

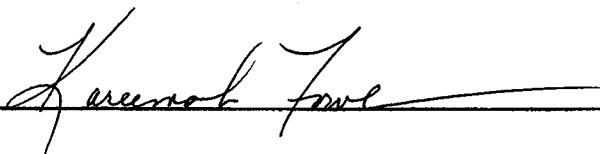
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**ORDINANCE No. 10429-16**

*Passed by the Common Council of the City of South Bend, Indiana*

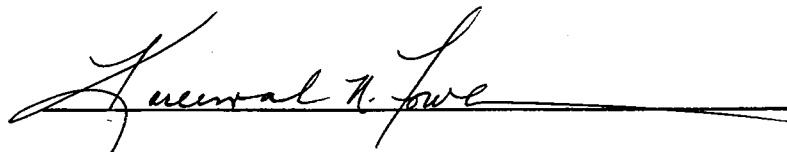
March 29, 20 16

*Attest:*  *City Clerk*

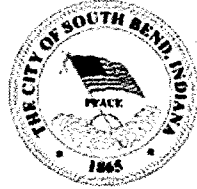
*Attest:*  *President of Common Council*

*Presented by me to the Mayor of the City of South Bend, Indiana*

March 30, 20 16

 *City Clerk*

*Approved and signed by me* March 30 20 16



**The South Bend Common Council**

4<sup>th</sup> Floor County-City Building  
227 West Jefferson Boulevard  
South Bend, Indiana 46601-1830

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March 29, 2016

The South Bend Common Council  
4<sup>th</sup> Floor County-City Building  
South Bend, Indiana 46601

**Re: 2<sup>nd</sup> Substitute Bill No. 11-16 Smoke Free Air Standards for Workplaces/Public Places**

Dear Council Members:

The attached 2<sup>nd</sup> Substitute Bill 11-16 makes one change to in Section IV. The effective date is now proposed to be changed from August 1, 2016 to **January 2, 2017**.

All other provisions of the proposed ordinance which is on file in the Office of the City Clerk remain the same.

We seek your support. Thank you.

Most sincerely,

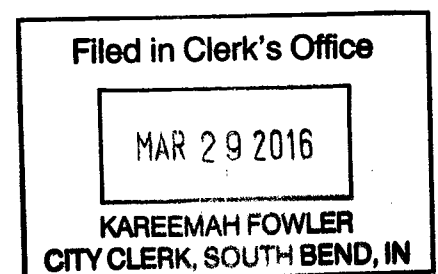
Gavin Ferlic  
Council Member at Large

Jo Broden  
4<sup>th</sup> District Council Member

Randy Kelly  
3<sup>rd</sup> District Council Member

John Voorde  
Council Member at Large

Attachment



**2<sup>ND</sup> SUBSTITUTE BILL NO. 11-16**

**ORDINANCE NO. 10429-16**

**AN ORDINANCE OF THE COMMON COUNCIL OF THE SOUTH BEND COMMON COUNCIL AMENDING CHAPTER 14 OF THE *SOUTH BEND MUNICIPAL CODE* BY ESTABLISHING NEW ARTICLE 13 ENTITLED SMOKE FREE AIR REGULATIONS FOR WORKPLACES AND PUBLIC PLACES**

**STATEMENT OF PURPOSE AND INTENT**

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke free policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.)

According to the 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke. (U.S. Department of Health and Human Services, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.)

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) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.)

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.)

There is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke. (World Health Organization (WHO), "Protection from exposure to secondhand smoke: policy recommendations," World Health Organization (WHO), 2007.)

In reviewing 11 studies concluding that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smoke free laws, the Institute of Medicine of the National Academies concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smoke free laws reduce heart attacks. (Institute of Medicine (IOM) of the National Academies, Board on Population Health and Public Health Practice, Committee on Secondhand Smoke Exposure and Acute Coronary Events, "Secondhand smoke exposure and cardiovascular effects: making sense of the evidence," Washington, DC: National Academies Press, October 2009.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," Tobacco Control 11(3): 220-225, September 2002.)

Studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in hospitality workers find dramatic reductions in the levels of these biomarkers after a smoke free law takes effect. Average cotinine levels of New York City restaurant and bar workers decreased by 85% after the city's smoke free law went into effect. ([In.a.], "The State of Smoke-Free New York City: A One Year Review," New York City Department of Finance, New York City Department of Health & Mental Hygiene, New York City Department of Small Business Services, New York City Economic Development Corporation, March 2004).

After the implementation of Ontario, Canada's Smoke free Indoor Air Law, levels of NNAL were reduced by 52% in nonsmoking casino employees and cotinine levels fell by 98%. (Geoffrey T. Fong, et. al., "The Impact of the Smoke-Free Ontario Act on Air Quality and Biomarkers of Exposure in Casinos: A Quasi-Experimental Study," Ontario Tobacco Control Conference, Niagara Falls, Ontario, December 2, 2006.)

Following a Health Hazard Evaluation of Las Vegas casino employees' secondhand smoke exposure in the workplace, which included indoor air quality tests and biomarker assessments, the National Institute of Occupational Safety & Health (NIOSH) concluded that the casino employees are exposed to dangerous levels of secondhand smoke at work and that their bodies absorb high levels of tobacco-specific chemicals NNK and cotinine during work shifts. NIOSH also concluded that the "best means of eliminating workplace exposure to [secondhand smoke] is to ban all smoking in the casinos." (Health hazard evaluation report: environmental and biological assessment of environmental tobacco smoke exposure among casino dealers, Las Vegas, NV. By Achutan C, West C, Mueller C, Boudreau Y, Mead K. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, NIOSH HETA No. 2005-0076 and 2005-0201-3080, May 2009.)

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", Tobacco Control 6(4): 346-353, Winter, 1997.) The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," Nonsmokers' Voice 15(1): 8-9.)

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" British Medical Journal 328: 980-983, April 24, 2004.)

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coultas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A., "ASHRAE position document on environmental tobacco smoke," American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), 2005.)

During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smoker's rival indoor tobacco smoke concentrations. (Klepeis, N.; Ott, W.R.; Switzer, P., "Real-time measurement of outdoor tobacco smoke particles," Journal of the Air & Waste Management Association 57: 522-534, 2007.)

Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smoke free outdoor area. (Hall, J.C.; Bernert, J.T.; Hall, D.B.; St Helen, G.; Kudon, L.H.; Naeher, L.P., "Assessment of exposure to secondhand smoke at outdoor bars and family restaurants in Athens, Georgia, using salivary cotinine," Journal of Occupational and Environmental Hygiene 6(11): 698-704, November 2009.)

Residual tobacco contamination, or "thirdhand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings. Gases can be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds. (Singer, B.C.; Hodgson, A.T.; Nazaroff, W.W., "Effect of sorption on exposures to organic gases from environmental tobacco smoke (ETS)," Proceedings: Indoor Air 2002, 2002.)

Tobacco residue is noticeably present in dust throughout places where smoking has occurred. (Matt, G.E.; Quintana, P.J.E.; Hovell, M.F.; Bernert, J.T.; Song, S.; Novianti, N.; Juarez, T.; Floro, J.; Gehrman, C.; Garcia, M.; Larson, S., "Households contaminated by environmental tobacco smoke: sources of infant exposures," *Tobacco Control* 13(1): 29-37, March 2004.)

Given the rapid sorption and persistence of high levels of residual nicotine from tobacco smoke on indoor surfaces, including clothing and human skin, this recently identified process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion. (Sleiman, M.; Gundel, L.A.; Pankow, J.F.; Jacob III, P.; Singer, B.C.; Destailats, H., "Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential thirdhand smoke hazards," *Proceedings of the National Academy of Sciences of the United States of America (PNAS)* 107(15): 6576-6581, February 8, 2010.)

Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." ([n.a.], "Summary of results: laboratory analysis of electronic cigarettes conducted by FDA," Food and Drug Administration (FDA), July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm> Accessed on: October 22, 2009.)

E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions. During the Summer of 2015, the US Food and Drug Administration held three (3) public workshops to obtain more detailed information on electronic cigarettes and the public health. Currently only e-cigarettes that are marketed for therapeutic purposes are currently regulated by the FDA Center for Drug Evaluation and Research (CDER). The FDA has issued a proposed rule that would extend its authority to cover e-cigarettes, which is to be acted upon in 2016.

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity. (Behan, D.F.; Eriksen, M.P.; Lin, Y., "Economic Effects of Environmental Tobacco Smoke," *Society of Actuaries*, March 31, 2005.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke free. Creation of smoke free workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L., "The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States." *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," GPI Atlantic, September 2001.)

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," Business & Health 15(8), Supplement A: 6-9, August 1997.)

The smoking of tobacco, hookah, marijuana, and the use of electronic cigarettes are forms of air pollution, a positive danger to health, and a material public nuisance.

Indiana Code 7.1-5-12-13(a) authorizes a city to adopt an ordinance that is more restrictive than Indiana State Law: "*This chapter does not prohibit a county, city, town, or other governmental unit from adopting an ordinance more restrictive than this chapter.*"

Accordingly, the Common Council of the City of South Bend, 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; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke. This ordinance is believed to be in the best interests of the public health and welfare of the City of South Bend, Indiana.

*Now, Therefore, be it Ordained by the Common Council of the City of South Bend, Indiana, as follows:*

Section I. Chapter 14 of the *South Bend Municipal Code* shall be amended to include new Article 13 which shall read in its entirety as follows:

**ARTICLE 13. SMOKE FREE AIR REGULATIONS FOR WORKPLACES AND PUBLIC PLACES.<sup>1</sup>**

**Sec. 14-123. Definitions.**

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

(a) "Ashtray" means any receptacle that is used for disposing of smoking materials, including, but not limited to ash and filters.<sup>2</sup>

(b) "Bar" means an establishment used primarily for the sale of alcoholic beverages for consumption by patrons on the premises and which holds a retailer's permit under the laws of the State of Indiana. The terms includes, but is not limited to, taverns, nightclubs, and cocktail lounges.

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<sup>1</sup> *Indiana Code* § 7.1-5-12-13 entitled "Local Ordinances" authorizes a city to pass ordinances which may be more restrictive than state statutes addressing the "prohibition of smoking".

<sup>2</sup> *Indiana Code* § 7.1-5-12-0.5 addresses "Ashtray defined."

(c) “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, 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.

(d) “Electronic Smoking Device” means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor.

(e) “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services.

(f) “Employer” means a person, business, association, municipal corporation, trust, or nonprofit entity that employs the services of one or more individual employees.

(g) “Enclosed Area” means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

(j) “Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals, addiction treatment hospitals and facilities, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. The term “Health Care Facility” shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within healthcare facilities.

(k) “Hookah” means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

(l) “Place of Employment” means an area under the control of a public or private employer including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles.<sup>3</sup>

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<sup>3</sup> *Indiana Code* § 7.1-5-12-1 addresses “Place of employment defined” and specifically excludes private vehicles.



(m) “Playground” means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on South Bend grounds.

(n) “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.

(o) “Public Place” means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a childcare, adult day care, or health care facility.<sup>4</sup>

(p) “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.

(r) “Service Line” means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

(s) “Shopping Mall” means a public walkway or hall area that serves to connect retail or professional establishments.

(t) “Smoking” means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookah and marijuana, in any manner or in any form. “Smoking” also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.<sup>5</sup>

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<sup>4</sup> *Indiana Code* § 7.1-5-12-2 addresses “Public place defined”.

<sup>5</sup> *Indiana Code* § 7.1-5-12-3 addresses “Smoking defined”.

