

CITY OF VALPARAISO

ORDINANCE NO. 15-2007

An Ordinance Amending Ordinance No. 49-2006 NONSMOKING AREAS

WHEREAS, numerous studies, including those conducted by the U.S. Surgeon General and the Center for Disease Control, 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 of Valparaiso 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 in public places;

BE IT ORDAINED BY THE COMMON COUNCIL OF THE
CITY OF VALPARAISO, INDIANA

Section 1. Definitions.

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

- a. "Bar" means any establishment used for the sale of alcoholic beverages for consumption by guests on the premises and which holds a beer-wine ("two-way"), or a beer-wine-liquor ("three-way") retailer's permit under the laws of Indiana 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. An establishment of this type which includes a bar and which chooses to apply for and receives an exemption under § 6 of this Ordinance shall not be a "restaurant," but shall be a "bar."

- d. "Private club" means an organization exempt from federal income taxation under 26 U.S.C. § 501(c) and defined as a "club" and eligible to receive a "club permit" under Ind. Code § 7.1-3-20-1 or as a "fraternal club" as defined by Ind. Code § 7.1-3-20-7.
- e. "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 presentation, musical recital, dance, lecture or other similar performance.
- f. "Smoke" or "smoking" means the act of lighting, carrying, inhaling from, or leaving a lighted or smoldering cigar, cigarette, or pipe of any kind.
- g. "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, 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.
- h. "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.
- i. "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.
- j. "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. 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.
- k. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, emotional, other medical, physiological, or psychological conditions including, but not limited to,

hospitals, rehabilitation hospitals or other clinics including weight control clinics, nursing homes, hospices, or homes for the aging or chronically ill.

Section 2. Application of Chapter to City-Owned Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Valparaiso, 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 of Valparaiso 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, and hotels or motels (except as provided in § 6(b)).
- c. Bars, unless an exemption has been issued under § 6 of this Ordinance.
- d. Bed and breakfast facilities.
- e. Bingo facilities.
- f. Convention facilities.
- g. Elevators.
- h. Facilities primarily used for exhibiting a motion picture, stage presentation, lecture, musical recital, or other similar performance, unless exempted by § 6.
- i. Health care facilities.
- j. Licensed childcare and adult day care facilities.
- k. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- l. Polling places.
- m. Public transportation facilities including buses and taxicabs, under the authority of the City of Valparaiso and ticketing, boarding, and waiting areas of public transit depots.

- n. Private clubs unless an exemption has been issued under § 6 of this Ordinance.
- o. Restaurants. Smoking is also prohibited in any outside eating or drinking areas provided by the restaurant to its patrons.
- p. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- q. 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 the City of Valparaiso.
- s. Schools.
- t. Service lines.
- u. Shopping malls.
- v. Sports or entertainment arenas, including enclosed places in outdoor arenas or venues and in grandstands and other seating areas.

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

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, but in no event any closer than fifteen feet, so as to insure that 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 3 shall not apply to the following:

a. Private residences, except when used as (1) a licensed childcare, adult day care, or health care facility, or (2) any business open to the public.

b. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however, that not more than thirty (30%) 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.

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c. A retail tobacco store provided that (1) it meets the definition of a "retail tobacco store" in § 1 of this Ordinance; (2) it applies for and is granted an exemption by the City under the deadlines provided in § 15; and (3) if it is contained in a building which contains any other business or residence, it supplies with its application for exemption on a form provided by the City a signed affidavit from the authorized representative of a business which designs, installs, or inspects heating, ventilation, and air-conditioning systems and which is a business bonded in Porter County which affidavit states that the retail tobacco store and its ventilation system is separated from the rest of the building and from its ventilation system(s) such that smoke from the store will not infiltrate these other areas.

d. 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.

e. Outdoor areas of places of employment except for (1) outdoor seating areas for patrons in restaurants and (2) grandstands or other outside seating at public events.

f. A bar provided that: (1) it meets the definition of a "bar" in § 1 of this Ordinance; (2) it applies for and is granted an exemption by the City under the deadlines provided in § 15; (3) it allows no customer to enter at any time who is under the age of eighteen (18); (4) it employs no person under the age of eighteen (18); and (5) if it is contained in a building which contains any other business or residence, it supplies with its application for exemption on a form provided by the City a signed affidavit from the authorized representative of a business which designs, installs, or inspects heating, ventilation, and air-conditioning systems and which is a business bonded in Porter County which affidavit states that the bar and its ventilation system is separated from the rest of the building and from its ventilation system(s) such that smoke from the bar will not infiltrate these other areas.

g. A private club provided that: (1) It meets the definition of a "private club" in § 1 of this Ordinance; (2) it applies for and is granted an exemption by the City under the deadlines provided in § 15; (3) if it is contained in a building which

contains any other business or residence, it supplies with its application for exemption on a form provided by the City a signed affidavit from the authorized representative of a business which designs, installs, or inspects heating, ventilation, and air-conditioning systems and which is a business bonded in Porter County which affidavit states that the private club and its ventilation system is separated from the rest of the building and from its ventilation system(s) such that smoke from the private club will not infiltrate these other areas.

h. Any vehicle used by an employee while in the service of an employer when the vehicle is occupied only by that employee.

i. Smoking by actors on stage during and as part of a performance, provided that the audience is warned prior to the start of the performance that such will occur.

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.

Section 8. Posting of Signs.

Every public place and place of employment where smoking is permitted under § 6 of this Ordinance shall have posted at every entrance a conspicuous sign clearly warning that smoking is permitted therein. The City shall make such signs available for such places.

Every public place and place of employment where smoking is prohibited by this Ordinance may post signs stating that smoking is not permitted therein. The City shall make such signs available for such places.

Section 9. Enforcement.

A. This Chapter shall be enforced by the City Administrator and the City Legal Department, or their designees.

B. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the City Administrator or his designee.

C. 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.

C. 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 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 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 supersede 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.

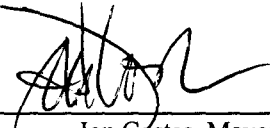
If any section or sentence or provision of this Ordinance, or the application thereof to any person or circumstances shall be declared unconstitutional or invalid, such invalidity shall not affect any of the other sections, sentences, provisions or application of this ordinance which can be given effect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

Section 15. Effective Date and Deadlines for Exemption Applications.

This Ordinance shall take effect on April 1, 2007.

Any bar, private club, or retail tobacco store seeking exemption under § 6 of this Ordinance must request such on a form provided by the City. If all requirements set forth in § 6 are fulfilled, the City shall grant such exemption in writing. The exemption shall cover the following calendar year (except that in 2007, it shall cover the balance of 2007.) Such requests must be received by the last business day of November of each year to cover the exemption for the following year (except that in 2007, it must be received by March 1, 2007). To defray administrative expenses in connection therewith, each application shall be accompanied by a fee of \$50.

5-1 PASSED by the Common Council of the City of Valparaiso, Indiana, by a vote of all members present and voting, this 12 day of March, 2006.



Jon Costas, Mayor

ATTEST 

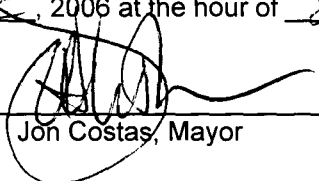
Sharon E. Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 12th of March 2006 at the hour of 8:10 o'clock P.M.



Sharon E. Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this 12th day of March, 2006 at the hour of 8:10 o'clock P. M.



Jon Costas, Mayor