

SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

Chapter 58

3-58-1 Findings of Fact and Statement of Purpose

- a) The Vigo County Board of Health finds the following facts to exist:
 - 1) Tobacco smoke is a major contributor to indoor air pollution, and breathing second hand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Many of these individuals cannot go into public places with second hand smoke due to their respiratory or allergenic handicap; and
 - 2) Health hazards induced by breathing second hand smoke include, but are not limited to, lung cancer, heart disease, respiratory infection and allergic reactions function; and
 - 3) The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke for which there is no know safe level of exposure.

3-58-2 Definitions

For the purpose of this Article, the following words and phrases shall have the meanings given them in this Section.

- a) Bar. Bar means any building, room or area used primarily for the sale of alcoholic beverages for consumption by guests on the premises, and where only guests that are at least 18 years of age may legally enter the establishment.
- b) Place of employment. 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 classrooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.
- c) Public conveyance. Public conveyance means any air, land or water vehicle used for the transportation of persons for compensation, including but not limited to airplanes, trains, buses, boats and taxis;
- d) Public place. Public place means any enclosed, indoor area used by the general public, including, but not limited to, restaurants, retail stores, offices and other commercial establishments, public conveyances, bars, hospitals, auditoriums, arenas, common areas of hotels and motels.
- e) Restaurant. Restaurant means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

- f) Retail store. Retail store means that portion of a commercial occupancy used for the transaction of business or the rendering of a service directly to the public, including shops, convenience stores, retail food stores, laundries or laundromats and department stores;
- g) Room. Room means any indoor area bordered on all sides by a floor to ceiling wall. The sides must be continuous and solid except for closeable doors for entry and exit;
- h) Private Room. Private room means any room that is rented for private entertainment or lodging. Private room means any indoor area bordered on all sides by a floor to ceiling wall. The sides must be continuous and solid except for closeable doors for entry and exit;
- i) Smoking. Smoking includes possessing or carrying a lighted cigar, cigarette, pipe or any other lighted smoking equipment.

3-58-3 Smoking prohibited in all places defined in section 3-58-2 except:

No person shall smoke in any place defined in 3-58-2 except:

- a) Established restaurants must have a designated smoking area in a separate room enclosed on all sides by continuous floor-to-ceiling walls, interrupted only by closeable doors by July 1, 2007.
- b) Restaurants established after the clean indoor air ordinance is signed in as record must have a separate designated smoking room enclosed on all sides by continuous floor-to-ceiling walls, interrupted only by closeable doors, and separately ventilated to the outside with negative air pressure.
- c) Bars as defined by section 2 (exempt from amendments or addendums to ordinance for five years after July 1, 2007).
- d) The bar area of a bar/restaurant:
 - 1) The bar area must be separately enclosed on all sides by continuous floor-to-ceiling walls, interrupted only by closeable doors by July 1, 2007; and
 - 2) The bar area of restaurant/bar established after the clean indoor air ordinance is signed in as record must be enclosed on all sides by continuous floor-to-ceiling walls, interrupted only by closeable doors, separately ventilated, with negative air pressure in relation to dining areas; and
 - 3) Minors are not permitted in the bar area at any time;
- e) A civic organization, service club, fraternal or patriotic organization or similar private membership organization, when admission to the organization is limited to members and members' guests, provided that this exception shall not apply to any organization established to avoid compliance with this ordinance.
- f) Private Room as defined by section 2.
- g) Business establishments where more than seventy-five percent (75%) of the volume of trade or business carried on is that of the blending of tobaccos, or sale of tobaccos

or sale of tobaccos, pipes, cigars, or smokers' sundries provided that smoke from these places is enclosed and does not infiltrate into areas where smoking is prohibited under the provisions of this chapter. Added 10/3/06

3-58-4 Responsibilities of owners

The owner and the on-site person in charge of a restaurant subject to this chapter shall:

- a) 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) clearly and conspicuously in every public place and place of employment where smoking is prohibited by this ordinance;
- b) Ensure that ashtrays, lighters and matchbooks are not provided in areas where smoking is prohibited;
- c) Ask in a reasonable and timely manner any person who smokes in areas where smoking is prohibited to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, ask the person to leave.

3-58-5 Retaliation prohibited

No person or employer shall discharge, refuse to hire, penalize, discriminate against or in any manner retaliate against, any employee, applicant for employment or customer because the employee, applicant or customer exercises any right to a smoke free environment afforded by this ordinance or other law.

3-58-6 Other applicable laws

This ordinance is intended to complement the Indiana Clean Indoor Air Law *IC 16-41-37*, as amended from time to time. Nothing in this ordinance authorizes smoking in any location where smoking is restricted by other applicable laws.

3-58-7 Enforcement

- a) Enforcement of this subchapter shall be implemented by the Vigo County Health Department, and all other city and county governmental agencies responsible for building inspections, which board and/or departments shall certify in writing that any establishments being inspected is complying with the terms of the subchapter. This may be done by noting compliance to this subchapter on any form already used for building inspections.
- b) Upon findings that any provision of this ordinance has been violated, the enforcement designee(s) shall issue a *Notice of Violation* to the person(s) responsible for the violation. The *Notice of Violation* shall be in writing and shall be served upon the person(s) responsible for the violation by one or more of the following methods: delivery in person or first class mail. The *Notice of Violation* shall state:
 - (1) The location of the violation;
 - (2) The nature of the violation;
 - (3) The fine assessed for the violation;

- (4) That the fine is paid at the clerks office;
- (5) That the fine may be contested in the Vigo County Circuit Courts.
- c) Owners, operators, managers or other persons having control over a restaurant or enclosed area where smoking is prohibited and any citizen who desires to register a complaint under this subchapter may initiate enforcement by calling the city or county governmental agencies responsible for building inspections.
- d) The owner, operator, or manager of a business shall not be responsible for violations of this subchapter within their premises by patrons or citizens, provided that such patrons or citizens have been adequately informed in a timely manner that their actions may be in violation of the subchapter.

3-58-8 Violation and penalties

- a) Smoking where prohibited. It is a violation for any person to smoke in an area where smoking is prohibited by this ordinance.
- b) Owners. It is a violation for the owner or the on-site person in charge of any premises subject to this ordinance to fail to comply with the requirements of this ordinance, or to retaliate against an employee, applicant for employment or customer, as prohibited by Section 6.
- c) Penalties. A person who violates any provision of this ordinance shall be subject to the following penalties:
 - (1) A fine of one hundred dollars (\$100.00) for the first offense.
 - (2) A fine of two hundred fifty dollars (\$250.00) for the second offense.
 - (3) A fine of five hundred dollars (\$500.00) for the third and each subsequent offense.
 - (4) Persons who smoke in an area where smoking is prohibited and who refuse to extinguish their smoking material when asked, may be required to leave the premises, and shall be subject to prosecution for trespass if they do not leave when asked.
- d) Private right of action. In addition to the penalties, any person injured by a repeated or continuing violation of the Article may bring a civil action against the owner or other person in charge of a public place to enjoin further violations.
- e) Each calendar day during which the violation occurs shall constitute a separate and distinct offense.

3-58-9 Severability

If any portion of this ordinance, or its application to any circumstances, is held invalid, the remaining provisions shall be considered severable, and shall be given effect to the maximum extent possible.

3-58-10 Effective Date

This Ordinance has been passed and adopted this 20th day of June, 2006, by the Vigo County Board of County Commissioners and shall become effective on July 1, 2007.

Vigo County Board of Commissioners

Signatory, _____

Signatory, _____

Signatory, _____

ATTEST: Signatory,