

1 **CITY OF CARMEL'S NO-SMOKING LAW**

2 *[Ordinance No. D-1778-05, As Amended, and Ordinance No. D-1793-06]*

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5 **AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF CARMEL, INDIANA,**  
6 **ESTABLISHING NO SMOKING AREAS BY ADOPTING AND ADDING CHAPTER 6,**  
7 **ARTICLE 5, DIVISION VII, SECTION 6-161 TO THE CARMEL CITY CODE**  
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9  
10 **WHEREAS**, numerous studies have found that tobacco smoke is a major contributor to indoor air  
11 pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) can  
12 cause diseases in healthy nonsmokers that include heart disease, stroke, respiratory disease, and lung  
13 cancer; and

14  
15 **WHEREAS**, the National Cancer Institute has determined that secondhand smoke is annually  
16 responsible for the early deaths of more than 38,000 Americans and the Public Health Service's National  
17 Toxicology Program has listed secondhand smoke as a known human carcinogen; and

18  
19 **WHEREAS**, in Indiana, the rate of lung cancer deaths and deaths from stroke, and the  
20 percentage of people diagnosed with asthma, are all higher than the national average and can be related  
21 in part to the persistently high prevalence of smoking and exposure to secondhand smoke; and

22  
23 **WHEREAS**, secondhand smoke is particularly hazardous to elderly people, individuals with  
24 cardiovascular disease, obstructive airway disease, or individuals with impaired respiratory functions,  
25 including asthmatics; and

26  
27 **WHEREAS**, children exposed to secondhand smoke have an increased risk of asthma,  
28 respiratory infection, sudden infant death syndrome, developmental abnormalities, and cancer; and

29  
30 **WHEREAS**, the United States Surgeon General has determined that the separation of smokers  
31 and nonsmokers within the same air space does not eliminate the exposure of nonsmokers to  
32 secondhand smoke; and

33  
34 **WHEREAS**, air cleaners filter particulate matter and odors from smoke but do not eliminate the  
35 known toxins in secondhand smoke, and the Environmental Protection Agency has determined that  
36 secondhand smoke in businesses cannot be reduced to safe levels through ventilation; and

37  
38 **WHEREAS**, the Centers for Disease Control and Prevention has determined that the risk of acute  
39 myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is  
40 nonlinear at low doses and increases rapidly at doses such as those received from secondhand smoke,  
41 and has warned persons with an increased risk of coronary heart disease or known coronary artery  
42 disease to avoid indoor environments that permit smoking; and

43  
44 **WHEREAS**, under the Americans with Disabilities Act, which requires public places and  
45 workplaces to be accessible to disabled persons, impaired respiratory function is a "disability"; and

46  
47 **WHEREAS**, a significant amount of secondhand smoke exposure occurs in the workplace, with  
48 employees who work in smoke-filled businesses suffering a 25% to 50% increase in the risk of a heart  
49 attack, as well as higher rates of death from cardiovascular disease and cancer, an increase in acute  
50 respiratory diseases, and a measurable decrease in lung functions; and

52           **WHEREAS**, smoke-filled workplaces result in higher rates of worker absenteeism due to  
53 respiratory disease, as well as in lower employee productivity, increased health insurance rates, and an  
54 increase in liability claims for diseases related to exposure to secondhand smoke; and  
55

56           **WHEREAS**, a study of hospital admissions for acute myocardial infarction in Helena, Montana,  
57 before, during, and after the enactment of a local law eliminating smoking in workplaces and public  
58 places found that a law requiring smoke-free workplaces and public places may be associated with a  
59 reduction in morbidity from heart disease; and  
60

61           **WHEREAS**, the City of Carmel may regulate the introduction of substances and odors into the air  
62 to protect the public health and welfare; and  
63

64           **WHEREAS**, it appropriate and in the best interests of public health and welfare to prohibit  
65 smoking in public places and places of employment located within the City.  
66

