

**ORDINANCE NO. 06-2564**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF  
SHELBYVILLE, ADOPTING AND ADDING TITLE IX, CHAPTER 99  
OF THE CODE OF ORDINANCES FOR THE CITY OF SHELBYVILLE,  
INDIANA ESTABLISHING NONSMOKING AREAS WITHIN THE CITY**

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) can cause diseases in healthy nonsmokers that include heart disease, stroke, respiratory disease, and lung cancer; and

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

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

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

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

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

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

WHEREAS, the City of Shelbyville may regulate the introduction of substances and odors into the air to protect the public health and welfare; and

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

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

Section 1. The foregoing Recitals are incorporated herein by this reference.

Section 2. The purposes of this Ordinance are: (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; (2) to guarantee the right of non-smokers to breathe smoke-free air; and, (3) to recognize that the need to breathe smoke-free air has priority over the desire to smoke in public places and in places of employment, and to this end Title IX, Chapter 99 should be and the same is hereby adopted and added to the Shelbyville City Code to read as set forth below.

Section 3. The City of Shelbyville, Indiana Code of Ordinances, Title IX, Chapter 99, shall read as follows:

**“CHAPTER 99: NONSMOKING AREAS**

Section

***General Provisions***

99.01	Definitions
99.02	Smoking in public places
99.03	Smoking in places of employment
99.04	Exemptions
99.05	Posting of signs and removal of paraphernalia
99.06	Reasonable distance
99.07	Public education

***Enforcement and Penalties***

99.90	Enforcement
99.99	Penalties

***GENERAL PROVISIONS***

**§ 99.01 DEFINITIONS.**

The following words and phrases, whenever used in this chapter, shall be construed as defined herein:

***BAR(S).*** Any business that:

- (A) Holds a beer, liquor and/or wine retailer’s permit under the laws of Indiana; and
- (B) Allows no customer to enter therein at any time who is under the age of eighteen (18); and

(C) Employs no person therein who is under the age of eighteen (18); and

(D) Is not physically located within a business otherwise required to be smoke-free pursuant to this section.

**BUSINESS(ES).** All sole proprietorships, partnerships, joint ventures, corporations, and other business entities, either for-profit or not-for-profit, including, but not limited to, retail establishments where goods or services are provided to the public, and other entities where accounting, counseling, legal, medical, dental, engineering, architectural, or other professional services are delivered.

**EMPLOYEE(S).** All persons who are employed by an employer in consideration for direct or indirect monetary wages or profit, and all persons who volunteer their services.

**EMPLOYER(S).** All persons, businesses, companies, partnerships, associations, municipal corporations, trusts, and not-for-profit entities that employ the services of one or more employees.

**ENCLOSED AREA(S).** All spaces closed in by roofs, ceilings, or other overhead coverings of any material, as well as by walls or other side coverings of any material on at least two (2) sides of same, with appropriate openings for ingress and egress.

**PLACE(S) OF EMPLOYMENT.** All enclosed areas under the control of public or private employers that employees normally frequent during the course of their employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias, hallways, and vehicles.

**PRIVATE CLUB(S).** Any business that:

(A) Is exempt from federal income taxation under 26 U.S.C. 501(c); and

(B) Is a “club” as that term is defined in I.C. 7.1-3-20-1, or a “fraternal club” as the term is defined by I.C. 7.1-3-20-7; and

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

(D) Provides food or alcoholic beverages only to its *bona fide* members and their guests.

**PUBLIC PLACE(S).** All enclosed areas, whether owned publicly or privately, to which the public is invited or in which the public is permitted.

**RESTAURANT(S).** Any business operating as an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which give or offer for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

**SELF-CONTAINED BAR AREA(S).** A designated room or other enclosed area within a restaurant otherwise regulated and where smoking is prohibited, if and only if:

- (A) Such an area is completely enclosed and separate from the remainder of the facility by solid floor to ceiling walls and doors and/or windows which must remain closed except for entry and exit of persons to and from the area, or where a window or door ventilates to the outside of the building; and
- (B) The smoke generated within such a designated area does not enter any area or location where smoking is prohibited; and
- (C) Alcoholic beverages are served for consumption therein; and
- (D) No customer or member of the public who is under the age of eighteen (18) is allowed to enter therein at any time; and
- (E) No employee who is under the age of eighteen (18) is allowed to enter therein at any time.

