

**ORDINANCE 06-12  
OF THE CITY OF FRANKLIN, INDIANA**

**An Ordinance Amending Ordinance No. 06-02 Regulating Smoking**

WHEREAS, the Common Council of the City of Franklin, Indiana finds it necessary and proper to amend Ordinance No. 06-02 relative to smoking regulations within the City of Franklin, Indiana. For convenience, the entire ordinance as amended is stated below.

WHEREAS, the Common Council of the City of Franklin, Indiana, finds that tobacco smoke is a major contributor to indoor pollution, and that breathing tobacco smoke is a cause of disease to both smokers and non-smokers. Health hazards induced by breathing tobacco smoke include lung cancer, heart disease, decreased respiratory function, and bronchospasms. People at special risk include children, the elderly, and individuals with cardiovascular disease and/or impaired respiratory function, such as asthmatics and those with obstructive airway disease.

WHEREAS, the City of Franklin, Indiana 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; (2) to guarantee the right of non-smokers to breathe smoke-free air; and (3) to recognize that the need to breath smoke-free air has priority over the desire to smoke.

**Now, therefore, the Common Council of the City of Franklin, Indiana, Ordains and Enacts the following:**

- 1) **Definitions:** The following word and phrases, whenever used in this Ordinance, shall be construed as defined in this section:
  - a) "Bar" means any building, room or area used primarily for the sale of alcoholic beverages for consumption by guests on the premises, in which the sale of food and the provision of entertainment is merely incidental to the sale of alcoholic beverages, and in which entrance to the "Bar" is restricted at all times to adults over the age of twenty-one (21) years of age.
  - 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 services 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.
  - d) "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.
  - e) "Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, such as office landscaping or similar structures.
  - f) "Place of employment" means any enclosed area under the control of a public or private employer which employees normally 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. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.
  - g) "Private club" means a facility:
    - i) Owned or operated by an association or corporation, which shall:
      - (1) Not be operated for pecuniary gain; and

- (2) Consist of a membership:
      - (a) Formed as a lodge, local chapter, or corresponding unit of a fraternal order recognized on a national basis; or
      - (b) Comprised of persons who have served in the armed forces of the United States; or
      - (c) Formed as a recognized, exclusive association of persons organized for a joint or common purpose for which application for membership, the payment of dues, and self governance by the membership are distinguishing characteristics; and
    - (3) Where entry into, and use of the facility is restricted at all times to members and guests of members.
  - h) "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. (A private residence is not a "public place.")
  - i) "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.
  - j) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. The term does not include retail stores where food or beverages are sold for consumption on the premises or where an area has been set aside on the premises for customers to consume food or beverages.
  - k) "Service line" means 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.
  - l) "To Smoke", in any tense of the verb, means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, or other device containing tobacco or other substance that is noxious when burned, but explicitly excludes the use of candles and the like when appropriately and customarily used.
  - m) "Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.
- 2) **Smoking Prohibited in City-Owned Facilities.** All enclosed facilities, as well as all vehicles, owned by the City shall be subject to the provisions of this Ordinance.
- 3) **Smoking Prohibited in Public Places.** Smoking shall be prohibited in the following public places and other public places similarly situated, including, but not limited to, the following areas:
- a) Elevators;
  - b) Restrooms, lobbies, reception areas, hallways and any other common-use areas;
  - c) All means of public transit;
  - d) Service lines;
  - e) Retail stores;
  - f) All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public;
  - g) Restaurants;
  - h) Public areas of galleries, libraries, and museums;
  - i) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a theatrical production;
  - j) Sports arenas and convention halls, including bowling facilities;

- k) 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 of 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;
- l) Hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;
- m) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- n) Polling places;
- o) Places of employment unless otherwise expressly excluded by this Ordinance;
- p) The following outdoor areas:
  - i) Seating provided by eating establishments,
  - ii) Within courtyards and other areas where air circulation may be impeded by architectural landscaping or other barriers,
  - iii) Any place where people are using or waiting for a service, entry, or a transaction, including but not limited to ATM's, bank teller windows, telephones, ticket lines, bus stops and cab stands,
- q) Any place where food and/or drink is offered for sale;
- r) Private functions in other public places, such as restaurants, hotels, and motels.
- s) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

**4) Employer's Responsibility:**

- a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications. Within one hundred twenty days of the adoption of this Ordinance, each employer having an enclosed place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:
  - i) Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.
- b) The smoking policy shall be communicated to all employees within three weeks of its adoption.
- c) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

**5) Reasonable Distance:** Smoking shall occur at least ten (10) feet away from 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.

**6) Where Smoking is Not Regulated:**

- a) Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall not be subject to the smoking restrictions of this Ordinance:
  - i) Bars;
  - ii) Private clubs;
  - iii) Private residences, except when used as a child care, adult day care or health care facility;
  - iv) Twenty-five percent of hotel and motel rooms rented to guests, provided they are designated in writing for this purpose;
  - v) Retail tobacco stores.

- b) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

**7) Posting of signs - Removing of paraphernalia.**

- a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other area where smoking is prohibited by this Ordinance, by the owner, operator, manager or other person having control of such building or other area.
- b) Every public place where smoking is prohibited by this Ordinance 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 any area where smoking is prohibited by this Ordinance by the owner, operator, manager or other person having control of such area. However, this ordinance does not restrict the sale of ashtrays and other smoking paraphernalia in such areas.

