

**ORDINANCE NO. 4
COUNCIL BILL NO. 12
(2006)**

(As Amended)

**An ordinance regulating smoking
in public places and places of employment.**

- WHEREAS, the Common Council of the City of Seymour, Indiana finds and declares that the purposes of this ordinance are to protect the public health and general welfare by limiting smoking in public places and places of employment.
- WHEREAS, Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a potential 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; and
- WHEREAS, Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function.
- WHEREAS, Accordingly, the Common 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 breath smoke-free air and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

**NOW, THEREFORE BE IT HEREBY ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF SEYMOUR, INDIANA, THAT:**

SECTION 1: The Code of Ordinances of Seymour, Indiana entitled "Smoking in Public Places" shall be enacted and added and bear the following title: "Smoking in Public Places and Places of Employment".

Section 1: Definitions.

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

- a. "Bar" means an establishment that serves alcoholic beverages for consumption on the premises, by guests who must be at least twenty-one (21) years of age to enter the premises, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets. The establishment may also give, serve, or provide food to those guests, however, where there exists any part, portion, or area on the premises that allows for guests who are not at least eighteen (18) years of age to enter the premises, that establishment shall not fit the definition of a "Bar".

b. "Business" means any 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.

c. "Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit, including those employed full-time, part-time, on a temporary basis, or by contract through a third party.

d. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.

e. "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

f. "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. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.

g. "Private club" means a facility owned or operated by an association or corporation, which shall:

- (1) Not be operated for pecuniary gain; and
- (2) Registered under Indiana law; and
- (3) Determined by the Internal Revenue Service to be operating under not-for-profit status; and
- (4) Consist of a membership:
 - (i) Formed as a lodge, local chapter, or corresponding unit of a fraternal order recognized on a national basis; or
 - (ii) Comprised of persons who have served in the armed forces of the United States; or
 - (iii) Formed as a recognized, exclusive association of persons organized for a joint or common purpose for which application for membership, the payment of dues, and self governance by the membership are distinguishing characteristic, and, where entry into, and use of the facility is restricted to members and guests of members.

h. "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a "public place."

i. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale of 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. The term "restaurant shall include a bar area within the restaurant".

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. "Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

l. "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.

m. "Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

Section 2:

Prohibition of smoking in public places and places of employment.

Except as otherwise provided in this ordinance, smoking shall be prohibited in the following public places and places of employment, including, but not limited to, the following areas:

- (1) Elevators;
- (2) Restrooms, lobbies, reception areas, hallways and any other common-use areas;
- (3) Buses, taxicabs, and other means of public transit under the authority of the city, and ticket, boarding, and waiting areas of public transit depots;
- (4) Service lines;
- (5) Retail stores;
- (6) Restaurants
- (7) Public areas of aquariums, galleries libraries, and museums;

- (8) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a theatrical production;
- (9) Sports arenas and convention halls, including bowling facilities;
- (10) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city;
- (11) Hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
- (12) Private and semi-private rooms in nursing homes and long-term care facilities;
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (15) Polling places;
- (16) Private functions in other public places like restaurants, hotels, and motels.

Notwithstanding any other provisions of this Section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

Section 3:

Policies regarding smoking in places of employment.

- (a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.
- (b) Within one hundred eighty days (180) of the adoption of this chapter, each employer having an enclosed place of employment located within the city shall adopt, implement, and comply with the smoking ordinance that shall contain the following requirements: Smoking shall be prohibited in all enclosed facilities within a place of employment. 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.
- (c) The smoking ordinance shall be communicated to all employees.
- (d) All employers shall supply a written copy of the smoking ordinance upon request to any existing or prospective employee.

Section 4: Reasonable distance.

Smoking shall be prohibited within ten (10) feet of any entrance to a public place so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means. It shall be a violation for smoke to be detected in any area where smoking is prohibited.

Section 5: Where smoking is NOT regulated.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

1. Private residences, except when used as a licensed childcare, adult day care, or health care facility.
2. 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.
3. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
4. Private Clubs.
5. Bars.
6. Outdoor areas of places of employment.

Section 6: Posting of signs--Removing of paraphernalia.

(a) "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, sufficiently and conspicuously posted in every building or other area where smoking is prohibited by this chapter, by the owner, operator, manager or other person having control of such building or other area.

(b) Every public place where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) 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 such area.

Section 7:**Compliance.**

- (a) Enforcement of this ordinance shall be implemented by the Ordinance Administrator.
- (b) Notice of the provisions set forth in this ordinance shall be given to all applicants for a business registration in the City, provided, however, that failure to receive such notice shall not exempt any person from the requirements of this ordinance or its enforcement.
- (c) Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the code enforcement officer.
- (d) The Seymour Fire Department shall require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager, operator or other person having control of such establishment that all requirements of this ordinance have been complied with.
- (e) Any owner, manager, operator or employee of any establishment regulated by this ordinance may inform persons violating this ordinance of the appropriate provisions thereof.

Section 8:**Violations and penalties.**

- (a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.
- (b) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this chapter to knowingly or willfully allow smoking to occur where prohibited by this chapter. It is a defense to this Section, if the foregoing persons or their employees act in a reasonable and timely manner to personally inform the violator of the prohibition and request that he or she refrain from smoking.
- (c) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of the ordinance codified in this chapter.
- (d) Any person who violates any provision of this chapter shall be subject to a fine of Fifty and 00/100 dollars (\$50.00) for each finding of a violation of this chapter. If, after multiple violations by the same person or at the same business, the city legal department has reason to believe that the fines will not be effective in enforcing this chapter, then the city legal department shall be empowered to seek any other remedies provided by law.

Section 9:**Public education.**

The Office of the Mayor shall initiate a program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program

may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Section 10: **Partial Invalidity.** The invalidity of any portion of this ordinance shall not affect the validity of any other portion of it, which can be given effect without such invalid part.

Section 11: **Other applicable laws.** This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 12: **Repealer.** All prior ordinances or parts thereof inconsistent with any provision of this ordinance are hereby repealed.

Section 13: **Effective Date.** This ordinance shall be in full force and effect from and after July 30, 2006, approval by the Mayor, publication, and recording, all as by law provided.

ADOPTED by the Common Council and APPROVED by me, as Mayor, this 22nd day of May, 2006, at 7:43 p.m.

/s/

James E. Bullard, Mayor
City of Seymour, Indiana

ATTEST:

/s/

Fred D. Lewis, Clerk-Treasurer
City of Seymour, Indiana

Passed First Reading: May 8, 2006

Passed Second Reading: May 22, 2006