

**ORDINANCE NO. 09-09
OF THE CITY OF WESTFIELD, INDIANA**

**AN ORDINANCE AMENDING CHAPTER 9 OF THE
CODE OF ORDINANCES OF THE CITY OF WESTFIELD, INDIANA
CREATING A NEW ARTICLE XIII
PROHIBITING SMOKING IN PUBLIC PLACES.**

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer in non-smokers; and

WHEREAS, people at special risk to secondhand smoke include children, the elderly, individuals with cardiovascular disease or impaired respiratory function, including asthmatics, and those with obstructive airway disease; and

WHEREAS, health hazards are induced by breathing secondhand smoke including lung cancer, heart disease, respiratory infection, decreased respiratory function, and bronchospasm; and

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

NOW, THEREFORE, BE IT HEREBY ORDAINED AND ENACTED by the City Council for the City of Westfield, that:

Section 1. Chapter 9 of the Code of Ordinances for the City of Westfield, Indiana, be amended by inserting the following new Article XIII:

ARTICLE XIII. SMOKING PROHIBITED IN PUBLIC PLACES

Sec. 9-82 Purpose

It is hereby declared, as a matter of public policy of the City of Westfield, that:

The City of Westfield finds and declares that the purposes of this ordinance are: 1) to protect the public health and welfare by prohibiting smoking in public places, and places of employment; and 2) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Sec. 9-83 Definitions.

As used in this Chapter, the following have the following meanings unless otherwise designated:

(a) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets and designated cigar bars.

(b) "Enclosed Area" means all space between a floor and a ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which

- extend from the floor to the ceiling, including, but not limited to elevators, lobbies, hallways, and other common areas in buildings, restrooms, lobbies, reception areas, rooms, chambers, and buildings.
- (b) "Person" means any individual, firm, partnership, association, corporation, company or organization of any kind.
 - (c) "Place of Employment" means any enclosed area under the control of a public or private employer in which employees normally work or frequent during the course of employment, including but not limited to, work areas, private offices, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways, bars and restaurants.
 - (d) "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
 - (e) "Public place" means any area used by the general public, including, but not limited to, schools, private clubs, retail stores and financial institutions, department stores, banks, laundromats, beauty and barber shops, retail food production and marketing establishments, restaurants, retail service establishments, all outdoor arenas, stadiums and amphitheatres and other commercial establishments, regardless of whether a fee is charged for admission.
 - (f) "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers 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. The term "restaurant" shall include a bar area within the restaurant.
 - (g) "Smoke" or "smoking" means the act of lighting, carrying, inhaling from, or leaving a lighted or smoldering cigar, cigarette, or pipe of any kind.

Sec. 9-84 Application of Chapter to City-Owned and Operated Facilities

All City owned or operated facilities, including but not limited to, buildings and surrounding grounds, vehicles owned, leased, or operated by the City of Westfield, parks, trails, parking lots as well as any City sponsored event wherever located within the City limits, shall be subject to the provisions of this Chapter.

Sec. 9-85 Smoking prohibited in public places.

Smoking shall be prohibited in all public places within the City of Westfield. including any outdoor area within a reasonable distance of a regulated area.

Sec. 9-86 Prohibition of Smoking in Places of Employment.

Smoking shall be prohibited in all enclosed areas within places of employment. This includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

Sec. 9-87 Reasonable Distance.

Smoking shall be prohibited within a reasonable distance from any area where smoking is prohibited by this Chapter, so as to insure tobacco smoke does not enter into establishments designated as smokefree under this Chapter through entrances, windows, ventilation intakes or other means. In no event shall a distance less than twenty (20) feet be deemed reasonable.

Sec. 9-88 Where Smoking is Not Regulated.

The prohibitions of Sec. 9-85 shall not apply to the following:

- (a) Private residences, except when used as a licensed childcare, adult day care, or health care facility.
- (b) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided however, that not more than twenty (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.
- (c) Any restaurant or bar open to the public that prohibits patrons less than twenty-one (21) years of age and employs no persons less than twenty-one (21) years of age.
- (d) Any outdoor area a reasonable distance from any regulated area.
- (e) Any work vehicle used in the course of employment in which the driver is the only occupant and the employer does not object to smoking in the vehicle.
- (f) Private clubs that prohibits patrons less than twenty-one (21) years of age and employs no persons less than twenty-one (21) years of age.

