

**SUBSTITUTE BILL NO. 57-20**

**ORDINANCE NO. \_\_\_\_\_**

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**AN ORDINANCE OF THE COMMON COUNCIL OF SOUTH BEND, INDIANA, AMENDING ARTICLE 13, SECTION 14-123 OF THE SOUTH BEND MUNICIPAL CODE TO ADD DEFINITIONS FOR “CIGAR” AND “CIGARETTE”, AMENDING ARTICLE 13 SECTION 14-124 OF THE SOUTH BEND MUNICIPAL CODE TO ELIMINATE “TOBACCO SPECIALTY BARS” AND “TOBACCO RETAIL STORES”, FROM PLACES IN WHICH SMOKING IS PROHIBITED, AMENDING ARTICLE 13, SECTION 14-127 OF THE SOUTH BEND MUNICIPAL CODE TO INCLUDE EXEMPTIONS FOR “TOBACCO SPECIALTY BARS” AND “TOBACCO RETAIL STORES”, AND ADDING SECTION 14-127 “SEVERABILITY” TO THE SOUTH BEND MUNICIPAL CODE.**

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**STATEMENT OF PURPOSE AND INTENT**

The purpose and intent of this Ordinance are to amend the Article 13 of the South Bend Municipal Code entitled “Smoke Free Air Regulations For Workplaces and Public Places” to include additional definitions for “cigar” and “cigarette” and to add exemptions to Article 13, Section 14-127, to permit cigar smoking in “tobacco specialty bars” and smoking in “tobacco retail stores” as permitted by Ind. Code 7.1-5-12-5. Such businesses are unique in that smoking certain types of tobacco products are an integral part of the business and necessary to meet the public demand for such “niche” businesses. Such public demand has led to the establishment of similar businesses in nearby jurisdictions that are not subject to the same comprehensive smoking ban that currently exists in South Bend. Smoking remains legal in the State of Indiana. This ordinance does not mandate any establishment to permit smoking. The additional exemptions established in this amended ordinance apply only to those establishments that voluntarily choose to permit smoking under the limited conditions provided for in the exemptions. The same or similar exemptions exist under Indiana statutes. Finally, the amendments add a severability clause to the City’s “Smoke Free Air Regulations for Workplaces and Public Places” to permit the ordinances to remain in effect in the event that any part of the ordinances is declared to be invalid for any reason.

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**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of South Bend, Indiana, as follows:

**SECTION I.** Article 13, Section 14-123 of the South Bend Municipal Code is amended to read in its entirety as follows:

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

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

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

*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 term includes, but is not limited to, taverns, nightclubs, and cocktail lounges.

*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.

*Cigar* means any roll of tobacco that has a wrapper or cover consisting only of tobacco, weighing more than four and one-half (4½) pounds per one thousand (1,000) and is sold without a filter.

*Cigarette* means:

- (1) Any roll for smoking containing tobacco wrapped in paper or in any substance other than tobacco leaf; or
- (2) Any roll for smoking containing tobacco wrapped in any substance, however labeled or named, which because of its appearance, size, the type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, purchased by, or consumed by consumers as a cigarette as defined above.

*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.

*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.

*Employer* means a person, business, association, municipal corporation, trust, or nonprofit entity that employs the services of one or more individual employees.

*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.

*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.

*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.

*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>

*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.

*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. § 501.

*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>

*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.

*Retail tobacco store* means a retail store:

- (1) utilized primarily for the sale of tobacco and tobacco-related products including, but not limited to, cigarettes, cigars, tobacco, pipes, cigarette paper, hookahs and lighters;
- (2) 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;
- (3) food or beverages are not sold in a manner that requires consumption on the premises, and there is not an area set aside for customers to consume food or beverages on the premises;
- (4) the owner or operator of the store holds a valid tobacco sales certificate issued under IC 7.1-3-18;
- (5) the store prohibits entry by an individual who is less than eighteen (18) years of age;
- (6) the sale of products other than tobacco products and tobacco accessories is merely incidental; and
- (7) the sale of tobacco products accounts for at least eighty-five percent (85%) of the store's annual gross sales.

A retail tobacco store does not include a tobacco department of a larger commercial establishment such as a grocery store, department store, discount store or hotel.

*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.

*Shopping mall* means a public walkway or hall area that serves to connect retail or professional establishments.

*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>

*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.

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

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

<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".

**SECTION II.** Article 13, Section 14-124 of the South Bend Municipal Code is amended to read in its entirety as follows:

**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;
- (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; and
- (w) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

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

**SECTION III.** Article 13, Section 14-127 of the South Bend Municipal Code is amended to read in its entirety as follows:

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

Notwithstanding the smoking prohibitions in Sections 14-124 and 14-125, smoking is permitted in the following locations:

- (a) Private residences, unless used as a licensed childcare, adult day care or health care facility;
- (b) A tobacco specialty bar that:
  - (1) prohibits entry by an individual who is less than twenty-one (21) years of age;
  - (2) is licensed to sell alcoholic beverages pursuant to a permit issued by the Indiana Alcohol and Tobacco Commission for on-premises consumption and in

which the service of food is only incidental to the consumption of such beverages and the sale of cigars or hookah materials;

(3) the business limits smoking in the establishment to cigar or hookah smoking;

(4) is not physically located within a business otherwise required to be smoke free;

(5) does not sell cigarettes or allow smoking of cigarettes on the premises; and

(6) posts in the establishment conspicuous signs that display the message that cigarette smoking is prohibited.

(c) A retail tobacco store.

(d) Any business that:

(1) is exempt from federal taxation under 26 U.S.C § 501(c);

(2) is a "club" as that term is defined by Ind. Code 7.1-3-20-7;

(3) holds a beer, liquor or wine retailer's permit under the laws of the state of Indiana; and

(4) provides food or alcoholic beverages only to its bona fide members and guests; and, in addition, sends notice to South Bend Department of Code Enforcement and the South Bend Police Department that through a majority - vote of its general membership at a formal meeting or ballot of same, has elected to allow smoking, and that it is otherwise entitled to an exemption under this section.

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 Section.

Any business claiming an exemption pursuant to this section shall provide to any enforcement agency listed in Section 14-132 within three (3) business days of demand, adequate written proof 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."

**SECTION IV.** Article 13, Section 14-134 is added to the South Bend Municipal to read in its entirety as follows:

**Sec. 14-134 Severability.**

If any part, section, subsection, paragraph, sentence, clause, or phrase of this ordinance is for any reason declared to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

**SECTION V.** Effective Date.

This ordinance shall be in full force and effect after its passage by the Common Council, approval by the Mayor, and publication as required by law.

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Karen L. White, President  
South Bend Common Council

**Attest:**

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Dawn M. Jones, City Clerk  
Office of the City Clerk

**Presented** by me, the undersigned Clerk of the City of South Bend, to the Mayor of the City of South Bend, Indiana on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_ o'clock \_\_. m

\_\_\_\_\_  
Dawn M. Jones, City Clerk  
Office of the City Clerk

**Approved and Signed** by me, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_ o'clock \_\_. m

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James Mueller, Mayor  
City of South Bend

