

**SUBSTITUTE**  
**ORDINANCE**

**WHEREAS**, New York City, Los Angeles, Dallas and Boston strengthened their existing clean indoor air laws by adopting strict no smoking legislation to protect the health of their citizens; and

**WHEREAS**, within the State of California, the cities of Los Angeles, San Francisco, San Diego, and other major cities have banned smoking in their restaurants and bars; and

**WHEREAS**, the States of California, Massachusetts, Rhode Island, Utah, Vermont, Idaho, Connecticut, South Dakota, Maine, Delaware, Florida and Washington adopted protective clean indoor air laws that eliminate workers', patrons' and visitors' exposure to secondhand smoke; and

**WHEREAS**, secondhand smoke, which contains 4,000 chemicals, 63 of which cause cancer, is the third leading cause of preventable death in the United States, and the National Cancer Institute determined in 2000 (Monograph #10) that secondhand smoke is responsible for the early deaths of as many as 65, 000 Americans annually; and

**WHEREAS**, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart, stroke, respiratory disease, and lung cancer; and

**WHEREAS**, the Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen (U.S. DHHS, 2000, citing Cal. EPA, 1997); and

**WHEREAS**, the ills of smoking and secondhand smoke are well documented in all of the independent medical studies and secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

**WHEREAS**, children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden death syndrome, developmental abnormalities, and cancer; and

**WHEREAS**, the Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability; and

**WHEREAS**, (1) the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke, (2) the Environmental Protection Agency has determined that second hand smoke cannot be reduced to safe levels in businesses by high rates

of ventilation, (3) air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke, (4) American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smoke-free environments because it cannot determine a safe level of exposure to secondhand smoke, which contains cancer-causing chemicals, and ASHRAE acknowledges that the technology does not exist that can remove chemicals from the air that cause cancer; and

**WHEREAS**, a recently promulgated ASHRAE Position Document on Environmental Tobacco Smoke concludes that at present, the only means of eliminating health risks associated with indoor exposure is to ban all smoking activity; and

**WHEREAS**, the ASHRAE Position Document further concludes that no current ventilation, air cleaning or other technologies have been demonstrated to control health risks from environmental tobacco smoke exposure in spaces where smoking occurs; and

**WHEREAS**, a significant amount of secondhand smoke exposure occurs in the workplace, and employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and a measurable decrease in lung function; and

**WHEREAS**, smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates and increased liability claims for diseases related to exposure to secondhand smoke; and

**WHEREAS**, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

**WHEREAS**, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety; and

**WHEREAS**, smoking is a potential cause of fires, cigarette and cigar burns and ash stains on merchandise and fixtures and contributes to the economic damage of businesses; and

**WHEREAS**, strengthening Chicago's existing Clean Indoor Air Ordinance will eliminate secondhand smoke exposure in all workplaces and public places including without limitation restaurants and bars; and

**WHEREAS**, the Chicago City Council finds and declares that the purposes of this Ordinance are (1) to protect the public health and welfare by prohibiting smoking in all public places and places of employment, and (2) to guarantee the right of nonsmokers to breathe

smoke-free air which shall have priority over the desire to smoke; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

**SECTION 1.** Chapter 7-32 of the Municipal Code is hereby repealed in its entirety and replaced with the following:

**7-32-010 Title.**

This Chapter shall be known as the Chicago Clean Indoor Air Ordinance of 2005.

**7-32-020 Interpretation With Other Laws.**

Nothing in this Chapter overrides any existing elimination of smoking that is already covered by fire code restrictions.

**7-32-030 Definitions.**

The following words and phrases, whenever used in Sections 7-32-30 through 7-32-90, shall have the following meanings:

"Arcade" means a public place of amusement, Class II, as defined in Chapter 4-156 of this code, which contains four or more automatic amusement devices and is not licensed to serve alcoholic liquor.

"Bar/tavern" means an establishment that is subject to a license for the sale of alcoholic liquor for consumption on the premises, and that derives 65% or more of its gross proceeds from the sale of alcoholic liquor . Each bar/tavern shall provide such documentation as may be requested by the Departments of Business Affairs and Licensing and Revenue to enable those departments to determine whether the establishment meets the percentage requirement of this definition.