**SERVICE LINE(S).** Any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money;

**SMOKING.** The carrying or holding of a lighted cigarette, cigar, pipe, or any other lighted smoking item or equipment containing tobacco or any other herbaceous material, or the inhalation of exhalation of smoke from the same, but does not include incense or the burning of incense.

**SPORTS ARENA(S).** All sports pavilions, stadiums, athletic fields, gymnasiums, health spas, swimming pools, roller or ice rinks, bowling alleys, and other similar places where members of the public assemble

to engage in physical exercise or recreation, participate in athletic competition, or witness sports or other events.

***RETAIL TOBACCO STORE(S).*** Any retail store:

- (A) That is utilized primarily for the sale of tobacco and tobacco-related products including, but not limited to, cigarettes, cigars, tobacco, pipes, cigarette paper, and lighters;
- (B) That is not licensed for the consumption of meals or alcoholic beverages on the premises or operated in conjunction with another business that is licensed for the on-premises consumption of meals or alcoholic beverages; and
- (C) In which the sale of tobacco and tobacco-related products accounts for not less than sixty-six percent (66%) of the gross sales of that business.

**§ 99.02 SMOKING IN PUBLIC PLACES.**

Except as provided in this chapter, smoking is prohibited in all public places within the City.

Public places include, but are not limited to, the following:

- (1) Elevators;
- (2) Restrooms, lobbies, reception areas, hallways, and any other common use areas;
- (3) Buses, taxicabs, and any other means of public transit under the authority of the City, as well as all ticket, boarding, and waiting areas of public transit depots;
- (4) Service lines;
- (5) Retail stores;
- (6) All areas available to and customarily used by the general public in all governmental offices and in all businesses as defined in § 99.01;
- (7) Restaurants;
- (8) Aquariums, galleries, libraries, and museums;

- (9) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital, or other similar performance;
- (10) Sports arenas and convention halls, including, but not limited to, bowling alleys;
- (11) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies or the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City;
- (12) All offices and institutions providing care for or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions, as well as all waiting rooms, hallways, private rooms, semi-private rooms, and wards within same.
- (13) Private and semi-private rooms in nursing homes and long-term care facilities;
- (14) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (15) Polling places;
- (16) Private functions in other public places, including, but not limited to, restaurants, hotels, and motels; and
- (17) Laundromats.

**§ 99.03 SMOKING IN PLACES OF EMPLOYMENT.**

(A) Smoking is prohibited in all places of employment within the City. This smoking prohibition shall be communicated by employers on or before the effective date of this chapter, and to all prospective employees upon their application for employment.

(B) No person or 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 chapter or reports or attempts to prosecute any violation of this chapter.

**§ 99.04 EXEMPTIONS.**

(A) The following establishments, areas, and locations shall be exempt from the smoking prohibitions set forth above, provided that no smoke from smoking activities conducted therein or thereon enters any area or location in which smoking is otherwise prohibited by this chapter:

- (1) Private residences, except when used as licensed child care or adult day care facilities, or as health care facilities;
- (2) Private vehicles when not being used in the service of an employer;
- (3) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) 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;
- (4) Bars.
- (5) Self-contained bar areas.
- (6) Private clubs.

(B) 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.

(C) Any business claiming an exemption as a bar, as a private club, or within a self-contained bar area pursuant to this Section must complete a written registration form with the City Attorney, giving notice that it intends to allow smoking and that it meets all of the criteria entitling it to an exemption under this Section. No business may effectively claim any exemption under this Section as a bar, as a private club, or within a self-contained bar area unless and until it has completed the process of registration with the City Attorney.

**§ 99.05 POSTING OF SIGNS AND REMOVAL OF PARAPHERNALIA.**

(A) “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) shall be clearly, sufficiently, and conspicuously posted on every building or other area where smoking is prohibited by this chapter, by the owner, operator, manager, or other person having control of such building or area.

