AN ORDINANCE OF THE COMMON COUNCIL ESTABLISHING
NON-SMOKING AREAS

WHEREAS, numerous studies have found that secondhand tobacco smoke is a cause of
diseases, including lung cancer and coronary heart disease, in non-smokers;

WHEREAS, young children are particularly susceptible to secondhand smoke, and secondhand
smoke is associated with an increased risk for sudden infant death syndrome, asthma, bronchitis,
and pneumonia in young children; and

WHEREAS, the United States Surgeon General has determined that the separation of smokers
and non-smokers within the same air space does not eliminate the exposure of non-smokers to
secondhand smoke; and

WHEREAS, a significant amount of secondhand smoke exposure occurs in the workplace, with
employees who work in smoke-filled businesses suffering a significant increase in the risk of heart
attack, cardiovascular disease and cancer, acute respiratory diseases, and a measurable decrease in
lung functions; and

WHEREAS, the City of Evansville Common Council finds and declares that the purpose of this
Ordinance is to protect the public health and welfare of its residents, including children and
workers, by prohibiting smoking in public places and places of employment located within the
City.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY
OF EVANSVILLE, INDIANA, AS FOLLOWS:

SECTION 1. AMENDMENT OF CHAPTER 9.80.

Chapter 9.80 shall be amended to read as follows:

Chapter 9.80 SMOKING PROHIBITED IN WORK PLACES AND IN PUBLIC PLACES.

9.80.01 Definitions
The following words and phrases, wherever used in this Chapter, shall be construed as defined herein:

"Business(es)" shall mean all sole proprietorships, partnerships, joint ventures, corporations, and other business entities, 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.

"City" shall mean the City of Evansville, Indiana.

"Employee(s)" shall mean all persons who are employed by an Employer in consideration for direct or indirect monetary wages or profit, and all persons who volunteer their services.

"Employer(s)" shall mean all persons, businesses, companies, partnerships, associations, municipal corporations, trusts, and not-for-profit entities that employ the services of one or more Employees.

"Employee Location(s)" shall mean all Enclosed Areas under the control of public or private Employers that Employees normally frequent during the course of their employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias, hallways, and vehicles.

"Enclosed Area(s)" shall mean all spaces closed in by roofs, ceilings, or other overhead coverings of any material, as well as by walls or other side coverings of any material on at least two (2) sides of same, with appropriate openings for ingress and egress.

"Health Care Facility(ies)" shall mean all offices and institutions providing care for or treatment of diseases, whether physical, mental, or emotional, or other medical, rehabilitation hospitals, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions, as well as all waiting rooms, hallways, private rooms, semi-private rooms, and wards within same.

"Public Place(s)" shall mean all Enclosed Areas, whether owned publicly or privately, to which the public is invited or in which the public is permitted.

"Retail Tobacco Store(s)" shall mean all retail stores that are not tobacco departments of larger commercial establishments (i.e., grocery stores, department stores, and discount stores) that:

1. Are utilized primarily for the sale of tobacco and/or tobacco-related products including, but not limited to, cigarettes, cigars, tobacco, pipes, cigarette paper, and lighters; and
2. Are not licensed for the consumption of meals or alcoholic beverages on the premises nor operated in conjunction with another Business that is licensed for the on-premises consumption of meals or alcoholic beverages; and
(3) Are a retail store in which the sale of tobacco and tobacco-related products accounts for 66% or more of the store’s gross sales.

“Service Line” shall mean any indoor line at which one (1) or more persons are waiting for or receiving services of any kind.

“Shopping Mall(s)” shall mean all enclosed public walkways or hall areas that serve to connect retail or professional establishments.

“Smoking” shall mean the carrying or holding of a lighted cigarette, cigar, pipe, or any other lighted smoking item or equipment containing tobacco or any other herbaceous material, or the inhalation or exhalation of smoke from the same, but does not include incense or the burning of incense.

“Sports Arena(s)” shall mean all sports pavilions, stadiums, athletic fields, gymnasiums, health spas, swimming pools, roller or ice rinks, bowling alleys, and other similar places where members of the public assemble to engage in physical exercise or recreation, participate in athletic competition, or witness sports or other events.

9.80.02 Smoking in Public Places and Employee Locations Prohibited

(A) Except as provided in Section 9.80.03 below, Smoking is prohibited in all Public Places within the City, including, but not limited to, the following:

(1) Elevators;
(2) Health Care Facilities;
(3) Laundromats;
(4) Licensed child care and adult care facilities;
(5) Lobbies, hallways, and all other common areas of apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities;
(6) Buildings containing Polling places;
(7) Public transportation facilities, including buses and taxicabs, and ticket boarding and waiting areas in public transit depots;
(8) Restrooms, lobbies, reception areas, hallways, and other common use areas;
(9) Service lines;
(10) Shopping Malls;
(11) Sports Arenas;
(12) All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public.

