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**BEFORE THE COMMON COUNCIL  
FOR THE CITY OF JEFFERSONVILLE  
STATE OF INDIANA**

Ordinance No. 2005-OR- 63

**AN ORDINANCE REGULATING SMOKING IN PUBLIC PLACES  
AND PLACES OF EMPLOYMENT**

WHEREAS, the Common Council for the City of Jeffersonville finds and declares that the purpose of this ordinance are to protect the public health and welfare by limiting smoking in public places and places of employment;

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL FOR THE CITY OF JEFFERSONVILLE, CLARK COUNTY, INDIANA, THAT:

**SECTION 100. Definitions**

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

a. "Bar" means an establishment that serves alcoholic beverages for consumption on the premises, by guests who must be at least twenty-one (21) years of age to enter the premises, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

b. "Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional service are delivered.

c. "Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit, including those employed full-time, part-time, on a temporary basis, or by contract through a third-party.

1 d. "Employer" means any person, partnership, corporation, including a municipal  
2 corporation, or non-profit entity, which employs the services of one or more individual persons.

3 e. "Enclosed area" means all space between a floor and ceiling which is enclosed on all  
4 sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor  
5 to the ceiling, including all space therein screened by partitions which do not extend to the  
6 ceiling or are not solid, "office landscaping" or similar structures.

7 f. "Place of employment" means any enclosed area under the control of a public or  
8 private employer which employees normally frequent during the course of employment,  
9 including, but not limited to, work areas, private offices, employee lounges and restrooms,  
10 conference and classrooms, employee cafeterias and hallways. A private residence is not a  
11 "place of employment" unless it is used as a childcare, adult day care or health care facility.

12 g. "Private club" means a facility owned or operated by an association or corporation,  
13 which shall:

14 (1) Not be operated for pecuniary gain; and

15 (2) Registered under Indiana law; and

16 (3) Determined by the Internal Revenue Service to be operating under not-for-profit  
17 status; and

18 (4) Consist of a membership:

19 (i) Formed as a lodge, local chapter, or corresponding unit of a fraternal order  
20 recognized on a national basis; or

21 (ii) Comprised of persons who have served in the armed forces of the United  
22 States of American; or

1 (iii) Formed as a recognized, exclusive association of person organized for a joint  
2 or common purpose for which application for membership, the payment of dues, and self  
3 governance by the membership are distinguishing characteristics, and, where entry into, and use  
4 of the facility is restricted to members and guests of members.

5 h. "Public place" means any enclosed area to which the public is invited or in which the  
6 public is permitted, including but not limited to banks, educational facilities, health facilities,  
7 laundromats, public transportation facilities, reception areas, restaurants, retail food production  
8 and marketing establishments, retail service establishments, retail stores, theatres, and waiting  
9 rooms. A private residence is not a "public place."

10 i. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public  
11 school cafeteria, and any other eating establishment which gives or offers for sale of food to the  
12 public, guests, or employees, as well as kitchens in which food is prepared on the premises for  
13 serving elsewhere, including catering facilities. The term "restaurant" shall include a bar area  
14 within the restaurant.

15 j. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco  
16 products and accessories and in which the sale of other products is merely incidental. The term  
17 does not include retail stores where food or beverages are sold for consumption on the premises  
18 or where an area has been set-aside on the premises for customers to consume food or beverages.

19 k. "Service line" means any indoor line at which one or more persons are waiting for or  
20 receiving service of any kind, whether or not such service involves the exchange of money.

21 l. "Smoking" means the carrying or holding of lighted cigarette, cigar, pipe, or any other  
22 lighted smoking equipment/mechanism, or the inhalation or exhalation of smoke from any  
23 lighted smoking equipment/mechanism. "Smoking" does not include the burning of incense.

1 m. "Sports arena" means sports pavilions, gymnasiums, health spas, boxing areas,  
2 swimming pools, roller and ice rinks, bowling alleys and other similar places where members of  
3 the general public assemble either to engage in physical exercise, participate in athletic  
4 competition, or witness sports events.

5 **SECTION 200. Prohibition of smoking in public places and places of employment.**

6 (a) Except as otherwise provided herein, smoking shall be prohibited in the following  
7 public places and places of employment, including, but not limited to, the following areas:

8 (1) Elevators;

9 (2) Restrooms, lobbies, reception areas, hallways, and other common-use areas;

10 (3) Buses, taxicabs, and other means of public transit under the authority of the city, and  
11 Ticket, boarding, and waiting areas of public transit depots;

12 (4) Service lines;

13 (5) Retail stores;

14 (6) All areas available to and customarily used by the general public in all businesses and  
15 non-profit entities patronized by the public;

16 (7) Restaurants;

17 (8) Public areas of aquariums, galleries, libraries, and museums;

18 (9) Any facility which is primarily used for exhibiting any motion picture, stage, drama,  
19 lecture, musical recital, or other similar performance, except performers when smoking is part of  
20 a theatrical production;

21 (10) Sports arenas and convention halls, including bowling facilities.

22 (11) Every room, chamber, place of meeting or public assembly, including school  
23 buildings under the control of any board, council, commission, committee, including joint

1 committees, or agencies of the city or any political subdivision of the state during such time as a  
2 public meeting is in the progress, to the extent such place is subject to the jurisdiction of the city;

3 (12) Hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;

4 (13) Private and semi-private rooms in nursing homes and other long-term care facilities;

5 (14) Lobbies, hallways, and other common areas in apartment buildings, condominiums,  
6 trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

7 (15) Polling places; and

8 (16) Private functions in other public places like restaurants, hotels, and motels.

