

ORDINANCE NO. 4417

PROHIBITING SMOKING

WHEREAS, smoking exposes persons other than the smoker to the harmful effects of second hand smoke; and

WHEREAS, every citizen of Goshen, Indiana should have the right to breathe smoke-free air; and

WHEREAS, according to the National Cancer Institute, second hand smoke is responsible for the deaths of 65,000 Americans each year; and

WHEREAS, second hand smoke is particularly hazardous to the elderly, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthma and obstructive airway disease; and

WHEREAS, children exposed to second hand smoke have increased risks for asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

WHEREAS, a significant amount of second hand smoke exposure occurs in the work place; and

WHEREAS, workers who work in smoke filled businesses suffer 25% to 50% higher risk of heart attack, death from cancer, and reduced lung function; and

WHEREAS, smoke filled work places result in higher worker absences, lower productivity, higher cleaning and maintenance costs, and increased health insurance rates; and

WHEREAS, reasonable regulation of smoking is necessary to protect the health, safety and welfare of the citizens of Goshen; and

WHEREAS, the Goshen Common Council declares that this ordinance will protect its citizens by prohibiting smoking in public places and places of employment.

NOW THEREFORE, BE IT ORDAINED by the Common Council of the City of Goshen, Indiana, that:

Section 1. Prohibitions; Requirements

1.01 Smoking is prohibited in all city-owned or operated buildings, enclosed facilities, or vehicles.

1.02 Smoking is prohibited in any portion of buildings or enclosed facilities, whether publicly or privately owned that are open for public accommodation. Places of public accommodation include, but are not limited to, the following:

- A. An inn, hotel, motel or other place of lodging;
- B. A restaurant, bar, or other establishment serving food or drink;
- C. A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;
- D. An auditorium, convention center, lecture hall, or other place of public gathering;
- E. A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or retail establishment;
- F. A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other such establishment;
- G. A terminal, depot, or other station used for public transportation;
- H. A museum, library, gallery, or other place of public display or collection;
- I. A park, zoo, amusement park, or other place of recreation;
- J. A nursery, elementary, secondary, undergraduate, or postgraduate school, or other place of education;
- K. A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- L. A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

1.03 Smoking is prohibited within all buildings and enclosed facilities at places of employment. This includes, but is not limited to, the following:

- A. Common work areas;
- B. Auditoriums;
- C. Classrooms;

- D. Conference and meeting rooms;
- E. Private offices;
- F. Elevators and hallways;
- G. Medical facilities;
- H. Cafeterias;
- I. Employee lounges;
- J. Stairs;
- K. Restrooms; and
- L. Vehicles.

- 1.04 Smoking is prohibited within fifteen feet (15') of any entrance to a place of public accommodation or place of employment.
- 1.05 The owner, operator or manager shall remove all ash trays, lighters, and matches from all areas where smoking is prohibited by this ordinance.
- 1.06 Each employer having a building or enclosed facility where smoking is prohibited by this ordinance shall adopt, maintain and enforce a written smoking policy consistent with this ordinance. The written policy shall be given and discussed with each existing employee within ninety (90) days of the adoption of this ordinance and with each new employee within ten (10) days of the hiring of such new employee.
- 1.07 Every place of public accommodation and every place of employment where smoking is allowed under the provisions of this ordinance must post a conspicuous and clearly legible sign at each entrance that warns that tobacco smoke may be present.
- 1.08 No person or entity shall discharge, refuse to hire or retaliate in any manner against an employee, applicant for employment, or customer because of any attempt to enforce the provisions of this ordinance by such employee, applicant or customer.

