

**ORDINANCE No. 20-2010**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO AMENDING ORDINANCE NO. 49-2006 ENTITLED "NONSMOKING AREAS"**

WHEREAS, on December 4, 2006, the Common Council adopted Ordinance No. 49-2006 entitled "Nonsmoking Areas"; and

WHEREAS, on March 12, 2007, the Common Council adopted Ordinance No. 15-2007 amending Ordinance No. 49-2006; and

WHEREAS, the Common Council is desirous of further amending Ordinance No. 49-2006 to prohibit smoking on publicly owned right-of-ways adjacent to hospitals.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Valparaiso, Indiana that certain sections of Ordinance No. 49-2006 shall be amended to read as follows:

Section 5. Prohibition of Smoking Near Hospitals

Smoking shall be prohibited on all publicly owned rights-of-way adjacent to a hospital. This prohibition shall not apply to individuals operating automobiles on publicly owned rights-of-way adjacent to hospitals.

Section 6. Reasonable Distance

Smoking shall be prohibited within a reasonable distance from an enclosed area where smoking is prohibited by this Chapter, but in no event any closer than fifteen feet, so as to insure that tobacco smoke does not enter into establishments designated as smokefree under this Chapter through entrances, windows, ventilation intakes or other means.

Section 7. Where Smoking is Not Regulated.

The prohibitions of Section 3 shall not apply to the following:

- a. Private residences, except when used as (1) a licensed childcare, adult day care, or health care facility, or (2) any business open to the public.
- b. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however, that not more than thirty (30%) 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.
- c. A retail tobacco store provided that (1) it meets the definition of a "retail tobacco store" in § 1 of this Ordinance; (2) it applies for and is granted an exemption by the City under the deadlines provided in § 15; and (3) if it is contained in a building which contains any other business or residence, it supplies with its application for exemption on a form provided by the City a signed affidavit from the authorized representative of a business which designs, installs, or inspects heating, ventilation, and air-conditioning systems and which is a business bonded in Porter County which affidavit states that the retail tobacco store and its ventilation system is separated from the

rest of the building and from its ventilation system(s) such that smoke from the store will not infiltrate these other areas.

d. Family-owned and operated businesses in which all employees are related to the owner, and offices of self-employed persons in which all employees are related to the self-employed person, but only if the enclosed areas these businesses and offices occupy are not open to the public.

e. Outdoor areas of places of employment except for (1) outdoor seating areas for patrons in restaurants and (2) grandstands or other outside seating at public events.

f. A bar provided that: (1) it meets the definition of a "bar" in § 1 of this Ordinance; (2) it applies for and is granted an exemption by the City under the deadlines provided in § 15; (3) it allows no customer to enter at any time who is under the age of eighteen (18); (4) it employs no person under the age of eighteen (18); and (5) if it is contained in a building which contains any other business or residence, it supplies with its application for exemption on a form provided by the City a signed affidavit from the authorized representative of a business which designs, installs, or inspects heating, ventilation, and air-conditioning systems and which is a business bonded in Porter County which affidavit states that the bar and its ventilation system is separated from the rest of the building and from its ventilation system(s) such that smoke from the bar will not infiltrate these other areas.

g. A private club provided that: (1) It meets the definition of a "private club" in § 1 of this Ordinance; (2) it applies for and is granted an exemption by the City under the deadlines provided in § 15; (3) if it is contained in a building which contains any other business or residence, it supplies with its application for exemption on a form provided by the City a signed affidavit from the authorized representative of a business which designs, installs, or inspects heating, ventilation, and air-conditioning systems and which is a business bonded in Porter County which affidavit states that the private club and its ventilation system is separated from the rest of the building and from its ventilation system(s) such that smoke from the private club will not infiltrate these other areas.

h. Any vehicle used by an employee while in the service of an employer when the vehicle is occupied only by that employee.

i. Smoking by actors on stage during and as part of a performance, provided that the audience is warned prior to the start of the performance that such will occur.

#### Section 8. Declaration of Establishment as Nonsmoking.

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.

#### Section 9. Posting of Signs.

Every public place and place of employment where smoking is permitted under § 6 of this Ordinance shall have posted at every entrance a conspicuous sign clearly warning that smoking is permitted therein. The City shall make such signs available for such places.

Every public place and place of employment where smoking is prohibited by this Ordinance may post signs stating that smoking is not permitted therein. The City shall make such signs available for such places.

#### Section 10. Enforcement.

A. This Chapter shall be enforced by the City Administrator and the City Legal Department, or their designees.

B. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the City Administrator or his designee.

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

Section 11. 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 exceeding fifty dollars (\$50).

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) for a first violation.
2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

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

Section 12. Non-retaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment afforded by this Ordinance.

Section 13. Other applicable laws.

This Chapter 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 14. Chapter to be broadly interpreted.

This Chapter shall be construed broadly to effectuate the purposes described in the preamble of this ordinance.

Section 15. 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 16. Effective Date and Deadlines for Exemption Applications. This Ordinance shall take effect on April 1, 2007.

Any bar, private club, or retail tobacco store seeking exemption under § 7 of this Ordinance must request such on a form provided by the City. If all requirements set forth in § 7 are fulfilled, the City shall grant such exemption in writing. The exemption shall cover the following calendar year

(except that in 2007, it shall cover the balance of 2007.) Such requests must be received by the last business day of November of each year to cover the exemption for the following year (except that in 2007, it must be received by March 1, 2007). To defray administrative expenses in connection therewith, each application shall be accompanied by a fee of \$50.

BE IT ORDAINED THAT, if any portion of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect any other portion or provision of this Ordinance.

BE IT FURTHER ORDAINED THAT, all ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency. It is provided, however, that such repeal shall be only to the extent of such inconsistency, and in all other respects the ordinances or parts of ordinances are hereby ratified, re-established and confirmed.

This Ordinance shall be in full force and effect from and after its adoption and the procedures required by law.

**PASSED** by the Common Council of the city of Valparaiso, Indiana, by a \_\_\_\_\_ vote of all members present and voting this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Jon Costas, Mayor

ATTEST:

\_\_\_\_\_  
Sharon Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2010 at \_\_\_\_\_ o'clock p.m.

\_\_\_\_\_  
Sharon Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_, 20`0, at \_\_\_\_\_ o'clock p.m.

\_\_\_\_\_  
Jon Costas, Mayor