(u) “Sports Arena” means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

**Sec. 14-124. Prohibition of Smoking.<sup>6</sup>**

Except as provided in Section 14-127, smoking shall be prohibited in all enclosed public places within the City of South Bend including but not limited to, the following places:

- (a) Aquariums, galleries, libraries, and museums;
- (b) Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments;
- (c) Bars;
- (d) Bingo facilities;
- (e) Child care and adult day care facilities;
- (f) Convention facilities;
- (g) Educational facilities, both public and private;
- (h) Elevators;
- (i) Gaming facilities;
- (j) Health care facilities;
- (k) Hotels and motels;
- (l) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (m) Polling places;
- (n) Private clubs;

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<sup>6</sup> *Indiana Code* § 7.1-5-12-4 addresses “Smoking prohibited in public places, places of employment, and state vehicles”.

- (o) Public transportation vehicles, including buses and taxicabs, under the authority of the City of South Bend, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities;
- (p) Restaurants;
- (q) Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- (r) Retail stores;
- (s) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of South Bend, Indiana or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of South Bend, Indiana;
- (t) Service lines;
- (u) Shopping malls;
- (v) Sports arenas, including enclosed places and outdoor arenas;
- (w) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances;
- (x) Tobacco Specialty Bars; and
- (y) Tobacco Retail Stores.

**Sec. 14-125. Prohibition of Smoking in Enclosed Places of Employment.**

(a) Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, 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.

(b) The prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

**Sec. 14-126. Reasonable Distance.<sup>7</sup>**

Smoking shall be prohibited outdoors within a reasonable distance of fifteen feet (15') feet outside entrances, open windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.

**Sec. 14-127. Exemptions.**

Notwithstanding the smoking prohibitions in Section 14-124, smoking is permitted in the following locations:

- (a) Private residences, unless used as a licensed childcare, adult day care or health care facility.
- (b) None of the areas set forth in this Section shall be exempt from the provisions of this Article if smoke from any area enters, either directly or indirectly, through entrances, windows, ventilation systems, or other means, where smoking is otherwise prohibited by this Article.

**Sec. 14-128. Prohibition of Smoking in Outdoor Public Places.**

Smoking shall be prohibited in the following outdoor places:

- (a) Outdoor seating areas of restaurants, bars, private clubs, and businesses except those seating areas restricted to individuals over the age of 18 years of age;
- (b) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in and within fifteen feet (15') of bleachers and grandstands for use by spectators at sporting and other public events;
- (c) Within fifteen feet (15') of all outdoor playgrounds;
- (d) Within fifteen feet (15') of all outdoor public transportation stations, platforms, and shelters under the authority of the City of South Bend, Indiana; and
- (e) In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multi-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least fifteen feet (15') outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

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<sup>7</sup> *Indiana Code* § 7.1-5-12-4 sets forth a eight foot (8') distance requirement from a public entrance to a public place or place of employment.

**Sec. 14-129. Removal of Smoking Paraphernalia and Signage Requirements.**

- (a) All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.
- (b) An owner, operator, manager, or official in charge of a public place or place of employment, except vehicles, shall post conspicuous signs at each outdoor entrance that read "The City of South Bend Prohibits Smoking Within 15 Feet of this Entrance".

**Sec. 14-130. Declaration of Establishment as Nonsmoking.**

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that the entire establishment, facility, or outdoor areas are a smoke free place.

**Sec. 14-131. Non-Retaliation and Non-Waiver of Rights.<sup>8</sup>**

(a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 14-133, violation of this subsection shall be punishable by a fine not to exceed one thousand dollars (\$1,000) for each violation.

(b) An employee who works in an outdoor area restricted to individuals over the age of 18 years of age where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

**Sec. 14-132. Enforcement.**

(a) The South Bend Department of Code Enforcement and South Bend Police Department shall enforce this Article. Additionally, the St. Joseph County Health Department, the South Bend Fire Department or their designees may, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

(b) Notice of the provisions of this Article shall be given to all applicants for a business license in the City of South Bend.

