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**ORDINANCE NO. 2008-12
AN ORDINANCE REGULATING SMOKING IN PUBLIC PLACES
AND PLACES OF EMPLOYMENT**

WHEREAS, scientific research has established that tobacco smoke is a major contributor to indoor air pollution and that exposure to second hand smoke, also referred to as environmental tobacco smoke, is a significant causative factor of cardiovascular and pulmonary disease in nonsmoking adults, the elderly and children; and

WHEREAS, there is a clear and present danger to employees and patrons of facilities operated in the Town of Whitestown (hereinafter referred to as the "Town") from exposure to smoke from cigarettes, pipes, cigars and other tobacco products; and

WHEREAS, the Town Council of the Town of Whitestown has determined that to promote the general health, safety and welfare of the residents of Town it is in the best interests of those residents to limit exposure to second hand smoke by prohibiting smoking in public places and places of employment; and

WHEREAS, the Town Council has balanced the interests of smokers and nonsmokers, and businesses and employees to arrive at certain exceptions to the no smoking policy.

NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, BOONE COUNTY, INDIANA that:

Sec. 1.01. Definitions.

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

"Bar" means any building, room or area used primarily for the sale of alcoholic beverages for consumption by guests on the premises and in which the sale of food and the provision of entertainment is merely incidental to the sale of alcoholic beverages.

"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.

"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.

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

"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.

"Outdoor Area" shall mean any patio, courtyard, sidewalk cafe, backyard or roof of a restaurant, tavern, or nightclub, or hotel restaurant, tavern, or nightclub.

"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, warehouses, 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 licensed child care facility (as defined in I.C. § 12-7-2-28.6) or health care facility (as defined in I.C. § 16-18-2-161).

"Private Club" means a facility:

- (a) owned or operated by an association or corporation, which shall:
 - (1) not be operated for pecuniary gain; and
 - (2) consist of a membership:
 - (A) formed as a lodge, local chapter, or corresponding unit of a fraternal order whether or not recognized on a national basis; or
 - (B) comprised of persons who have served in the armed forces of the United States; or
 - (C) 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 characteristics; and
- (b) where entry into, and use of the facility is restricted to members and guests of members.

"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."

"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.

"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

"Tobacco Bars" are establishments that sell or rent tobacco products and devices and derive more than 25% of their income from these sales or rentals.

"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.

"Smoking" means the act of puffing, having in one's possession, holding or carrying a lighted or smoldering cigar, cigarette, pipe, or smoking equipment of any kind or lighting a cigar, cigarette, pipe, or smoking equipment of any kind. "Smoking," however, does not include any such act (puffing, having, holding, or carrying) where the cigar, cigarette, pipe, or other smoking equipment of any kind is not lit or smoldering.

"Sporting Arena" means any sport 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.

Sec. 1.02. Application to Town-Owned Facilities.

All enclosed facilities owned by the Town of Whitestown shall be subject to the provisions of this chapter, including Town vehicles, whether or not they are occupied by more than one person.

Sec. 1.03. Prohibition of Smoking in Public Places.

- (a) Smoking shall be prohibited in the following public places and other public places similarly situated, including but not limited to:
- (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 Town of Whitestown, and ticket, boarding, and waiting areas of public transit depots;
 - (4) Service lines;

- (5) Retail stores;
 - (6) All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public;
 - (7) Restaurant and bar within restaurants or attached to a restaurant unless the bar is an "enclosed area" as defined by Section 1.0 1 of this ordinance, and the bar does not share the ventilation system with another portion of the building and, access to the bathroom facility from the restaurant does not require entering the bar area.
 - (8) Public areas of aquariums, galleries, libraries, indoor areas of zoos and museums;
 - (9) 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;
 - (10) Sports arenas and convention halls, including bowling facilities;
 - (11) 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 Town 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 Town;
 - (12) Hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
 - (13) Lobbies, hallways, and other common areas in apartment buildings; condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
 - (14) Polling places;
 - (15) Places of employment;
 - (16) Private functions in other public places like bars, restaurants, hotels, and motels.
- (b) Smoking shall be allowed in a contiguous outdoor area of a restaurant, tavern, or nightclub; providing that such area:
- (1) Is designated a smoking area by being clearly marked as such;
 - (2) Represents a separate and discrete area;

- (3) Is completely separated by a physical barrier from any indoor nonsmoking area.
- (c) Notwithstanding any other provisions of this section, any other operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

Sec. 1.04. 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) The smoking policy shall be communicated to all employees.
- (c) Each employer having an enclosed place of employment located within the Town shall adopt, implement, make known, and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employment lounges, stairs, restrooms, vehicles with more than one occupant, and all other enclosed facilities.

- (d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

Sec. 1.05. Reasonable Distance.

Smoking is not permitted within ten (10) feet from a ventilation system or a public entrance to any area where smoking is prohibited 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 areas where smoking is prohibited.

Sec. 1.06. Where Smoking Is Not Regulated.