67           **NOW, THEREFORE, BE IT ORDAINED**, by the Common Council of the City of Carmel, Indiana,  
68 that:  
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70           Section 1. The foregoing Recitals are incorporated herein by this reference.  
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72           Section 2. The purposes of this Ordinance are: (1) to protect the public health and welfare by  
73 prohibiting smoking in public places and places of employment; (2) to guarantee the right of non-  
74 smokers to breathe smoke-free air; and, (3) to recognize that the need to breathe smoke-free air has  
75 priority over the desire to smoke, and to this end Chapter 6, Article 5, Division VII, Section 6-161 should  
76 be and the same is hereby adopted and added to the Carmel City Code to read as set forth below.  
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78           Section 3. Carmel City Code Chapter 6, Article 5, Division VII, Section 6-161, shall read as  
79 follows:  
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81           **"Sect. 6-161. Smoking Prohibited In Work Places And In Public Places**

82  
83           a. Definitions. The following words and phrases, whenever used in this Section, shall be construed  
84 as defined herein:  
85

86           (i) **"Business(es)"** shall mean all sole proprietorships, partnerships, joint ventures, corporations,  
87 and other business entities, either for-profit or not-for-profit, including, but not limited to,  
88 retail establishments where goods or services are provided to the public, and other entities  
89 where accounting, counseling, legal, medical, dental, engineering, architectural, or other  
90 professional services are delivered.  
91

92           (ii) **"City"** shall mean the City of Carmel, Hamilton County, Indiana.  
93

94           (iii) **"Employee(s)"** shall mean all persons who are employed by an Employer in consideration for  
95 direct or indirect monetary wages or profit, and all persons who volunteer their services.  
96

97           (iv) **"Employer(s)"** shall mean all persons, businesses, companies, partnerships, associations,  
98 municipal corporations, trusts, and not-for-profit entities that employ the services of one or  
99 more Employees.  
100

101           (v) **"Employee Location(s)"** shall mean all Enclosed Areas under the control of public or private  
102 Employers that Employees normally frequent during the course of their employment,

103 including, but not limited to, work areas, employee lounges, restrooms, conference rooms,  
104 meeting rooms, classrooms, cafeterias, hallways, and vehicles.

105  
106 (vi) **"Enclosed Area(s)"** shall mean all spaces closed in by roofs, ceilings, or other overhead  
107 coverings of any material, as well as by walls or other side coverings of any material on at  
108 least two (2) sides of same, with appropriate openings for ingress and egress.

109  
110 (vii) **"Health Care Facility(ies)"** shall mean all offices and institutions providing care for or  
111 treatment of diseases, whether physical, mental, or emotional, or other medical,  
112 physiological, or psychological conditions, including but not limited to, hospitals,  
113 rehabilitation hospitals, weight control clinics, nursing homes, homes for the aging or  
114 chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists,  
115 physicians, dentists, and all specialists within these professions, as well as all waiting rooms,  
116 hallways, private rooms, semi-private rooms, and wards within same.

117  
118 (viii) **"Public Place(s)"** shall mean all Enclosed Areas, whether owned publicly or privately, to  
119 which the public is invited or in which the public is permitted.

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121 (ix) **"Retail Tobacco Store(s)"** shall mean all retail stores that are not tobacco departments of  
122 larger commercial establishments (i.e., grocery stores, department stores, and discount  
123 stores) that:

124  
125 (A) Are utilized primarily for the sale of tobacco and/or tobacco-related products  
126 including, but not limited to, cigarettes, cigars, tobacco, pipes, cigarette paper, and  
127 lighters; and

128  
129 (B) Are not licensed for the consumption of meals or alcoholic beverages on the  
130 premises nor operated in conjunction with another Business that is licensed for the  
131 on-premises consumption of meals or alcoholic beverages; and

132  
133 (C) Are a retail store in which the sale of tobacco and tobacco-related products accounts  
134 for 66% or more of the store's gross sales.

135  
136 (x) **"Shopping Mall(s)"** shall mean all enclosed public walkways or hall areas that serve to  
137 connect retail or professional establishments.

