck, Vice President



Larry Bledsoe, Member
Delaware County Commissioner

ATTEST: 
Judy Rust, Auditor, Delaware County