(c) Any citizen who desires to register a complaint under this Article may register it with the Department of Code Enforcement.

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<sup>8</sup> *Indiana Code* § 7.1-5-12-11 addresses retaliation.

(d) An owner, manager, operator, or employee of an establishment regulated by this Article, shall inform person(s) in violation of the appropriate provisions thereof and shall ask those persons to refrain from smoking. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator or employee shall contact a law enforcement agency.

(e) In addition to the remedies provided by the provisions of this Section, the Department of Law or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

#### **Sec. 14-133. Penalties for Violations.**

Any owner, manager, operator, or other person in control of an establishment, facility, or outdoor area found to be in violation of this Article shall, when found to be in violation be fined as follows:

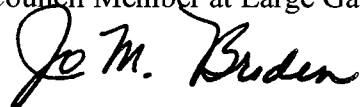
- (a) The issuance of a verbal and written warning for the first (1<sup>st</sup>) violation.
- (b) A fine of two hundred dollars (\$200.00) for the second (2<sup>nd</sup>) violation within the same calendar year.
- (c) A fine of four hundred dollars (\$400.00) for the third (3<sup>rd</sup>) violation within the same calendar year.
- (d) A fine of eight hundred dollars (\$800.00) for the fourth (4<sup>th</sup>) violation within the same calendar year.
- (e) A fine of one thousand five hundred dollars (\$1,500.00) for each additional violation occurring thereafter within the same calendar year.
- (f) Repeated violation of this Article is declared to be a public nuisance, which may be abated by the Department of Law seeking a restraining order, preliminary and permanent injunction, or other means provided for by law, and may bring action to recover the costs of the nuisance abatement.
- (g) The Department of Law is authorized to bring civil action against any alleged violator of this Article for all unpaid fines, and any and all expenses incurred by the City to enforce the provisions of this Article to seek compliance from the alleged violator.
- (h) Each day on which a violation of this Article occurs shall be considered a separate and distinct violation. Each violation of this Article shall constitute a separate offense.

Section II. Repeal: Article 10 of Chapter 14 entitled “Smoking Regulations” of the *South Bend Municipal Code* is repealed. Any other ordinance which is inconsistent or in conflict with any part of this ordinance is expressly repealed to the extent of such inconsistency or conflict and the remainder of such ordinance or *Code* provision shall be unaffected and remain in effect.

Section III. Severability: If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Section IV. This ordinance shall be in full force and effect on January 2, 2017, and from after the passage by the Common Council, approval by the Mayor and legal publication.

  
\_\_\_\_\_  
Council Member at Large Gavin Ferlic

  
\_\_\_\_\_  
Jo Broden, 4<sup>th</sup> District Council Member

  
\_\_\_\_\_  
Randy Kelly, 3<sup>rd</sup> District Council Member

  
\_\_\_\_\_  
Council Member at Large John Voorde

*Attest:*

I, Kareemah Flower, City Clerk, hereby verify that the foregoing ordinance was passed defeated by the South Bend Common Council on the 29<sup>th</sup> day of March, 2016, by a vote of 6 in favor and 3 against.

Kareemah Fowler  
Kareemah Fowler, City Clerk  
South Bend, Indiana

*Presented by me to the Mayor of the City of South Bend, Indiana, 30<sup>th</sup> day of March, 2016, at 9:30 o'clock a.m.*

Kareemah Fowler  
Office of the City Clerk

*Approved and signed by me on the, 30<sup>th</sup> day of March, 2016, at 9:30 o'clock a.m.*

Pete Buttigieg  
Pete Buttigieg, Mayor  
South Bend, Indiana

1st READING 3/14/16  
PUBLIC HEARING 3/29/16  
3rd READING 3/29/16  
NOT APPROVED  
REFERRED  
PASSED 3/29/16

Filed in Clerk's Office  
MAR 29 2016  
KAREEMAH FOWLER  
CITY CLERK, SOUTH BEND, IN