138  
139 (xi) **"Smoking"** shall mean the carrying or holding of a lighted cigarette, cigar, pipe, or any other  
140 lighted smoking item or equipment containing tobacco or any other herbaceous material, or  
141 the inhalation or exhalation of smoke from the same, but does not include incense or the  
142 burning of incense.

143  
144 (xii) **"Sports Arena(s)"** shall mean all sports pavilions, stadiums, athletic fields, gymnasiums,  
145 health spas, swimming pools, roller or ice rinks, bowling alleys, and other similar places  
146 where members of the public assemble to engage in physical exercise or recreation,  
147 participate in athletic competition, or witness sports or other events.

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149 (xiii) **"Tobacco Bar"** shall mean all Businesses that:  
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- (A) Offer alcoholic beverages for sale to customers for consumption on the licensed premises pursuant to a Type 210 retailer permit issued by the Indiana Alcohol & Tobacco Commission; and
- (B) Do not admit customers or hire Employees who are less than twenty-one (21) years of age; and
- (C) Generate ten percent (10%) or more of their total annual gross income from the on-site sale of tobacco products.

b. Smoking In Public Places And Employee Locations Prohibited.

- (i) Except as provided in Subsection (b)(iii) below, Smoking is prohibited in all Public Places within the City, including, but not limited to, the following:
  - (A) Elevators;
  - (B) Health Care Facilities;
  - (C) Laundromats;
  - (D) Licensed child care and adult day care facilities;
  - (E) Lobbies, hallways, and all other common areas of apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities;
  - (F) Polling places;
  - (G) Public transportation facilities, and ticket, boarding and waiting areas in public transit depots;
  - (H) Restrooms, lobbies, reception areas, hallways, and other common use areas;
  - (I) Shopping Malls;
  - (J) Sports Arenas.
- (ii) Smoking is prohibited in all Employee Locations within the City. This Smoking prohibition shall be communicated by Employers to all existing Employees on or before the effective date of this Section, and to all prospective Employees upon their application for employment.

193 (iii) The following establishments, areas and locations shall be exempt from the Smoking  
194 prohibitions set forth in Subsections (b)(i) and (ii) above, provided that no smoke from  
195 Smoking activities conducted therein or thereon enters any area or location in which Smoking  
196 is otherwise prohibited by this Section, to-wit:

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198 (A) Private residences, except when used as licensed child care or adult day care  
199 facilities or as Health Care Facilities.

200  
201 (B) Any vehicle used by an Employee while in the service of an Employer when the  
202 vehicle is occupied only by that Employee.

203  
204 (C) Private vehicles when not being used in the service of an Employer

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206 (D) Family-owned and operated businesses in which all Employees are related to the  
207 Business owner by blood or marriage, and the offices of self-employed persons in  
208 which all Employees are so related to the self-employed person, but only if no  
209 Enclosed Area in these Businesses and offices in which Smoking is permitted is a  
210 Public Place.

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212 (E) Hotel and motel rooms that are rented to guests and are designated as "smoking  
213 rooms," provided that no more than twenty percent (20%) of the rooms rented to  
214 guests in a hotel or motel are designated as "smoking rooms."

215  
216 (F) Retail Tobacco Stores.

217  
218 (G) Private and semi-private rooms in nursing homes and long-term Health Care  
219 Facilities that are occupied by one (1) or more persons, all of whom have requested  
220 in writing to be placed in a room where smoking is permitted.

221  
222 (H) Any Tobacco Bar.

223  
224 (I) Any bar or tavern that:

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226 (1) Holds a beer, liquor and/or wine retailer's permit under the laws of Indiana; and

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228 (2) Allows no customer to enter therein who is under the age of twenty-one (21);  
229 and

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231 (3) Employs no person therein who is under the age of twenty-one (21); and

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233 (4) Is not physically located within a Business otherwise required to be smoke-free  
234 pursuant to this Section; and

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236 (5) Has provided written notice to the City Attorney that it intends to allow smoking  
237 and that it meets all of the criteria entitling it to an exemption under this  
238 Subsection.