"Business" means any sole proprietorship, partnership, joint venture, corporation, limited liability company or other business entity formed for profit-making purposes, including without limitation 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 an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

"Employer" means any person, business, partnership, association, corporation, including without limitation a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

"Enclosed" area means all space between a floor and a ceiling, that is enclosed or semi-enclosed with (i) solid walls or windows (exclusive of doorways), or (ii) solid walls with half wall partitions and no windows (exclusive of doorways) which extend from the floor to the ceiling, without limitation to lobbies and corridors.

"Health care facility" means any office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or

psychological conditions, including without limitation hospitals, rehabilitation hospitals, clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms and wards within health care facilities.

"Place of employment" means any enclosed area under the control of a public or private employer that employees frequent during the course of employment, including without limitation work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, health care facility or home-based business of any kind open to the public.

"Public place" means any enclosed area to which the public is invited or in which the public is permitted, including without limitation banks, educational facilities, government buildings, health care facilities, laundromats, museums, public transportation facilities, reception areas, restaurants, bars/taverns, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a childcare, adult day care, health care facility or home-based business of any kind open to the public.

"Private function" means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement or dining where membership or specific invitation is a prerequisite to entry and where the event is not intended to be open to the public.

"Restaurant" means any retail food establishment, as that term is defined in section 4-8-010 of the code, and that derives less than 65% of its gross proceeds from the sale of alcoholic liquor. The term "restaurant" shall include, if applicable, a restaurant bar area. Each restaurant shall provide such documentation as may be requested by the Departments of Business Affairs and Licensing and Revenue to enable those departments to determine whether the establishment meets the percentage requirement of this definition.

"Restaurant bar area" means an area of a restaurant that is primarily devoted to the serving of alcoholic liquor.

"Retail tobacco store" means any retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental and where no one under 18 is permitted.

"Service line" means any indoor line at which one (1) or more persons are waiting for or receiving services of any kind, whether or not the service involves the exchange of money.

"Shopping mall" means any enclosed walkway or hall area that serves to connect retail or professional establishments.

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, hookah or other lighted tobacco product in any manner or in any form.

"Enclosed or Semi-Enclosed Sports Arena" or "Recreational Area" means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley and other similar places where members of the general public assemble either to engage in physical exercise, or participate in athletic competition or recreational activity, to witness sports, cultural, recreational or other events.

### **7-32-040 City-owned Facilities.**

All enclosed vehicles and facilities, including without limitation buildings and vehicles owned, leased, or operated by the City of Chicago, shall be subject to the provisions of Chapter 7-32.

### **7-32-050 Prohibition of Smoking in Public Places.**

Smoking shall be prohibited in all enclosed public places and places of employment within the City of Chicago including without limitation the following places:

1. Arcades.
2. Aquariums, galleries, libraries, and museums.
3. Bars/taverns, subject to section 7-32-080.
4. Bingo facilities.
5. Convention facilities.
6. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
7. Health care facilities, adult care facilities and nursing homes.
8. Day care centers, nursery schools, elementary schools, high schools, community colleges, technical training establishments, specialty schools, colleges and universities.
9. Lobbies, hallways and other common areas in apartment buildings, condominiums and enclosed common areas in trailer parks.
10. Polling places.
11. Public transportation facilities under the authority of government agencies, including without limitation buses, trains, taxicabs, and limousines, and ticket, boarding and waiting areas of public transit stations.
12. Restaurants, subject to section 7-32-080.
13. Restrooms, lobbies, reception areas, hallways, and other enclosed common-use areas.
14. Public elevators and all retail stores where merchandise is displayed and offered for sale.
15. Rooms, chambers, places of meeting or public assembly, including without limitation school buildings, under the control of an agency, board, commission, committee or council or the City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
16. Service lines.
17. Shopping malls.
18. Sports arenas or recreational areas, including without limitation enclosed places in outdoor arenas.
19. Grocery stores.
20. Public meetings.
21. Gymnasiums.
22. Government vehicles used for City business such as maintenance trucks or fleet vehicles.

