

BILL NO. G-06-12-12(AS AMENDED SEVEN TIMES)

GENERAL ORDINANCE NO. G-03-07

AN ORDINANCE ADDING SECTIONS 95.60 THROUGH 95.99, REGULATION OF SMOKING, TO CHAPTER 95 OF THE CITY OF FORT WAYNE, INDIANA, CODE OF ORDINANCES.

WHEREAS, the Surgeon General has issued statements citing the health risks caused by secondhand smoke; and

WHEREAS, it is important to protect all citizens, patrons and employees in public places from the harmful effects of secondhand smoke.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That Sections 95.60 through 95.99, Regulation of Smoking, of Chapter 95 are hereby added to the City of Fort Wayne, Indiana, Code of Ordinances as follows:

CHAPTER 95: HEALTH, SAFETY AND SANITATION

Regulation of Smoking

95.60 Definitions

95.61 Application of subchapter to city- owned facilities

[95.62](#) Prohibition of smoking in public places and the Fort Wayne Children's Zoo

[95.63](#) Regulation of smoking in places of employment

<u>95.64</u>	Exceptions
<u>95.65</u>	Reasonable distance
<u>95.66</u>	Posting of signs
<u>95.67</u>	Enforcement
<u>95.68</u>	Violations
<u>95.69</u>	Non-retaliation
<u>95.70</u>	Public education
<u>95.71</u>	Other applicable laws
<u>95.72</u>	Severability
<u>95.79</u>	Effective Date
<u>95.99</u>	Penalty

REGULATION OF SMOKING

Sec. 95.60 DEFINITIONS.

As used in this chapter, the following terms have the meanings indicated unless the content clearly requires otherwise:

BUSINESS. 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.

EMPLOYEE. Any person who is employed by an employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.

EMPLOYER. Any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

ENCLOSED AREA. 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 or similar structures which do not extend to the ceiling or are not solid.

PLACE OF EMPLOYMENT. 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, 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 licensed child care, adult day care or health care facility.

PUBLIC PLACE. Any enclosed area, including vehicles, to which the public is invited or in which the public is permitted or generally that is open to the public regardless of whether such building or vehicle is owned in whole or in part by a private person or entities or by the city or other public entity, and regardless whether a fee is charged for admission to the place. It includes, but is not limited to: elevators, public conveyances, museums, concert halls, theaters, hallways, auditoriums, exhibition halls, indoor sports arenas, bowling centers, hospitals, nursing homes, medical, dental, or health care facilities, enclosed shopping centers, financial institutions, educational facilities, public meetings or hearings, public transportation facilities, ticket areas, public restrooms, libraries, restaurants, waiting areas, lobbies, reception areas, banks, educational facilities, laundromats, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, pool halls, bars, bingo halls, private clubs, military service clubs, fraternal clubs, and waiting rooms. A private residence is not a "public place," unless it is used as a licensed child care, adult day care or health care facility.

RESTAURANT. Any enclosed building, structure or area used as or held out to the public as having food available for payment to be consumed on the premises, including but not limited to bars, coffee shops, cafeterias, cafes, luncheonettes, soda fountains, and taverns.

RETAIL TOBACCO STORE

"Retail Tobacco Store" means a retail store: (1) utilized primarily for the sale of tobacco and tobacco-related products including, but not limited to, cigarettes, cigars, tobacco, pipes, cigarette paper and lighters; (2) that is not licensed for the consumption of meals or alcoholic beverages on the

premises or operated in conjunction with another business that is licensed for the on-premises consumption of meals or alcoholic beverages; and (3) in which the sale of tobacco and tobacco-related products account for not less than 60% of the store's gross sales. "Retail Tobacco Store" does not include a tobacco department of a larger commercial establishment such as a grocery store, department store or discount store.

SMOKING. Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

Sec. 95.61 APPLICATION OF SUBCHAPTER TO CITY-OWNED FACILITIES.

All public places and other enclosed facilities, including vehicles, owned by the city shall be subject to the provisions of this subchapter.

Sec. 95.62 PROHIBITION OF SMOKING IN PUBLIC PLACES AND THE FORT WAYNE CHILDREN'S ZOO.

- (A) Smoking shall be prohibited in all enclosed public places within the city.
- (B) Smoking shall be prohibited at all times in all areas of the Fort Wayne Children's Zoo.

Sec. 95.63 REGULATION OF SMOKING IN PLACES OF EMPLOYMENT.

- (A) It shall be the responsibility of employers to provide for all employees a place of employment where smoking is prohibited in the entire place of employment.

Sec. 95.64 EXCEPTIONS.

The following shall be exempted from this chapter:

- (A) Hotel and motel rooms that are rented to guests and are designated as smoking rooms, provided that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated;
- (B) Private or semi-private rooms in nursing homes and long term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, provided that smoke from these rooms does not infiltrate into areas where smoking is prohibited under provisions of this chapter.
- (C) Retail Tobacco Store

Sec. 95.65 REASONABLE DISTANCE.

Smoking shall occur at a reasonable distance outside any enclosed area where smoking is prohibited to ensure that smoke does not enter through the entrances, windows, ventilation system or other means with no recirculation to other non-smoking areas. To ensure a smoke-free access and exit, a reasonable distance shall be construed to mean not less than 20 feet from the doorway or other opening leading into the enclosed area where smoking is prohibited. The reasonable distance is 20 feet from a government building. Smoking shall be prohibited from the grounds of a healthcare facility that has prohibited smoking on its grounds for a distance of the closer of either 200 feet from any point of ingress or egress or the nearest private property boundary. Nothing contained herein shall prevent a healthcare facility from expanding its non-smoking area within its boundary lines to a distance greater than 200 feet.

