

ORDINANCE 2019-9B

AMENDING ORDINANCE NO. 2008-12G

**ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES,
PLACES OF WORK AND OTHER LOCATIONS WITHIN
HANCOCK COUNTY, INDIANA, AND ADDING TO THE
HANCOCK COUNTY CODE OF ORDINANCES, SECTION 91.50 ET. SEQ.**

WHEREAS, numerous studies have found that tobacco smoke is a leading cause of disease in nonsmokers and a major source of indoor air pollution, that secondhand smoke causes heart disease, lung cancer, respiratory infections, decreased respiratory function, reproductive problems and other health problems, that secondhand smoke kills an estimated 35,000 to 62,000 Americans each year from heart disease and that secondhand smoke also causes an estimated 3,000 lung cancer deaths in America each year; and

WHEREAS, these adverse health effects are well documented by numerous medical and scientific authorities, including the American Medical Association, the United States Surgeon General, the National Institute on Occupational Safety and Health, the National Cancer Institute, the Environmental Protection Agency, the National Academy of Sciences, the National Toxicology Program and the World Health Organization, all of which have recognized as well the deadly effects of exposure to secondhand smoke; and

WHEREAS, there is no safe level of exposure to tobacco smoke and that neither the separation of smokers and nonsmokers, nor the introduction of new ventilation systems can eliminate the health hazards caused by secondhand smoke; and

WHEREAS, the 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that, smoking by parents causes respiratory symptoms and slows lung growth in their children; exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.)

WHEREAS, by reducing the exposure of young people to adult smoking and unhealthy role modeling, elimination of smoking in public places furthers Indiana's goal of reducing youth smoking; and

WHEREAS, there is no legal or constitutional "right to smoke", nor is there any legal or constitutional right of business owners to expose their employees and customers to toxic chemicals, whether in the form of tobacco smoke or otherwise, but on the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous; and

WHEREAS, employees in smoky workplaces are at special risk, with one study having estimated that working in a smoky setting for eight (8) hours is the equivalent to smoking sixteen (16) cigarettes and that also at special risk are children, elderly people and those with cardiovascular disease or impaired respiratory function, including people with asthma and those with obstructive airway disease; and

WHEREAS, objective evidence does not bear out the fear that elimination of public smoking will harm a community's economy or result in a net loss of jobs in restaurants and bars, but on the contrary, many independent economic studies have shown that the elimination of smoking has no material economic impact on a community, said studies are drawn from the experience of hundreds of communities that have successfully eliminated smoking in workplaces and public places; and

NOW THEREFORE BE IT ORDAINED by the Board of Commissioners of Hancock County, Indiana, that:

SECTION I

There shall be added to the Hancock County Code of Ordinances, Section 91.50 as follows:

§91.50 DEFINITIONS. The following words and terms, when used in this Ordinance, shall have the following meanings unless the context clearly indicates otherwise:

Bar a portion of an establishment where a person can purchase and consume alcoholic beverages, including, but not limited to, taverns, night clubs and cocktail lounges.

Enclosed Area - all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

Electronic Smoking Device – means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

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.

Membership Club - means a facility owned or operated by an association or corporation, which shall:

- (1) Not be operated for pecuniary gain; and
- (2) Registered under Indiana law; and
- (3) Determined by the Internal Revenue Service to be operating under not-for-profit status; and
- (4) Consist of a membership:
 - (i) Formed as a lodge, local chapter, or corresponding unit of a fraternal order recognized on a national basis; or
 - (ii) Comprised of persons who have served in the armed forces of the United States; or
 - (iii) Formed as a recognized, exclusive association of persons organized for a joint or common purpose for which application for membership, the payment of dues, and self governance by the membership are distinguishing characteristic, and, where entry into, and use of the facility is restricted to members and guests of members.

Office - a building, structure or area used by the general public or serving as a place of work at which principal activities consist of professional, clerical or administrative services. An office includes, but is not limited to, professional offices, offices in financial institutions, business offices, telemarketing offices and governmental offices.

Other Person in Charge - the agent of the proprietor authorized to perform administrative direction to and general supervision of the activities within a place of work and public place at any given time.

Person - any individual, firm, partnership, association, corporation, company or organization of any kind.

Place of Work/Employment - any enclosed, indoor location at which two or more individuals perform any type of a service for consideration of payment under any type of employment relationship, including but not limited to, an employment relationship with or for a private corporation, partnership, individual, or government agency. This term includes any location where two or more individuals gratuitously perform services for which individuals are ordinarily paid. Examples of a place of work include enclosed, indoor areas of an office, a public conveyance, a factory, a warehouse, a hotel or motel, and other locations where services are performed under an employment relationship. Enclosed, indoor areas of private clubs, and rooms used for private meetings or social functions, are "places of work" if two or more persons acting under an employment relationship provide cleaning, catering, food or beverage service, maintenance or other support services in the location.