9 Notwithstanding any other provisions of this action, any owner, operator, or manager or  
10 other person who controls any establishment or facility may declare that entire establishment or  
11 facility as a non-smoking establishment.

12 **SECTION 300. Policies regarding smoking in places of employment.**

13 (a) It shall be the responsibility of employers to provide a smoke-free workplace for all  
14 employees, but employers are not required to incur expense to make structural or other physical  
15 modifications to comply with the provisions herein.

16 (b) Within one hundred eighty (180) days of the adoption of these provisions herein,  
17 each employer having an enclosed place of employment located within the city shall adopt,  
18 implement, and comply with the smoking ordinance that shall contain the following  
19 requirements:

20 Smoking shall be prohibited in all enclosed facilities within a place of employment. This  
21 includes common work areas, auditoriums, conference and meeting rooms, private offices,  
22 elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all  
23 other enclosed facilities.

1 (c) The smoking ordinance shall be communicated to all employees.

2 (d) All employers shall supply a written copy of the smoking ordinance upon request to  
3 any existing or prospective employee.

4 **SECTION 400. Where smoking not regulated.**

5 (a) Notwithstanding any other provision herein, the following areas shall not be subject  
6 to the aforementioned smoking restrictions:

7 1. Private residences, except when used as a licensed childcare, adult day care or health  
8 care facility.

9 2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms;  
10 provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel  
11 or motel may be so designated. The status of rooms as smoking or non-smoking may not be  
12 changed, except to add additional non-smoking rooms.

13 3. Retail tobacco stores; provided that smoke from these places does not infiltrate into  
14 areas where smoking is prohibited under the provisions herein.

15 4. Private clubs.

16 5. Bars.

17 6. Outdoor areas of placement of employment.

18 **SECTION 500. Posting signs—Removing of paraphernalia.**

19 (a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a  
20 pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it)  
21 shall be clearly, sufficiently and conspicuously posted in every building or other area where  
22 smoking is prohibited by the provisions herein, by the owner, operator, manager or other person  
23 having control of such building or other area.

1 (b) Every public place where smoking is prohibited by the provisions herein shall have  
2 posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

3 (c) All ashtrays and other smoking paraphernalia shall be removed from any area where  
4 smoking is prohibited by the provisions herein by the owner, operator, manager, or other person  
5 having control of such area.

6 **SECTION 600. Violations and penalties.**

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

10 (b) It shall be unlawful for any person who owns, manages, operates or otherwise  
11 controls the use of any premises subject to the regulation under this ordinance to knowingly or  
12 willfully allow smoking to occur where prohibited by the provisions herein. It is a defense to  
13 this ordinance, if the foregoing persons or their employees act in a reasonable and timely manner  
14 to personally inform the violator of the prohibition and request that he or she from refrain from  
15 smoking.

16 (c) It shall be unlawful for any person to smoke on any area where smoking is prohibited  
17 by the provisions of the ordinance.

18 (d) Any violation of this subchapter, including a person who smokes in an area where  
19 smoking is prohibited, shall be classified as a civil offense and shall be enforced through  
20 Jeffersonville City Court ("Court"). The civil penalties for violations of this ordinance are as  
21 follows: a civil fine of fifty (\$50) for each finding of a violation.

22 (e) Any person cited for violation of this ordinance may pay the minimum civil penalty  
23 within seven days from the date of issuance or request a hearing regarding such penalty to the

1 Court. If the person fails to respond to the citation within seven days as referenced above, the  
2 person shall be deemed to have waived the right to a hearing. In this event, the Court shall enter  
3 a final order determining that the violation was committed and impose the civil penalty as set  
4 forth in the citation.

5 (f) Persons who smoke in an area where smoking is prohibited and who refuse to  
6 extinguish their smoking material when asked, may be required to leave the premises, and shall  
7 be subject to prosecution for criminal trespass if they do not leave when asked.

8 (g) Each calendar day during which a violation of this ordinance occurs shall constitute  
9 a separate and distinct offense.

10 **SECTION 700. Enforcement.**

11 Enforcement of this subchapter shall be by citation issued by the Jeffersonville Building  
12 Commissioner.

13 **SECTION 800. Partial invalidity.**

14 The invalidity of any portion of this ordinance shall not effect the validity of any other  
15 portion of it, which can be given effect without such invalid part.

16 **SECTION 900. Other applicable laws.**

17 This chapter shall not be interpreted or construed to permit smoking where it is otherwise  
18 restricted by other applicable laws.


19 **SECTION 1000. Effective Date.**

20 This Ordinance shall be effective in 180 days from and after publication pursuant to I.C.  
21 36-4-6-14, 36-5-2-10, and I.C. 5-3-1. Therefore, the Clerk-Treasurer is hereby ordered and  
22 directed to give notice as provided by law.  
23

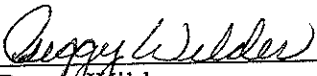
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SO ORDAINED on this 21 day of November, 2005.

COMMON COUNCIL OF  
CITY OF JEFFERSONVILLE, INDIANA

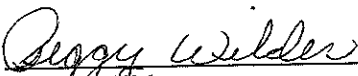
By:   
\_\_\_\_\_  
Robert L. Waiz, Jr.  
Presiding Officer

ATTEST:

  
\_\_\_\_\_  
Peggy Wilder  
Clerk and Treasurer


Presented by me as Clerk and Treasurer to the Mayor of said City of Jeffersonville this

22<sup>nd</sup> day of November, 2005 at 9:30 A. m.

  
\_\_\_\_\_  
Peggy Wilder  
Clerk and Treasurer

Approved and signed by me this 30 day of November, 2005 at

3:30 p. m.

  
\_\_\_\_\_  
Robert L. Waiz, Jr. Mayor