- (a) Notwithstanding any other provisions 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 child care facility (as defined in I.C. § 12-7-2-28.6) or health care facility (as defined in I.C. § 16-18-2-161);

- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however, that not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated and so long as the smoking does not directly affect any non-smoking rooms and areas of the building. Once designated, the status of rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms;
 - (3) Retail tobacco stores as defined in Section 1.01, so long as the smoking does not directly affect smoking prohibited areas;
 - (4) Private clubs as defined in Section 1.01, however, smoking shall be prohibited when the premises is temporarily used by the general public for a particular function;
 - (5) Tobacco bars as defined in Section 1.01, so long as the smoking does not directly affect smoking prohibited areas;
 - (6) Outdoor areas of places of employment.
 - (7) Any facility where the minimum age for admission is twenty-one (21) years.
- (b) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

Sec. 1.07. Posting of Signs-Removing of Ashtrays.

- (a) "No Smoking" signs or the international No Smoking symbol (consists of pictorial representation of burning a 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) Any public place or place of employment exempted from this chapter shall clearly and conspicuously post the following sign at every entrance: "Warning. Tobacco smoke may be present."

- (d) All ashtrays 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 areas.

Sec. 1.08. Enforcement.

- (a) The Town shall seek to obtain voluntary compliance with this chapter by means of publicity and education programs, and the issuance of warnings, where appropriate.
- (b) Enforcement of this chapter shall be implemented by the Whitestown Police Department.
- (c) Any citizen who desires to register a complaint under this chapter may do so with the Whitestown Police Department.
- (d) Upon finding that any provision of this chapter has been violated, the enforcement designee(s) shall issue a Notice of Violation (NOV) to the person(s) responsible for the violation. The NOV 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, certified or first class mail. The NOV 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 Clerk of the Whitestown Town Court's office;
and
 - (5) That the fine may be contested in the Whitestown Town Court.

Sec. 1.09. 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 or to knowingly or willfully allow smoking to occur where prohibited by this chapter.
- (b) 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.

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- (c) It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.
- (d) 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 of fifty dollars (\$50).
- (e) 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 of fifty dollars (\$50) for the first violation (or the first violation occurring after one (1) year following the persons most recent prior violation at the same place).
 - (2) A fine of one hundred dollars (\$100) for the second violation at the same place, if occurring within one (1) year following the persons first violation as set forth in subsection (1) above.
 - (3) A fine of two hundred fifty dollars (\$250) for each additional violation at the same place, if occurring within one (1) year following the persons second violation as set forth in subsection (2) above or other additional violation as set forth in this subsection.
- (f) Each day on which a violation of this chapter occurs, and each person violating this chapter at any given time or the same time, shall be considered a separate and distinct violation.
- (g) All penalties shall be processed through the Clerk of the Town Court and prosecuted in the Town Court. If, after multiple violations by the same person or at the same business, the Town legal and law enforcement departments have reason to believe that the fines will not be effective in enforcing this chapter, then the Town legal department shall be empowered to seek any other remedies provided by law.

Sec. 1.10. Public Education.

The Town may engage in programs 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. Such programs may include publication of a brochure for affected businesses and individuals explaining the provisions of this chapter. The Town may promote its smoke-free businesses, including restaurants, taverns, and nightclubs, through a marketing campaign.

Sec. 1.11. Other Applicable Laws.

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

Sec. 1.12. Severability.

If any sections, sentence or provision of this chapter, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter we declare to be severable.

Sec. 1.13. Effective Date.

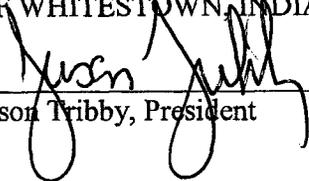
The enforcement provisions of this ordinance shall take effect on April 1, 2009, thereby allowing a phase-in period for all public places and places of employment.

All ordinances or parts thereof in conflict with this ordinance are hereby repealed and abolished, including any prior non-smoking ordinance(s), and this ordinance shall take effect upon its approval, adoption and publication by the Town Council.

Introduced and filed by the Town Council of the Town of Whitestown, Indiana, on July 7, 2008.

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF WHITESTOWN, INDIANA ON THE 9th DAY OF September, 2008. HAVING BEEN PASSED BY A VOTE OF 3 IN FAVOR OF AND 1 OPPOSED.

THE TOWN COUNCIL OF THE TOWN
OR WHITESTOWN, INDIANA

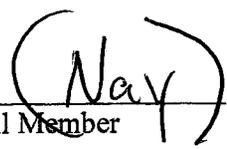


Jason Tribby, President

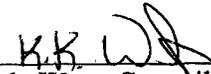
Susan Austin, Council Member



Dawn Semmler, Council Member

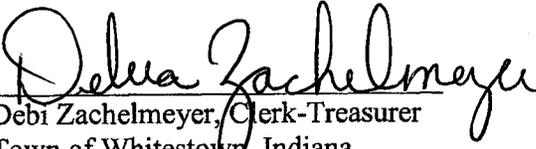


Kevin Russell, Council Member



Kyle West, Council Member

ATTEST:



Debi Zachelmeyer, Clerk-Treasurer
Town of Whitestown, Indiana

First Reading: 7/8/08

Second Reading: 8/12/08

Third Reading: 9/9/08

Publication Date: _____