

ORDINANCE 06-09 Passed: February 27, 2006

**AMENDING THE MUNICIPAL CODE OF
THE CITY OF DEKALB, ILLINOIS BY
INSERTING A NEW CHAPTER 64,
“SMOKING REGULATIONS.”**

WHEREAS, the City Council of the City of DeKalb 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 breathe 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 ORDAINED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the Municipal Code of the City of DeKalb, Illinois, be amended by inserting a new Chapter 64, “Smoking Regulations”, as shown following:

Chapter 64

SMOKING REGULATIONS

Sections:

64.01 DEFINITIONS.

64.02 PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES.

64.03 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.

64.04 SMOKING-FREE PERIMETER.

64.05 WHERE SMOKING IS NOT REGULATED.

64.06 DECLARATION OF ESTABLISHMENT AS NONSMOKING.

64.07 POSTING OF SIGNS.

64.08 NONRETALIATION.

64.09 ENFORCEMENT.

64.10 VIOLATIONS AND PENALTIES.

64.11 PUBLIC EDUCATION.

64.12 GOVERNMENTAL AGENCY COOPERATION.

64.13 OTHER APPLICABLE LAWS.

64.14 LIBERAL CONSTRUCTION.

64.15 SEVERABILITY.

64.16 EFFECTIVE DATE.

64.01 DEFINITIONS.

a) The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:

1. "Adult Day Care Home" means family homes which receive for care one or more aging or disabled adults, not related to the family.

2. "Bars" means the holder of a Class A liquor license that authorizes the retail sale of alcoholic liquor for consumption on the premises.

3. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

4. "Child Day Care Home" means family homes which receive for care more than 3 up to a maximum of 12 children including the family's natural, foster, or adopted children and all other persons under the age of 12.

5. "Employee" means a 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.

6. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

7. "Enclosed Area" means all space in any structure or building that is enclosed on all sides by any combination of walls, windows, or doorways, extending from floor to the ceiling, regardless of whether they are open or closed.

8. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control 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, semiprivate rooms, and wards within health care facilities.

9. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways, with the exception of one designated smoking room as described in Section 64.03. A private residence is not a "place of employment" unless it is being used as a licensed child care, adult day care, or health care facility.

10. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a

recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

11. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, recreational facilities, theaters, and waiting rooms. A private club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is being used as a licensed child day care home, adult day care home, or health care facility.

12. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

13. "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.

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

15. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

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

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

64.02 PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES.

a) Smoking shall be prohibited in all enclosed public places within the City of DeKalb, including but not limited to, the following places:

1. Aquariums, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public.
3. Bars (existing), effective September 1, 2007; smoking will be prohibited in any bar which may obtain a liquor license from the City of DeKalb created after the effective date of this Ordinance.
4. Bingo facilities.
5. Bowling facilities (existing); the lounge area within the bowling facility, effective September 1, 2007.
6. Convention facilities.
7. Educational facilities, both public and private.
8. Elevators.
9. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
10. Health care facilities.
11. Licensed child day care and adult day care homes.
12. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, rooming houses, other multiple-unit residential facilities, hotels and motels.
13. Polling places.
14. Private residences during the hours of operation of a licensed child care, adult day care, or health care facility.
15. Public transportation facilities, including buses and taxicabs, under the authority of the City of DeKalb and ticket, boarding, and enclosed waiting areas of public transit depots, not including bus shelters.
16. Restaurants (existing) with or without a liquor license, effective September 1, 2006; smoking will be prohibited in any restaurant which may obtain a Fire Life-Safety license from the City of DeKalb after the effective date of this Ordinance.
17. Restrooms, lobbies, reception areas, hallways, and other common-use areas.

18. Retail stores.

19. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee of City of DeKalb or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of DeKalb.

20. Service lines.

21. Shopping malls.

22. Recreational Facilities.

64.03 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.

a) Smoking shall be prohibited in all enclosed areas within places 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 areas.

64.04 SMOKING-FREE PERIMETER

a) Smoking is prohibited within 10 feet from any entrance, passageway, operable window or ventilation system of any area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

64.05 WHERE SMOKING IS NOT REGULATED

a) Notwithstanding any other provision of this Chapter to the contrary, the following places shall be exempt from the provisions of Sections 64.03 and 64.04:

1. Private residences, except during the hours of operation as a licensed child day care home, adult day care home, or health care facility.