(B) Smoking is prohibited in all Employee Locations within the City. This Smoking prohibition shall be communicated by Employers to all existing Employees on or before the effective date of this Ordinance, and to all prospective Employees upon their application for employment.
Smoking is also prohibited within twenty five (25) feet outside any Enclosed Area where smoking is prohibited to ensure that tobacco smoke does not enter such Enclosed Area through entrances, windows, ventilation.

9.80.03 Exemptions

(A) The following establishments, areas and locations shall be exempt from the Smoking prohibitions set forth in Section 9.80.02 above:

(1) Private residences, except when used as licensed child care or adult day care facilities or as Health Care Facilities.

(2) Any vehicle used by an Employee while in the service of an Employer when the vehicle is occupied only by that Employee.

(3) Private vehicles when not being used in the service of an Employer.

(4) Hotel and motel rooms that are rented to guests and are designated as "smoking rooms," ; however, by January 2, 2010, no more than twenty percent (20%) of the rooms rented to guests in a hotel or motel may be designated as "smoking rooms."

(5) Retail Tobacco Stores.

(6) Private and semi-private rooms in nursing homes and long-term Health Care Facilities that are occupied by one (1) or more persons, all of whom have requested in writing to be placed in a room where smoking is permitted.

(7) Any bar or tavern that:
   (a) Holds a beer, liquor and/or wine retailer’s permit under the laws of Indiana; and
   (b) During all hours of operation, allows no customer to enter therein who is under the age of eighteen (18); and
   (c) Employs no person therein who is under the age of eighteen (18).

(8) Any Business (or club) that:
   (a) Is exempt from federal income taxation under 26U.S.C.501(c); and
   (b) Is a “club” as that term is defined in I.C. 7.1-3-20-1, or a “fraternal club” as that term is defined by I.C. 7.1-3-20-7.

(9) A designated area within a business, which meets the following requirements:
   (a) Is designated as a smoking area, and has a clear and conspicuous sign posted at every entrance to the area declaring it to be a smoking area and declaring that persons under the age of eighteen (18) are prohibited from entering said area; and
   (b) The area designated as a smoking area shall not be a Public Place.

(10) A designated area within a restaurant, bar, or tavern which meets the following requirements:
   (a) Is designated as a smoking area, and has a clear and conspicuous sign posted at every entrance to the area declaring it to be a smoking area; and declaring that persons under the age of eighteen (18) are prohibited from entering said area; and


(b) Allows no customers or employees under the age of eighteen (18) to enter the designated smoking area.

(c) The designated smoking area must be separated from the non-smoking area by the following means:

(i) The designated smoking area is an enclosed space within the business meaning that it is separated from non-smoking areas by solid walls and ceilings, and is accessed by a doorway or passageway that does not exceed 60 inches in width, and which was in place on or before June 19, 2007.

(11) Any outdoor area connected to a restaurant, bar, or tavern in which seating is provided.

(12) Any area within a business which contains a garage or automotive sales or service area, and which contains overhead doors and is authorized or equipped for handling of exhaust from motor vehicles.

(B) Any Business claiming an exemption pursuant to this Section shall provide to any City official, within two (2) business days from the date of demand, adequate written proof showing 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.

(C) All ashtrays and other Smoking paraphernalia shall be removed from all Public Places and Employee Locations where Smoking is prohibited by the owner, operator, manager or other persons having control of same.

(D) Notwithstanding any other provision of this ordinance, any owner, operator, manager, or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment.

9.80.04 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 that Employee, applicant, or customer has exercised any right afforded by this Section or reports or attempts to prosecute any violation of this Chapter.

Subchapter 2. - Administration and Enforcement

9.80.10 Enforcement

(A) This Chapter may be enforced by any of the following:
(1) The Executive Director of the Vanderburgh County Health Department or the designee(s) of said Director;
(2) Any person or Department designated by the Mayor.

(B) Any citizen who desires to register a complaint under this Chapter may do so through the office of the City Clerk.

(C) Owners, managers, and operators of Businesses, Public Places and/or Employee Locations regulated by this Chapter shall inform all persons located therein whom they observe Smoking in violation of this Chapter of the provisions of this Section, and shall ask such persons to refrain from Smoking in any area or location in which Smoking is prohibited.

(D) It shall be the obligation and duty of the owner, manager or operator of any bar or tavern that elects to be exempted from the provisions of this Chapter pursuant to Section 9.80.03 hereof, to ensure that no person(s) under the age of eighteen (18) are allowed to enter therein in violation of this Chapter.

9.80.11 Violations and Penalties

(A) Any person who engages in the act of Smoking in any Public Place, Employee Location or in any other establishment, area or location wherein Smoking is prohibited by this Chapter as well as any person who owns, manages, operates, or controls the same and who fails to comply with the provisions of this Chapter shall be subject to a fine not to exceed Fifty Dollars ($50.00) for the first violation of this Section in a calendar year, with all subsequent violations of this Section in the same calendar year being subject to a fine of not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00) for each such violation.