Proprietor - the party, regardless of whether the party is the owner or lessee of the place of work or public place, who ultimately controls, governs or directs the activities within the place of work or public place. The term "proprietor" may apply to a corporation as well as an individual.

Public Place - any enclosed, indoor area used by the general public or serving as a place of work, including, but not limited to, bars, restaurants, retail stores, offices and other commercial establishments, public conveyances, auditoriums, arenas, meeting rooms, common areas of rental apartment buildings, educational facilities other than public schools, sports arenas, theaters, shopping malls, banks, laundromats, barber and beauty shops, retail food production locations, marketing establishments and health care facilities.

Restaurant - any establishment used as, or held out to, the public as having food available for payment to be consumed on the premises, including coffee shops, cafeterias, cafes, luncheonettes, sandwich stands and soda fountains. The term "restaurant" shall include a bar area within the restaurant.

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

Smoking - inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electric smoking device which creates an aerosol of vapor, in any manner or in any form, or the use of any oral smoking device for the purposes of circumventing the prohibition of smoking in this Article.

Sports Arena - any 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.

Theater - any enclosed facility, open to the public, which is primarily used for or designated for the purpose of exhibiting any motion picture, stage drama, musical recital, dance, lecture or other similar performance.

SECTION II

There shall be added to the Hancock County Code of Ordinances, Section 91.51 as follows:

§ 91.51 SMOKING PROHIBITED.

(A) Except as provided in subsection (C), no person shall smoke in public places and/or places of work/employment, in addition to, but not limited to, the following:

- (1) Aquariums, galleries, libraries and museums.
- (2) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
- (3) Bars.

- (4) Bingo facilities.
- (5) Buildings and grounds owned by Hancock County, Indiana, or any department, agency or subdivision thereof.
- (6) Convention facilities.
- (7) Elevators.
- (8) Facilities, primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- (9) Health care facilities.
- (10) Licensed childcare and adult day care facilities.
- (11) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (12) Membership Clubs.
- (13) Polling places.
- (14) Public transportation facilities, including buses and taxicabs, under the authority of Hancock County, Indiana, and ticket, boarding, and waiting areas of public transit depots.
- (15) Restaurants.
- (16) Restrooms, lobbies, reception areas, hallways, and other common- use areas.
- (17) Retail stores of whatever nature, except as otherwise provided in Section (C).
- (18) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of Hancock County, Indiana, or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of Hancock County, Indiana.
- (19) Schools.
- (20) Services lines.
- (21) Shopping malls.
- (23) Sports arenas, including enclosed places in outdoor arenas.

(B) To ensure that tobacco smoke does not enter public places and places of work/employment and that persons entering such places are not exposed involuntarily to tobacco smoke, smoking is prohibited within twenty-five (25) feet of entrances, exits, open windows and ventilation intakes of public places and places of work/employment.

(C) **Prohibition of Smoking in Outdoor Public Places**

Smoking shall be prohibited in the following outdoor places:

- (1) Within 25 feet of outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- (2) On all outdoor property that is adjacent to buildings owned, leased, or operated by Hancock County or that is under the control of the County.
- (3) In, and within 25 feet of, outdoor seating or serving areas of restaurants, bars, and gambling facilities.
- (4) In outdoor shopping malls, including parking structures.
- (5) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be Prohibited in, and within 25 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- (6) In outdoor recreational areas (parks, dog parks, baseball fields, etc.), including parking lots for those facilities except for areas designated by local municipalities.
- (7) In, and within 25 feet of, all outdoor playgrounds.
- (8) In, and within 25 feet of, all outdoor public events.
- (9) In, and within 25 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the county.
- (10) In all outdoor services lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles, but only within 25 feet of the point of service.
- (11) In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where

smoking is prohibited, and that such business have a valid business permit.

- (12) Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, and temporary offices such as trailers, restroom facilities and vehicles.
 - (13) The prohibition of smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.
- (C) The prohibitions of this Section do not apply to:
- (1) Private residences, except when used as a licensed day care, adult day care or health care facility.
 - (2) Motor vehicles.
 - (3) Sleeping rooms of hotels and motels which are rented to guests.
 - (4) Electronic smoking device retail store:
 - a. That is primarily engaged in the sale of tobacco products and instruments for profit, intended for off-premises consumption or use, with at least 90% of the gross revenues of the business resulting from such sales;
 - b. Prohibits persons under 18 years or age [or 21, depending on applicable law] from entering the premises;
 - c. Does not sell, offer or allow on-premises consumption of any food or beverages, including alcoholic beverages;
 - d. Is a stand-alone, free-standing, business with no other businesses or residential property attached to the premises; with the exception of all such businesses already operating on October 1, 2019;
 - e. Has a maximum seating capacity of eight persons;
 - f. A requirement that such establishments have a valid business permit for that type of establishment; and
 - g. The customer is prohibited from bringing tobacco products into the store for consumption purposes.
 - (5) Retail tobacco store:
 - a. That is primarily engaged in the sale of tobacco products and smoking instruments intended for off-premises consumption or use, with at least 90% of the gross revenues of the business resulting from such sales;
 - b. Prohibits persons under 18 years of age [or 21, depending on applicable law] from entering the premises;
 - c. Does not sell, offer or allow on-premises consumption of any food or beverages, including alcoholic beverages;

- d. is a stand-alone, free-standing business with no other businesses or residential property attached to the premises; with the exception of all such businesses operating on October 1, 2019;
- e. Has a maximum seating capacity of eight persons;
- f. The customer is prohibited from bringing tobacco products into the store for consumption purposes; and
- g. A requirement that such establishments have a valid business permit for that type of establishment.