Sec. 95.66 POSTING OF SIGNS.

- (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 place where smoking is regulated by this subchapter, by the owner, operator, manager, or other person having control of such building or other place. All letters in any such sign shall be at least one inch in height and three-quarters of one inch in width.
- (B) Every public place where smoking is prohibited by this subchapter 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 subchapter, by the owner, operator, manager, or other person having control of such area.

Sec. 95.67 ENFORCEMENT.

- (A) Enforcement of this subchapter shall be implemented by the Fort Wayne-Allen County Health Department, the City Fire Department, the City Police Department and all other city and county governmental agencies responsible for building inspections, which boards and/or departments shall certify in writing that any establishment being inspected is complying with the terms of the subchapter. This may be done by noting compliance with this subchapter on any other form already used for annual building inspections.
- (B) Owners, operators, managers or other persons having control over a place of employment, restaurant, public place, enclosed area or

other area where smoking is prohibited hereunder and any citizen who desires to register a complaint under this subchapter may initiate enforcement by calling the City Fire Department. If the Fire Department is not involved in other higher priority activities, someone will be dispatched to issue a citation to the offending party.

- (C) The owner, operator, or manager of a business shall not be responsible for violations of this subchapter within its premises by patrons or citizens, provided that such patrons or citizens have been adequately informed that their actions may be in violation of this subchapter. Any owner, operator, or manager of a business shall have adequately informed patrons or citizens if he or she has posted signs on the premises in accordance with this subchapter.

Sec. 95.68 VIOLATIONS.

- (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 subchapter to fail to comply with any of its provisions.
- (B) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this subchapter.
- (C) It shall be unlawful for an owner, operator, manager or other person having control over an area where smoking is prohibited under this subchapter to allow a person to smoke in violation of this subchapter.

Sec. 95.69 NON-RETALIATION.

No person or employers 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 an environment wherein smoking is prohibited by this subchapter.

Sec. 95.70 PUBLIC EDUCATION.

The Fort Wayne-Allen County Health Department and the City Fire Department shall explain and clarify the purposes and requirements of this subchapter to citizens affected by it, and shall provide guidance to owners, operators and managers in their compliance with it, upon request of such explanation or guidance. Such explanation may include publication of a brochure for affected businesses and individuals explaining the provisions of this subchapter.

Sec. 95.71 OTHER APPLICABLE LAWS.

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

Sec. 95.72 SEVERABILITY.

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

Sec. 95.79 EFFECTIVE DATE.

This subchapter is effective on June 1, 2007.

Sec. 95.99 PENALTY.

(A) Any person violating any provision of this chapter, for which no specific penalty is otherwise provided, shall, upon conviction thereof,

pay a fine of not more than \$2,500. Each day any violation shall continue shall constitute a separate offense. In all cases where the same offense may be made punishable, or may be created by different clauses or sections of the ordinances of the city, the City Attorney may elect under which to proceed, but not more than one recovery shall be had against the same person for the same offense. Notwithstanding the foregoing, the penalty provision contained therein is not intended to be applicable to Sec. 95.60 through 95.79.

- (B) Any person violating any of the provisions of § 95.01 shall be deemed guilty of a violation and upon conviction thereof shall be fined in an amount not exceeding \$300. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.
- (C) Any person violating any provision of Sec. 95.16 through Sec. 95.19 shall be punished by a fine of \$25 payable to the City Clerk. Each day such violation shall continue shall constitute a separate offense.
- (D) Any person violating any provision of Sec. 95.31 through Sec. 95.33 shall pay a civil penalty of not more than \$2,500 for each such violation.
- (E) A business entity which allows a violation of Sec. 95.61 through 95.71 or otherwise fails to comply with it shall be subject to a civil fine of up to \$2500.00 per day per violation.
- (F) Any person, except for persons smoking in dining areas in restaurants, who violates this subchapter shall be subject to a civil fine of \$25.00 for a first violation, \$100.00 for a second violation, and \$250.00 for each additional violation. A person who violates this subchapter by smoking in dining areas or who violate the Indiana Clean Indoor Air Law codified at I.C. 16-41-37 shall be subject to the fines and penalties as set forth in I.C. 16-41-37-4 and nothing herein shall be

construed to restrict local law enforcement agents for enforcing such penalty.

SECTION 2. That this Ordinance shall be in full force and effect June 1, 2007, and upon passage and approval by the Mayor.

John Shoaff

Council Member

Read the third time in full and on motion by Crawford and duly adopted, placed on its passage. PASSED by the following vote:

AYES: Seven
Crawford, Hayhurst, Pape,
Schmidt, Shoaff, Smith, Talarico, Jr.
NAYS: One
Didier
ABSTAINED: One
Hines
ABSENT: None

DATED: 1-23-07

Sandra E. Kennedy
City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-03-07 on the 23rd day of January, 2007

ATTEST:

SEAL

Sandra E. Kennedy
City Clerk

Donald J. Schmidt
Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th day of January, 2007 at the hour of 3:00 o'clock P.M. E.S.T.

Sandra E. Kennedy
City Clerk

Approved and signed by me this 30th day of January, 2007 at the hour of
4:31 o'clock P.M., E.S.T.

Graham A. Richard
Mayor