23. Public and private school buildings.

**7-32-060 Reserved.**

**7-32-070 Reasonable Distance.**

Smoking is prohibited within fifteen feet of any entrance to an enclosed area in which smoking is prohibited.

**7-32-080 Where Smoking is not Regulated.**

Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the provisions of Sections 7-32-050 through 7-32-070:

1. Private residences, except when used as a licensed childcare, adult care facility, health care facility, or a home-based business of any kind open to the public.
2. Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms provided, however, that not more than twenty-five percent (25%) of the rooms rented to guests in a hotel or motel may be so designated.
3. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of any section of Chapter 7-32.
4. Private clubs or lodges, as defined in code section 4-156-305(g).
5. Until July 1, 2008, any bar/tavern. On and after July 1, 2008, all bars/taverns shall be subject to the provisions of Sections 7-32-050 through 7-32-070.
6. Until July 1, 2008, any restaurant bar area; provided, however, that smoking in a restaurant bar area shall only be permitted within fifteen feet of the bar. On and after July 1, 2008, all restaurant bar areas shall be subject to the provisions of Sections 7-32-050 through 7-32-070.
7. Any public place or place of employment otherwise subject to this Chapter whose owner or operator can demonstrate, to the satisfaction of the commissioner of public health and the commissioner of the environment, that such area has been equipped with air filtration or purification devices or similar technologies as to render the exposure to secondhand smoke in such area, notwithstanding the fact that smoking may be occurring in such area, equivalent to such exposure to secondhand smoke in the ambient outdoor air surrounding the establishment. The commissioner of public health and the commissioner of the environment are jointly authorized to promulgate regulations specifying what types of technologies, when and if available, and taking into account any applicable

Federal and/or State standards, satisfy the requirements of this paragraph.

**7-32-090 Declaration of Establishment as Non-smoking.**

Notwithstanding any other provision of Chapter 7-32, 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 non-smoking place.

**7-32-100 Reserved.**

**7-32-110 Non-retaliation.**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Chapter or reports or attempts to prosecute a violation of this Chapter.

**7-32-120 Enforcement.**

A. Chapter 7-32 shall be enforced by the Chicago Department of Public Health and the Department of Business Affairs and Licensing, or their authorized designees.

B. Notice of the provisions Section 7-32-020 through 7-32-110 shall be given to all applicants for a business license in the City of Chicago.

C. Any citizen who desires to register a complaint under Sections 7-32-20 through 7-32-110 may initiate enforcement with the Chicago Department of Public Health.

D. The Chicago Department of Public Health or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with Sections 7-32-20 through 7-32-110.

E. An owner, manager, operator or employee of an establishment regulated by this Chapter shall inform persons violating Sections 7-32-20 through 7-32-110 of the appropriate provisions thereof.

F. In addition to the remedies provided by the provisions of Sections 7-32-20 through 7-32-110, the Chicago Department of Public Health or any person aggrieved by the failure of the owner, operator, manager or other person in control of a public place or a place of employment to comply with the provisions of this Section may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

**7-32-130 Violations and Penalties.**

A. A person who smokes in an area where smoking is prohibited by Sections 7-32-20 through 7-32-110 shall be guilty of an infraction, punishable by a fine not more than one hundred dollars (\$100).

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 Sections 7-32-20 through 7-32-110 shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100) for the first violation.
2. A fine not more than five hundred dollars (\$500) for the second violation

within one (1) year of the first violation.

3. A fine not more than two thousand five hundred dollars (\$2500) for each additional violation within one (1) year and a sixty (60) day suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

C. Each day on which a violation of Section 7-32-20 through 7-32-110 occurs shall be considered a separate and distinct violation.

**7-32-140 Public Education.**

The Chicago Department of Public Health shall engage in a continuing program to explain and clarify the purposes and requirements of Sections 7-32-20 through 7-32-110 to citizens affected by it, and to guide owners, operators, and managers in their compliance with it.

**7-32-150 Reserved.**

**7-32-160 Other Applicable Laws.**

Chapter 7-32 shall not be interpreted or be construed to permit smoking where it is otherwise restricted by other applicable laws.

**7-32-170 Severability.**

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

**SECTION 2.** The effective date of this ordinance shall be January 16, 2006.