**8) Enforcement.**

- a) Enforcement of this Ordinance shall be implemented by the Board of Works and Safety, or its designee(s).
- b) Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Board of Works and Safety, or its designee(s).
- c) Upon finding that any provision of this Ordinance has been violated, the Board of Works and Safety, or its designee(s), shall issue a Notice of Violation ("NOV") to the person(s) responsible for the violation. The NOV 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 NOV shall state:
  - i) The location of the violation;
  - ii) The nature of the violation;
  - iii) The fine assessed for the violation;
  - iv) That the fine is paid at the City Clerk-Treasurer's Office; and
  - v) That the fine may be contested by filing a written request for a hearing before the Board of Works and Safety. After such hearing, the decision of the Board of Works and Safety is a final order appealable to the Johnson County Courts.

**9) Violations and penalties.**

- a) It shall be unlawful for any person:
  - i) who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Ordinance to fail to comply with any of its provisions;
  - ii) who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Ordinance to knowingly or willfully allow smoking to occur where prohibited by this Ordinance. It is a defense to this section, if the foregoing persons or their employees act in a reasonable and timely manner to personally inform the violator of the prohibition and request that he or she refrain from smoking.
  - iii) to smoke in any area where smoking is prohibited by the provisions of the ordinance codified in this Ordinance.
- b) Any person who violates any provision of this Ordinance shall be subject to a fine of One Hundred Dollars (\$100.00) for each violation of this Ordinance. If the penalty is not paid within thirty (30) days, the general procedures for enforcement of code violations pursuant to Ordinance No. 04-05 will apply.
- c) The Franklin City Court and/or other court of competent jurisdiction will have jurisdiction over such violations and penalties.

**10) Public education.** The City may engage in programs to explain and clarify the purposes and requirements of this Ordinance 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 explaining the provisions of this Ordinance

**11) Construction of Clause Headings:** The clause headings appearing in this ordinance have been provided for convenience and reference, and do not purport and will not be deemed to define, limit, or extend the scope or intent of the clauses to which the headings pertain;

**12) Repeal of Conflicting Ordinances.** The provisions of all other ordinances in conflict with the provisions of this ordinance are of no further force or effect, and are now repealed;

**13) Severability of Provisions.** If any part of this ordinance is held to be invalid, such part will be deemed severable and its invalidity will have no effect upon the remaining provisions of this ordinance;

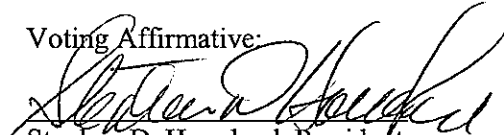
**14) Duration and Effective Date.** The provisions set forth in this ordinance become and will remain in full force and effect (until their repeal by ordinance) on the date of passage, or as otherwise prohibited by law.

Introduced and Filed on the 23 day of October, 2006.

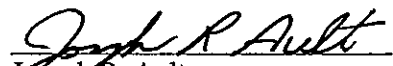
DULY PASSED in this 13 day of November, 2006 by the Common Council of the City of Franklin, Johnson County, Indiana, having been passed by a vote of 5 in Favor and 2 Opposed.

City of Franklin, Indiana, By its Common Council:

Voting Affirmative:

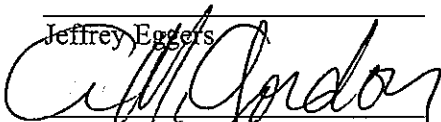
  
Stephen D. Houglan, President

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Joseph P. Abban

  
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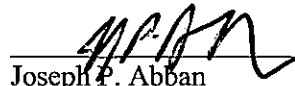
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Jeffrey Eggers

  
Ann M. Gordon

  
Dr. William T. Murphy

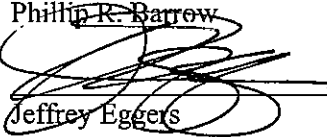
Voting Opposed:

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Stephen D. Houglan, President

  
Joseph P. Abban

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Joseph R. Ault

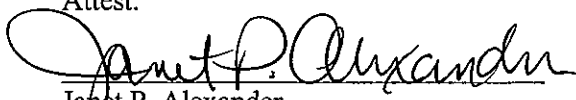
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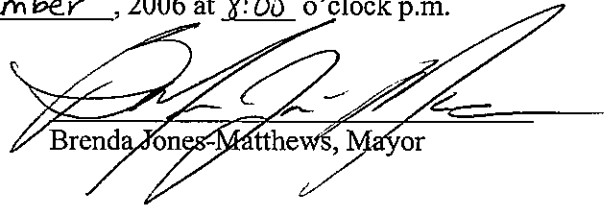
Attest:

  
Janet P. Alexander,  
City Clerk-Treasurer

Presented by me to the Mayor of the City of Franklin for her approval or veto pursuant to Indiana Code § 36-4-6-15,16, this 13 day of November, 2006 at 8:00 o'clock p.m.


  
Janet P. Alexander, City Clerk-Treasurer

This Ordinance having been passed by the legislative body and presented to me was [Approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16(a)(1)] [Vetoed, pursuant to Indiana Code § 36-4-6-16(a)(2)], this 13 day of November, 2006 at 8:00 o'clock p.m.



Brenda Jones-Matthews, Mayor

Attest:



Janet P. Alexander,  
City Clerk-Treasurer

Prepared by:

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