Sec. 9-89 Declaration of Establishment as Smoking.

Any restaurant, bar or private club that elects to allow smoking pursuant to the conditions contained herein shall inform the Director of Community Development of their decision in writing prior to allowing smoking under Sec 9-88.

Sec. 9-90 Posting of Signs.

- (a) Every public place and place of employment where smoking is prohibited by this chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. “No Smoking” signs shall be made available from the City at the Westfield City Services Building. Smoking shall be prohibited anywhere a sign indicating such is posted.
- (b) Every restaurant, bar or private club that allows smoking shall have posted at every entrance a conspicuous sign clearly stating that smoking is permitted.

Sec. 9-91 Change of Status.

An establishment’s change of status shall be allowed by written petition to the Community Development Department. A fee may be charged in the amount of no more than One Hundred Dollars (\$100.00). A change of status may be filed no more than once annually.

Sec. 9-92 Enforcement.

- (a) This Chapter shall be enforced by the Westfield the Community Development Department or any duly authorized representative thereof.
- (b) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Community Development Department.
- (c) The Building Inspector, Fire Department, or their designees 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 Article of the appropriate provisions thereof.

Sec. 9-93 Violations and Penalties.

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be subject to a fine not exceeding fifty dollars (\$50). Any matter referred to a court of law for adjudication shall also be subject to all court fees and costs, including attorney fees incurred in the collection.
- (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 subject to penalties as follows:
 - (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.
- (4) Any and all fees and costs, including attorney fees required in the collection of any fine.
- (c) Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.
- (d) Notwithstanding any other penalty provision herein, the City reserves the right to proceed under any legal or equitable remedies available under the laws of the State of Indiana. Additionally, the City reserves the right to withdraw any license or permit issued by the City of Westfield for continued violations of this Chapter.

Sec. 9-94 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.

Sec. 9-95 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.

Sec. 9-96 Chapter to be broadly interpreted.

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

Section 2. Savings Clause. If any title, section, subsection, phrase, clause, sentence, or word of this Ordinance shall for any reason be held invalid or unconstitutional by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby and shall remain in full force and effect.

Section 3. Construction of Clause Headings. The clause headings appearing herein have been provided for convenience and reference and do not purport and shall not be deemed to define, limit or extend the scope or intent of the clause to which they appertain.

Section 4. Repeal of Conflicting Ordinances. The provision of all other City ordinances in conflict with the provisions hereof, if any, are of no further force or effect and are hereby repealed.

Section 5. Severability. If any part of this Ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remainder of this Ordinance.

Section 6. Duration and Effective Date. The provisions of this Ordinance shall become and remain in full force and effect thirty (30) days from and after the date of its adoption and recording and until its repeal by Ordinance.

ALL OF WHICH IS ORDAINED THIS _____ DAY OF _____ 2009.

WESTFIELD CITY COUNCIL

Voting For

Voting Against

Abstain

John Dippel

John Dippel

John Dippel

Steven Hoover

Steven Hoover

Steven Hoover

Bob Horkay

Bob Horkay

Bob Horkay

Ken Kingshill

Ken Kingshill

Ken Kingshill

Bob Smith

Bob Smith

Bob Smith

Thomas Smith

Thomas Smith

Thomas Smith

Rob Stokes

Rob Stokes

Rob Stokes

ATTEST:

Cindy Gossard, Clerk Treasurer

I hereby certify that ORDINANCE 09-09 was delivered to the Mayor of Westfield

on the _____ day of _____, 2009, at _____ m.

Cindy Gossard, Clerk-Treasurer

I hereby APPROVE ORDINANCE 09-09

this _____ day of _____, 2009.

I hereby VETO ORDINANCE 09-09

this _____ day of _____, 2009.

J. Andrew Cook, Mayor

J. Andrew Cook, Mayor

ATTEST:

Cindy Gossard, Clerk Treasurer

This document prepared by
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