SECTION III

There shall be added to the Hancock County Code of Ordinances, Section 91.52 as follows:

§ 91.52 RESPONSIBILITIES OF PROPRIETORS.

(A) Notwithstanding any other provision of this Ordinance, an owner, operator, manager, proprietor, 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 by placing a sign conforming with the requirements of Section IV below.

(b) Ensure that ashtrays, lighters and matchbooks are not provided in areas where smoking is prohibited.

(C) Ask any person who smokes in an area where smoking is prohibited to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, ask the person to leave and use any other means which may be appropriate to obtain compliance.

(D) Notwithstanding the above, any employer, owner or operator may designate a smoking area not less than twenty-five (25) feet from any entrance.

SECTION IV

There shall be added to the Hancock County Code of Ordinances, Section 91.53 as follows:

§ 91.53 POSTING OF SIGNS. Every public place and place of work/employment where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

SECTION V

There shall be added to the Hancock County Code of Ordinances, Section 91.54 as follows:

§ 91.54 RETALIATION PROHIBITED. No person or employer shall discharge, refuse to

hire, penalize, discriminate against or in any manner retaliate against any employee, applicant for employment or customer because the employee, applicant or customer exercises any right to a smoke-free environment provided by this Ordinance or other law.

SECTION VI

There shall be added to the Hancock County Code of Ordinances, Section 91.55 as follows:

§ 91.55 OTHER APPLICABLE LAWS. This Ordinance shall not be interpreted to permit smoking where it is otherwise restricted by other applicable laws or to supersede any local laws which are more restrictive.

SECTION VII

There shall be added to the Hancock County Code of Ordinances, Section 91.56 as follows:

§ 91.56 ORDINANCE TO BE BROADLY INTERPRETED. This Ordinance shall be construed broadly to effectuate the purposes described in the preamble of this Ordinance.

SECTION VIII

There shall be added to the Hancock County Code of Ordinances, Section 91.57 as follows:

§ 91.57 SEVERABILITY. If any section or sentence or provision of this Ordinance, or the application thereof to any person or circumstances shall be declared unconstitutional or invalid, such invalidity shall not affect any of the other sections, sentences, provisions or application of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION IX

There shall be added to the Hancock County Code of Ordinances, Section 91.58 as follows:

§ 91.58 ENFORCEMENT.

- (A) This Chapter shall be enforced by the Hancock County Health Department.
- (B) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with either the Hancock County Health Department or the Hancock County Emergency Operations Center.
- (C) The Health Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.
- (D) An owner, manager, operator, or employee of an establishment regulated by this Chapter shall inform persons violating this Section of the appropriate provisions thereof.

SECTION X

There shall be added to the Hancock County Code of Ordinances, Section 91.59 as follows:

§ 91.59 VIOLATIONS AND PENALTIES.

(A) A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by a fine not exceeding Fifty Dollars (\$50.00).

(B) A person who owns, manages, operates, or otherwise controls a public place or place of work/employment and who fails to comply with the provisions of this Ordinance shall be guilty of an infraction, punishable by:

(1) A fine not exceeding One Hundred Dollars (\$100.00) for a first violation.

(2) A fine not exceeding Two Hundred Dollars (\$200.00) for a second violation within one (1) year.

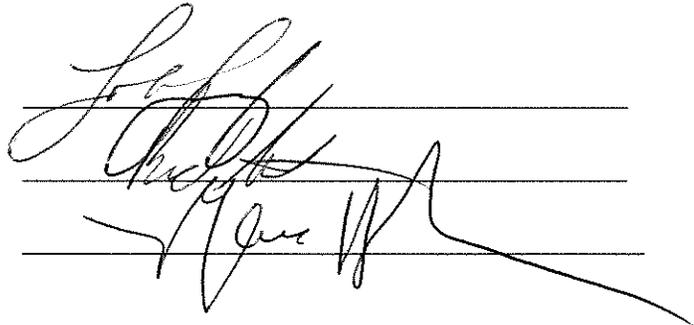
(3) A fine not exceeding Five Hundred Dollars (\$500.00) for each additional violation within one (1) year.

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

SECTION XI

This Ordinance shall become effective ninety (90) days after its due publication according to law.

HANCOCK COUNTY
BOARD OF COMMISSIONERS



ATTEST:



Hancock County Auditor