239  
240 (J) Any Business that:

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- (1) Is exempt from federal income taxation under 26 U.S.C. 501(c); and
- (2) Is a "club" as that term is defined in I.C. 7.1-3-20-1, or a "fraternal club" as that term is defined by I.C. 7.1-3-20-7; and
- (3) Holds a beer, liquor and/or wine retailer's permit under the laws of Indiana; and
- (4) Provides food or alcoholic beverages only to its *bona fide* members and their guests.

(iv) Any Business claiming an exemption pursuant to this Section shall provide to any City official, within two (2) business days from the date of demand, adequate written proof showing that it qualifies for the exemption claimed. Such written proof shall be certified under the penalties for perjury by an authorized representative of the Business.

(v) All ashtrays and other Smoking paraphernalia shall be removed from all Public Places and Employee Locations where Smoking is prohibited by the owner, operator, manager or other person having control of same.

(vi) No person nor Employer shall discharge, refuse to hire, or in any manner retaliate against any Employee, applicant for employment, or customer because that Employee, applicant, or customer has exercised any right afforded by this Section or reports or attempts to prosecute any violation of this Section.

c. Enforcement And Penalties

(i) This Section may be enforced by:

- (1) The Director of the Department of Community Services or his designees,
- (2) Fire Department Marshall and his designee.

(ii) Any citizen who desires to register a complaint under this Section may do so through the Office of the City Attorney.

(iii) Owners, managers and operators of Businesses, Public Places and/or Employee Locations regulated by this Section shall inform all persons located therein whom they observe Smoking in violation of this Section of the provisions of this Section, and shall ask such persons to refrain from Smoking in any area or location in which Smoking is prohibited.

(iv) It shall be the obligation and duty of the owner, manager or operator of any bar or tavern that elects to be exempted from the provisions of this Section pursuant to Subsection (b)(iii)(I) hereof, to ensure that no person(s) under the age of twenty-one (21) are allowed to enter therein in violation of this Section.

(v) Any person who engages in the act of Smoking in any Public Place, Employee Location or in any other establishment, area or location wherein Smoking is prohibited by this Section, as well as any person who owns, manages, operates, or controls the same and who fails to

290 comply with the provisions of this Section, shall be subject to a fine not to exceed Fifty Dollars  
291 (\$50.00) for the first violation of this Section in a calendar year, with all subsequent violations  
292 of this Section in the same calendar year being subject to a fine of not less than Seventy-Five  
293 Dollars (\$75.00) and not more than Five Hundred Dollars (\$500.00) for each such violation.  
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295 (vi) In addition to the fines established by this Section, the violation of this Section by any person  
296 who owns, manages, operates, or controls any Public Place, Employee Location or any other  
297 establishment, area or location where Smoking is prohibited by this Section may result in the  
298 suspension or revocation of any permit or license issued to said person by the City for the  
299 premises in or on which the violation occurred.  
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301 (vii) Each day on which a violation of this Section occurs shall be considered a separate and  
302 distinct violation.  
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304 (viii) This Section does not and shall not be interpreted as permitting Smoking in any  
305 establishment, area or location where it is otherwise restricted by any other applicable law, nor  
306 to prohibit any property owner from imposing on his property a smoking ban that is more  
307 restrictive than that imposed by this Section.  
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309 (ix) This Section shall be construed broadly to effectuate the purposes described herein.”

310 Section 4. The remaining provisions of Carmel City Code Chapter 6, Article 5, are not affected by  
311 this Ordinance and remain in full force and effect.  
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313 Section 5. If any portion of this Ordinance is for any reason declared to be unconstitutional or  
314 invalid, such decision shall not affect the validity of the remaining portions of this Ordinance so long as  
315 enforcement of same can be given the same effect.  
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317 Section 6. Upon its passage and signing by the Mayor and such publication as is required by  
318 law, this Ordinance shall be in full force and effect from and after March 5, 2006.  
319