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10-O-06

AN ORDINANCE

Clean Air Act - Smoking

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 four thousand (4,000) chemicals, sixty-three (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 sixty-five thousand (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 secondhand 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 twenty-five percent (25%) to fifty percent (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 Evanston's existing Indoor Clean Air Ordinance will eliminate secondhand smoke exposure in all workplaces and public places, including without limitation restaurants and bars; and

WHEREAS, the Evanston 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 MAYOR AND
CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: Chapter 8-21 of the Municipal code is hereby repealed in its entirety and replaced with the following:

8-21-1: TITLE: This Chapter shall be known as the “Clean Air Act - Smoking”.

8-21-2: INTERPRETATION WITH OTHER LAWS: Nothing in this Chapter overrides any existing elimination of smoking that is already covered by fire code restrictions.

8-21-3: DEFINITIONS: The following words and phrases, whenever used in Section 8-21-3 through Section 8-21-9, shall have the following meanings.

“**Arcade**” means a public place of amusement as defined in Chapter 3-6 and 3-8 of this code, which contains automatic amusement devices and is not licensed to serve alcoholic liquor.

“**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, retirement hotels, 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. This definition specifically excludes licensed long term care facilities.

“Performance entertainment venue” means a commercial land use in which the principal activity is the provision of performance entertainment in a non-theatrical setting without a theatrical stage other than a raised platform or without fixed seating. A performance entertainment venue may or may not, subject to all applicable legislation, include the service of alcoholic liquor, and may or may not allow dancing. A performance entertainment venue is not an establishment in which the principal use is the service of prepared food and beverages and in which the land user provides entertainment as an accessory or incidental to the service of prepared food and beverages, nor is a performance entertainment venue a cultural facility in which performance entertainment is provided in a theatrical setting or with fixed seating.

A performance entertainment venue includes, without limitation:

- (1) Live music venues;
- (2) Venues for the provision of musical entertainment which is not live for compensation;
- (3) Dance or “DJ” (disk jockey) halls or clubs in which for compensation live or recorded musical entertainment is provided with or without a dance floor;
- (4) Comedy clubs; and
- (5) Rap clubs.

A performance entertainment venue does not include: poetry clubs or the use of the property of nonprofit institutions for theatrical or musical performances accessory to the nonprofit institution or by another nonprofit organization.

“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 residential care home, a child residential care home, 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 residential care home, child residential care home, 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 8-8-2 of the Evanston City Code. The term “restaurant” shall include, if applicable, a restaurant bar area.

“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 eighteen (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, bidis, 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, wrestling 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.

8-21-4: CITY-OWNED FACILITIES: All enclosed vehicles and facilities, including without limitations buildings and vehicles owned, leased, or operated by the City of Evanston.

8-21-5: PROHIBITION OF SMOKING: Smoking shall be prohibited in the following places:

- Arcades.
- Aquariums, galleries, libraries, and museums.
- Bingo facilities.
- Businesses.
- Convention facilities.
- Facilities used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- Health care facilities.
- Day care centers, nursery schools, elementary schools, high schools, community colleges, technical training establishments, specialty schools, colleges and universities.
- Lobbies, hallways, and other common areas in apartment buildings and condominiums, and housing cooperatives.
- Performance entertainment venues, subject to Section 8-21-7.
- Polling places.
- 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.
- Restaurants, subject to Section 8-21-7.

- Restrooms, lobbies, reception areas, hallways, and other enclosed common use areas.
- Public elevators and all retail stores where merchandise is displayed and offered for sale.
- 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.
- Service lines.
- Shopping malls.
- Sidewalk cafes licensed by the City.
- Sports arenas or recreational areas, including without limitation enclosed places in outdoor arenas.
- Grocery stores.
- Public meetings.
- Gymnasiums.
- Government vehicles used for City business such as maintenance trucks or fleet vehicles.
- Public and private school buildings.

8-21-6: REASONABLE DISTANCE: Smoking is prohibited within twenty five feet of any entrance to an enclosed area in which smoking is prohibited.

8-21-7: 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 Section 8-21-5 through Section 8-21-6:

(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, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of any Section of Chapter 8-21.

(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, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of any Section of Chapter 8-21.

(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 8-21.

(4) Private clubs or lodges, as defined in Section 5-2.

8-21-8: DECLARATION OF ESTABLISHMENT AS NON-SMOKING: 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 non-smoking place.

8-21-9: 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.

8-21-10: ENFORCEMENT:

(1) This Chapter shall be enforced by the Department of Health and Human Services, or other designees of the City Manager.

(2) Notice of the provisions of this Chapter shall be given to all applicants for a business license in the City of Evanston.

(3) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Evanston Department of Health and Human Services.

(4) The Evanston Department of Health and Human Services or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.

(5) An owner, manager, operator or employee of an establishment regulated by this Chapter shall inform persons violating this Chapter of the appropriate provisions thereof.

8-21-11: VIOLATIONS AND PENALTIES:

(A) A person who smokes in an area where smoking is prohibited by this Chapter shall be guilty of an infraction, punishable by a fine not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00).

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

(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 exceeding one hundred dollars (\$100.00) for the first violation.

(2) A fine not more than five hundred dollars (\$500.00) for the second violation within one (1) year of the first violation.

(3) A fine not more than one thousand dollars (\$1,000.00) 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.

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

8-21-12: OTHER APPLICABLE LAWS: This Chapter shall not be interpreted or be construed to permit smoking where it is otherwise restricted by other applicable laws. 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.

8-21-13: EFFECTIVE DATE: The prohibitions stated in this Chapter shall be effective on July 1, 2006.

SECTION 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: That this ordinance shall be in full force and effect from after its passage, approval and publication in the manner provided by law.

Introduced: _____, 2006 Approved:

Adopted: _____, 2006 _____, 2006

Lorraine H. Morton, Mayor

Attest:

Approved as to form:

Mary P. Morris, City Clerk

Corporation Counsel