

PROPOSED

AN ORDINANCE REGULATING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT IN THE UNINCORPORATED AREAS OF McLEAN COUNTY

WHEREAS, the City of Bloomington and Town of Normal have adopted strict no smoking ordinances to protect the health of their citizens; 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 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 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, on June 25, 2006, the Illinois Governor signed into law Senate Bill 2400 which gives non-home rule counties the ability to regulate smoking in public places and places of employment; and

WHEREAS, enacting an Ordinance Regulating Smoking in Public Places and Places of Employment in the Unincorporated Areas of McLean County will eliminate secondhand smoke exposure in all workplaces and public places including without limitation restaurants and bars; and

WHEREAS, the County Board of McLean County, Illinois 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 COUNTY BOARD OF McLEAN COUNTY, ILLINOIS as follows:

The McLean County Code is hereby amended by adding a new Chapter 39 to read as follows:

Section 39 - 1 Title.

This Chapter shall be known as the Regulation of Smoking in Public Places and Places of Employment in the Unincorporated Areas of McLean County.

Section 39 - 2 Definitions.

The following words and phrases whenever used in Chapter shall have the following meanings:

“Adult Day Care Home” means a private residence which receives for care one or more aging or disabled adults, not related to the family.

“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.

“Child Day Care Home” means a private residence which receives for care one or more children under the age of 12, not related to the family.

“Church” means a facility primarily and regularly used for religious worship or religious instruction.

“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 in any structure or building that is enclosed on all sides by any combination of walls, half walls, windows, or doorways extending from floor to the ceiling, regardless of whether they are open or closed.

“Facility” means any enclosed structure or building intended for human occupancy.

“Family” means one or more persons related by blood, marriage or adoption that owns and operates a business which employs no more than three unrelated persons.

“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 other 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, and hallways. A private residence is not a “place of employment” unless it is used as a child day care home, adult day care home, health care facility or home-based business of any kind open to the public.

“Private Club or Lodge” 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 if alcoholic beverages are sold such sale is 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.

“Public place” means any enclosed area to which the public is invited or in which the public is permitted, including without limitation banks, any business, 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, service line, shopping malls, sports arenas, theaters, waiting rooms and common areas in multiple family residences. A private residence is not a “public place” unless it is used as a child day care home, adult day care home, health care facility or home-based business of any kind open to the public.

“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, hookah or other lighted tobacco product in any manner or in any form.

“Sports Arena” means any enclosed 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 to participate in or witness sports, cultural, recreational or other events.

Section 39 - 3 McLean County Owned Facilities.

Smoking shall be prohibited in any McLean County government facility and any McLean County government vehicle, including without limitation facilities and vehicles owned, leased, or operated by McLean County government.

Section 39 - 4 Prohibition of Smoking in Public Places and Places of Employment.

Smoking shall be prohibited in all enclosed public places and places of employment within the unincorporated areas of McLean County, except as provided in Section 39 - 5.

Section 39 - 5 Where Smoking is not Regulated.

Notwithstanding any other provision of this Chapter to the contrary, the following enclosed indoor areas shall be exempt from the provisions of Section 39 – 4.

1. Private residences and private residences wherein a home occupation or home office is permitted under the McLean County Zoning Ordinance, except when used as a licensed child day care home, adult care home, or health care facility, provided, however, private sleeping rooms in nursing homes and assisted living centers are not subject to Section 39 - 4, unless a roommate objects to smoking in the room.
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 per cent (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 this Chapter.
4. Private clubs or lodges.
5. Churches.
6. Public places that possess a current and valid Class “D” liquor license issued by the McLean County Liquor Control Commission.
7. Places of employment which are solely operated as family businesses, except when used as a licensed child day care home, adult care home, or health care facility.

Public places and places of employment which are exempt from the provisions of Section 39-4 shall have posted at every public entrance a conspicuous sign clearly stating that smoking is permitted.

Section 39 – 6 Declaration of Establishment as Non-Smoking.

Notwithstanding any other provisions of this Chapter, an owner, operator, manager, or other person in control of any enclosed indoor area described in Section 39 – 5 may declare that entire indoor area as a non-smoking place.

Section 39 - 7 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.

Section 39 - 8 Enforcement.

A. Notice of the provisions of this Chapter shall be given to all applicants for a liquor license in McLean County.

B. Any citizen who desires to register a complaint under this Chapter may file a police report with the McLean County Sheriff.

C. McLean County shall have the authority, while a public place or place of employment is undergoing an otherwise mandated inspection, to inspect for compliance with this Chapter.

D. An owner, manager, operator or employee of a public place or place of employment regulated by this Chapter shall inform persons violating this Chapter of the

appropriate provisions thereof. The posting of a no smoking sign that conforms with this Chapter shall be considered adequate notice.

E. In addition to the remedies provided by this Chapter, the McLean County Board Chairman 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.

Section 39 - 9 Posting of Signs.

Every public place and place of employment where smoking is prohibited by this Chapter, shall have posted at every public entrance a conspicuous sign clearly stating that smoking is prohibited. 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 considered acceptable under this Section.

Section 39 - 10 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 of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00).

B. A person who owns, manages, operates or otherwise controls a place subject to this Chapter and who fails to prohibit smoking shall be guilty of an infraction, punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00).

An owner, manager, operator or person in control of a place subject to this Chapter shall be deemed to have permitted a violation of the Chapter if a violation has occurred while the owner, manager, operator or person in control is physically present at the location at the time of the violation. It shall be a defense to this charge that the owner, manager, operator or person in control of the premises has told the smoking offender that smoking is prohibited, and if the smoker does not stop smoking, the owner, manager, operator or person in control has called the McLean County Sheriff’s Department at the time of the violation and reported the refusal to comply with the Ordinance.

C. A person who owns, manages, operates or otherwise controls a place subject to this Chapter and who fails to post a sign in conformance with the provisions of this Division shall be guilty of an infraction punishable by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00).

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

Section 39 - 11 Public Education.

McLean County, through the McLean County Health Department, shall 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.

Section 39 - 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.

Section 39 - 13 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 39 - 14 Effective Date.

That this Ordinance shall take effect January 1, 2007.

Section 39 - 15 Date of Adoption.

That this Ordinance is adopted this ____ day of _____, 2006.

APPROVED:

Chairman, McLean County Board

ATTEST:

Clerk of the McLean County Board