(B) In addition to the fines established by this Chapter, the violation of this Chapter by any person who owns, manages, operates, or controls any Public Place, Employee Location or any other establishment, area or location where Smoking is prohibited by this Chapter may result in the suspension or revocation of any permit or license issued to said person by the City for the premises in or on which the violation occurred.

(C) Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.

(D) If a judgment is entered against a defendant in an action to enforce this Chapter, the defendant may perform community restitution or service (as defined in I.C. 35-41-1-4.6) instead of paying the monetary judgment for the ordinance violation if
   (1) the defendant and the attorney for the City agree to the defendant’s performance of community restitution or service instead of the payment of a monetary judgment;
the terms of the agreement described in (1) above:
(a) include the amount of the judgment the city requests that the
defendant pay under I.C. 34-28-5-4(e) for the ordinance violation if
the defendant fails to perform the community restitution or service
provided for in the agreement as approved by the court; and
(b) are recorded in a written instrument signed by the defendant and the
attorney for the city;
(c) the agreement is filed in the court where the judgment was entered;
and
(3) the court approves the agreement.

If a defendant fails to comply with an agreement approved by a court hereunder, the
court shall require the defendant to pay up to the amount of the judgment requested
in the action under I.C. 34-28-5-4(e) as if the defendant had not entered into an
agreement hereunder. This provision is adopted under and shall be construed
consistent with I.C. 34-28-5-1(g).

This Chapter shall be construed broadly to effectuate the purposes described herein.

9.80.12  Severability

If any sections, sentence, or provision of this ordinance, or the application thereof to any
person or circumstances shall be declared invalid, such invalidity shall not affect any of the
other sections, sentences, provisions, or applications of this ordinance which can be given
effect without the invalid provision or application, and to this end the provisions of this
ordinance are deemed to be severable.

SECTION 2.  Effective Date. This Ordinance shall be effective January 2, 2007.
PASSED BY THE COMMON COUNCIL OF THE CITY OF EVANSVILLE, INDIANA ON THE 19 DAY OF JUNE, 2006, ON SAID DAY SIGNED BY THE PRESIDENT OF THE COMMON COUNCIL AND ATTESTED BY THE CITY CLERK.

B. J. WATTS, PRESIDENT COMMON COUNCIL OF THE CITY OF EVANSVILLE, INDIANA

ATTEST: Alberta Matlock

PRESENTED BY ME, THE UNDERSIGNED CITY CLERK OF THE CITY OF EVANSVILLE, INDIANA, TO THE MAYOR OF SAID CITY, THIS 20 DAY OF JUNE, 2006, AT 9:00 O'CLOCK A. M. FOR HIS CONSIDERATION AND ACTION THEREON.

ALBERTA MATLOCK, CITY CLERK CITY OF EVANSVILLE, INDIANA

HAVING EXAMINED THE FOREGOING ORDINANCE, I DO NOW, AS MAYOR OF THE CITY OF EVANSVILLE, INDIANA, APPROVE SAID ORDINANCE AND RETURN THE SAME TO THE CITY CLERK THIS 20 DAY OF JUNE, 2006, AT 4:30 O'CLOCK P. M.

JONATHAN D. WEINZAPFEL, MAYOR CITY OF EVANSVILLE, INDIANA

APPROVED AS TO FORM BY DAVID L. JONES, CORPORATION COUNSEL
MEMORANDUM OF PUBLIC WORKS COMMITTEE MEETING

CHAIRMAN: COUNCILMAN BAGBEBY

DATE: JUNE 19, 2006 5:00 P.M.

ORDINANCE G-2006-10 (amended) PUBLIC WORKS BAGBEBY & WALDEN
AN ORDINANCE OF THE COMMON COUNCIL ESTABLISHING NON-SMOKING AREAS

MOVED TO ACCEPT: DO PASS: DO NOT PASS:

SECONDED BY:

COMMENTS:

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VOTING: YES ___ NO ___ **STEVE BAGBEBY

YES ___ NO ___ JEFF KNISE

YES ___ NO ___ *KEITH JARBOE

YES ___ NO ___ *STEPHEN MELCHER

YES ___ NO ___ *JOE KIEFER

YES ___ NO ___ ANGELA KOEHLER WALDEN

YES ___ NO ___ CURT JOHN

YES ___ NO ___ CONNIE ROBINSON

YES ___ NO ___ *BJ. WATTS
MR. PRESIDENT:

YOUR COMMITTEE ON Public Works TO WHOM WAS REFERRED ORDINANCE/RESOLUTION G2006-10 WISHES TO RECOMMEND THE FOLLOWING ACTION BY COUNCIL.

DO PASS _________ DO NOT PASS _________

AMENDMENTS AS FOLLOWS:

Motion: [Name]
Second: [Name]

Motion: [Action] Verbatim County Ord. [Number] W/D
Second: [Name]

Motion: [Action] delete Amend [Number] in [Number]
Second: [Name]

Motion: [Action]
Second: [Name]

DATE 6/19/06

SIGNED [Signature]

CHAIRMAN [Name]