Section 2. Exemptions

- 2.01 Notwithstanding the smoking prohibitions in subsections 1.01, 1.02, 1.03, and 1.04, smoking will be permitted in the following locations:
 - A. Hotel and motel rooms that are rented to guests and are designated as smoking rooms, except not more than twenty-five percent (25%) of rooms rented to guests in

a hotel or motel may be so designated. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;

- B. Retail tobacco stores if smoke is not allowed to infiltrate into other areas of public accommodation or employment;
- C. Private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one 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 other areas of public accommodation or employment;
- D. Family-owned and operated and self-employed businesses in which all employees are related to the owner or the self-employed person, but only in the enclosed areas of these businesses and offices that are not open to the public;
- E. Private clubs;
- F. Any hall, room, or assembly area owned or operated by a church, synagogue, or other place of worship if smoking is a part of a religious ceremony or an essential part of the religious tenets; and
- G. A bar meeting the following qualifications:
 - 1. The bar possesses a valid alcoholic beverage license from the State of Indiana;
 - 2. The bar allows no patron or employee under the age of eighteen (18) to enter at any time; and
 - 3. If any portion of the building containing the bar allows patrons or employees under the age of eighteen (18) to enter, the bar must also:
 - i. have an exhaust and air handling system separate from the remaining portions of the building;
 - ii. have an exhaust and air handling system capable of collecting and removing smoke from the air and discharging the smoke to an approved location outside the building; and
 - iii. have separation from the rest of the building by walls, windows, and doors that remain closed except to allow patrons and employees to enter and exit. There must be no open areas between the bar and the remainder of the building.

- 2.02 Smoking Permit. Any building or enclosed facility seeking to permit smoking in any portion of the building or enclosed facility under an exemption listed in this section shall apply for a smoking permit with the Goshen Building Department. Before issuing any permit, the applicant shall pay a One Hundred Dollar (\$100.00) annual fee. The Building Department shall inspect the building or enclosed facility to determine that the building or enclosed facility meets all requirements under which the building or enclosed facility is requesting exemption.
- 2.03 Required Signage. Any building or enclosed facility which permits smoking under an exemption listed in this section must post a conspicuous, clearly legible sign at all public entrances to the building or enclosed facility indicating that smoking is permitted in the area.

Section 3. Enforcement; Penalty

- 3.01 An action to enforce the prohibitions and requirements of this ordinance may be initiated by the city by filing a notice of violation of the ordinance in a court of competent jurisdiction within the County of Elkhart, specifying the nature of the violation and the section of this ordinance violated.
- 3.02 Upon a determination that a person or an entity against which an ordinance violation is brought has committed an act prohibited by this ordinance or failed to meet a requirement imposed by the ordinance, the court may impose a fine of up to Three Hundred Dollars (\$300.00) and shall order the violator to pay court costs.
- 3.03 Each day on which a violation of this ordinance occurs, constitutes separate and distinct violation.
- 3.04 An appeal of the court's determination shall be made in accordance with Indiana Trial Rules governing appeals.

Section 4. Definitions

- 4.01 Enclosed facilities are areas enclosed on all sides by walls or windows (exclusive of door or passage ways) which extend from floor to ceiling.
- 4.02 Private clubs are facilities requiring a membership where entry into and the use of the facility is restricted to members and guests of members.
- 4.03 Retail tobacco stores are retail stores utilized for the sale of tobacco or tobacco products and accessories and in which the sale of other products is merely incidental. It does not include a retail store which sells food or beverages.
- 4.04 Smoke or smoking means the act of lighting, carrying, inhaling, exhaling or leaving a lighted cigar, cigarette or pipe of any kind.

Section 5. Miscellaneous

5.01 This ordinance shall be construed broadly to effectuate the purposes of this ordinance.

5.02 If any section, sentence or provision of this ordinance or any application to any person or circumstance shall be declared unconstitutional or invalid, such invalidity shall not affect any of the other sections, sentences, provisions or applications of the stated purposes of the ordinance if it can be given effect without the section, sentence, provision or application declared unconstitutional or invalid. To this end the sections, sentences, provisions or applications of this ordinance are declared to be severable.

5.03 This ordinance shall be effective September 1, 2007.

This ordinance is passed by the Common Council of the City of Goshen, Indiana on the 17th day of April, 2007.




Allan Kauffman, Presiding Officer

Attest:



Tina M. Bontrager, Clerk-Treasurer

This ordinance, having been passed by the Common Council, is presented by me to the Mayor on the 19th day of April, 2007 at 1:45 a.m./p.m.



Tina M. Bontrager, Clerk-Treasurer

This ordinance, having been passed by the Common Council and presented to me is approved by me and adopted on the 19 day of April, 2007.



Allan Kauffman, Mayor