2. Hotel and motel rooms that are rented to guests and are designated as smoking 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 Chapter.

4. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) 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 places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter.

5. Existing not-for-profit private membership clubs.
6. Outdoor patios.
7. Public sidewalks, roadways, parks and golf courses.
8. Vehicles.
9. The lounge area in existing bowling facilities, until September 1, 2007, at which time the smoking prohibition will go into effect.
10. Existing restaurants with or without liquor licenses, until September 1, 2006, at which time the smoking prohibition will go into effect.
11. Existing bars, until September 1, 2007, at which time the smoking prohibition will go into effect.

64.06 DECLARATION OF ESTABLISHMENT AS NONSMOKING.

a) Notwithstanding any other provision of this Chapter, 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 nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 64.07, a), is posted.

64.07 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 diagonally across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Chapter, by the owner, operator, manager, or other person in control of that place.

b) Every public place and place of employment 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 shall be removed from any area where smoking is prohibited by this Chapter by the owner, operator, manager, or other person having control of the area.

64.08 NONRETALIATION

a) 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.

64.09 ENFORCEMENT

- a) This Chapter shall be enforced by the City of DeKalb Police Department.
- b) Notice of the provisions of this Chapter shall be given to all applicants for a license issued by the City of DeKalb that will be affected by the provisions of this Chapter.
- c) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Police Department.
- d) The Building and Code Enforcement Division and Fire Department or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.
- e) An owner, manager, operator, or employee of an establishment regulated by this Chapter shall inform persons violating this Chapter of the appropriate provisions thereof.
- f) Notwithstanding any other provision of this Chapter, an employee or private citizen may bring a private cause of action against any individual or business that commits a violation of this Chapter.
- g) In addition to the remedies provided by the provisions of this Section, the City may apply for injunctive relief to enforce any provision of this Chapter in the DeKalb County Circuit Court. If the City files any such action, it may recover any costs it incurs to do so, including reasonable attorneys' fees.

64.10 VIOLATIONS AND PENALTIES.

- a) 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 not less than fifty dollars (\$50) nor 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 this Chapter shall be guilty of an infraction, punishable by:
 - 1. A fine not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for a first violation.
 - 2. A fine not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) for a second violation within a twelve month period.
 - 3. A fine not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) for each additional violation within a twelve month period.

c) In addition to the fines established by this Section, violation of this Chapter by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued by the City of DeKalb to the person for the premises on which the violation occurred following an administrative hearing by the City Manager.

d) Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.

64.11 PUBLIC EDUCATION .

a) The Citizen's Environmental Commission may engage in a continuing program 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. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

64.12 GOVERNMENTAL AGENCY COOPERATION.

a) The Citizen's Environmental Commission may annually request other governmental and educational agencies having facilities within the City of DeKalb to establish local operating procedures in cooperation and compliance with this Chapter. This includes urging all Federal, State, County and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

64.13 OTHER APPLICABLE LAWS.

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

64.14 LIBERAL CONSTRUCTION.

a) This Chapter shall be liberally construed so as to further its purposes.

64.15 SEVERABILITY.

a) If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, that 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.

64.16 EFFECTIVE DATE.

a) Unless otherwise reflected herein, the provisions of this Chapter shall be effective ninety (90) days from and after the date of its adoption.

Section 2. That each section, paragraph, sentence, clause and provision of this ordinance is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this ordinance, nor any part thereof, other than that part affected by such decision.

Section 3. That except as to the amendments heretofore mentioned, all Sections of the Municipal Code of the City of DeKalb, Illinois shall remain in full force and effect.

Section 4. Upon its passage and approval according to law, this Ordinance shall, by authority of the City Council be published in pamphlet form. On the tenth day after the date of publication, this Ordinance shall be in full force and effect. Publication date: February 28, 2006. Effective date: March 9, 2006.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 27th day of February, 2006, and approved by me as Mayor on the same day. First reading on February 13, 2006. Second reading on February 27, 2006. Roll call vote 5-2. Aye: Harris, Povlsen, Kapitan, Conboy, Baker. Nay: Gorski, Barr.

ATTEST:

DONNA S. JOHNSON, City Clerk

FRANK VAN BUER, Mayor