(B) Every public place where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(C) All ashtrays and other smoking paraphernalia shall be removed from all public places and places of employment where smoking is prohibited by the owner, operator, manager, or other person having control of same.

**§ 99.06 REASONABLE DISTANCE.**

Smoking may occur at a reasonable distance outside any area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or any other means. It shall be a violation for smoke to be detected in any area where smoking is prohibited.

**§ 99.07 PUBLIC EDUCATION.**

The City may engage in programs 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. Such programs may include publication of a brochure for affected businesses and individuals.

***ENFORCEMENT AND PENALTIES***

**§ 99.90 ENFORCEMENT.**

(A) This chapter shall be enforced by the Shelbyville Board of Public Works and Safety, and whatever City Department(s), City Official, or City Employee the Board wishes to designate or appoint.



(B) Any citizen who desires to register a complaint under this section may file a written complaint with the Office of the City Attorney.

(C) Upon finding that any provision of this chapter has been violated, the enforcement designee(s) shall issue a notice of violation to the person(s) responsible for the violation(s). The notice shall be in writing and shall be served upon the person(s) responsible for the violation by one or more of the following methods: delivery in person or first class mail. The notice shall state:

- (1) The location of the violation;
- (2) The nature of the violation;
- (3) The fine assessed for the violation;
- (4) That the fine shall be paid at the Clerk-Treasurer's Office; and
- (5) That the fine may be contested through an administrative hearing before the Shelbyville Board of Public Works and Safety.

(C) Owners, managers, and operators of businesses, public places and/or places of employment regulated by this chapter shall inform all persons located therein whom they observe smoking in violation of any of the provisions of this chapter, and shall ask such persons to refrain from smoking in any area or location in which smoking is prohibited.

(D) 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 chapter pursuant to §99.04 (4) to ensure that no person(s) under the age of eighteen (18) are allowed to enter therein in violation of that subsection.

## **§ 99.99 PENALTIES.**

(A) Any person who engages in the act of smoking in any public place, place of employment, or in any other establishment, area, or location wherein smoking is prohibited by this chapter shall be subject to a fine of no less than fifty dollars (\$50.00).

(B) It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this chapter to fail to comply with any of its provisions.

(C) It shall be unlawful for any person who owns, manages, operates, or otherwise controls the use of any premises subject to regulation under this chapter to knowingly, willfully, or recklessly allow smoking to occur where prohibited by this chapter. Any person who violates this provision shall be subject to a fine of no less than two-hundred dollars (\$200.00) for each violation thereof.

(D) Whoever violates any provision of this chapter for which another penalty is not specifically provided shall be punished as subject to §10.99.

(E) Any person who violates any provision contained in this chapter shall be subject to a penalty for each and every such violation of this chapter; and each day a violation is permitted to continue may constitute a separate offense.”

Section 4. The remaining provisions of Title IX are not affected by this Ordinance and remain in full force and effect.

Section 5. If any portion of this Ordinance is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance so long as enforcement of same can be given the same effect.

Section 6. Upon its passage and signing by the Mayor and such publication as is required by law, this Ordinance shall be in full force and effect from and after August 1, 2006.

Passed by the Common Council of the City of Shelbyville, Indiana, on the first reading  
this 3<sup>rd</sup> day of April, 2006.

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Jeff Sponsel, President  
Shelbyville Common Council

FOR:

AGAINST:

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APPROVAL:

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Scott Furgeson, Mayor

ATTEST:

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Rodney L. Meyerholtz, Clerk-Treasurer

Passed by the Common Council of the City of Shelbyville, Indiana, on the second reading  
this 17<sup>th</sup> day of April, 2006.

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Jeff Sponsel, President  
Shelbyville Common Council

FOR:

AGAINST:

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APPROVAL:

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Scott Furgeson, Mayor

ATTEST:

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Rodney L. Meyerholtz, Clerk-Treasurer

CERTIFICATION

The undersigned Clerk-Treasurer does hereby certify that the above ordinance was presented to the Mayor, approved and signed by the Mayor on the date shown, and that said Mayor announced its approval to the Common Council this 17<sup>th</sup> day of April, 2006.

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Rodney L. Meyerholtz, Clerk-Treasurer