

**ALLEN COUNTY CODE TITLE 10
DEPARTMENT OF HEALTH**

**ARTICLE 8
SMOKING ORDINANCE**

10-6-1 Chapter 1: Definitions

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

10-8-1-1

"Bar" means any building, room or area used primarily for the sale of alcoholic beverages and in which the sale of food and the provision of entertainment is merely incidental to the sale of alcoholic beverages.

10-8-1-2

"Bowling Alley" means any building used primarily for bowling by the public.

10-8-1-3

"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.

10-8-1-4

"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.

10-8-1-5

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

10-8-1-6

"Enclosed Area" means all space closed in by a roof, ceiling, or other overhead covering of any material, and walls or other side coverings of any material on at least two sides with appropriate openings for ingress and egress.

10-8-1-7

"Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, 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. The term "Health Care Facility" shall include all waiting rooms, hallways, and wards within health care facilities.

(Amended 5-25-07 by Ordinance # 5-25-07-13)

10-8-1-8

"Place of Employment" means an Enclosed Area under the control of a public or private Employer that Employees normally frequent during the course of employment, including, but not limited to, work areas, Employee lounges, restrooms, conference rooms, meeting rooms, classrooms, Employee cafeterias and hallways.

10-8-1-9

"Municipality" means a city or town.

10-8-1-10

"Private Club" means a facility

- 1) owned or operated by an association or corporation, which shall:
 - i. not be operated for pecuniary gain; and
 - ii. 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
- 2) where entry into, and use of the facility is restricted to members and guests of members.

10-8-1-11

"Public Place" means an Enclosed Area, whether owned publicly or privately, to which the public is invited or in which the public is permitted. Public Place does not include private or semi-private rooms in Health Care Facilities that are occupied by one or more persons, all of whom have

requested in writing to be placed in a room where Smoking is permitted.
(Amended 5-25-07 by Ordinance # 5-25-07-13)

10-8-1-12

"Retail Establishment" means any enclosed establishment that sells goods, merchandise, articles, or services to the public, including, but not limited to, clothing stores, grocery stores, convenience stores, and enclosed shopping centers.
(Amended 5-25-07 by Ordinance # 5-25-07-13)

10-8-1-13

"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, 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; and (3) in which the sale of tobacco and tobacco-related products accounts for not less than 66% of the store's gross sales. "Retail Tobacco Store" does not include a tobacco department of a larger commercial establishment such as a grocery store, department store, or discount store.

10-8-1-14

"Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

10-8-1-15

"Smoking" means the carrying or holding of a lighted cigarette, cigar, pipe, or any other lighted Smoking equipment, or the inhalation or exhalation of smoke from any lighted Smoking equipment. "Smoking" does not include the burning of incense.

10-8-1-16

"Sports Arena" means sport pavilions, stadiums, athletic fields, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise or recreation, participate in athletic competition.

10-8-2 Chapter 2: Smoking in Public Places

10-8-2-1

Smoking shall be prohibited in Public Places and designated outdoor venues and all Places of Employment within the County and other Public Places similarly situated including, but not limited

to, the following places:

- (a) Elevators.

- (b) Businesses.
- (c) Licensed Child care and adult care facilities
- (d) Laundromats
- (e) Hallways, lobbies, and other enclosed common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (f) Health Care Facilities
- (g) Restaurants, including, but not limited to, restrooms, lobbies, hallways, dining areas, and other common-use areas.
- (h) Polling places.
- (i) Public transportation and public transportation facilities.
- (j) Retail Establishments
- (k) Shopping Malls.
- (l) Sports Arenas.
- (m) Within 20 feet from the entrance to a Public Place.

(Amended 5-25-07 by Ordinance # 5-25-07-13)

10-8-3 Chapter 3: Exceptions

The following establishments shall be exempt from the provisions of Section 10-8-2:

(Amended 5-25-07 by Ordinance # 5-25-07-13)

10-8-3-1

Private residences, except when used as a licensed child care, adult care, or Health Care Facility.

10-8-3-2

Hotel and motel rooms that are rented to guests and are designated as Smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated.

10-8-3-3

Retail Tobacco Stores

10-8-3-4

Private Club

10-8-3-5

Retail Establishments where admission is prohibited to anyone under the age of 21.

(Amended 5-25-07 by Ordinance # 5-25-07-13)

10-8-3-6

Bowling Alleys between the hours of 9:00 p.m. and 3:00 a.m. Sunday through Thursday.

10-8-4 Chapter 4: Posting Requirements

10-8-4-1

"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 chapter, by the owner, operator, manager or other person having control of such building or other area.

10-8-4-2

All ashtrays and other Smoking paraphernalia shall be removed from any area where Smoking is prohibited by this Chapter by the owner, operator, manager, or other person having control of the area.

10-8-4-3

Any establishment exempted, except private residences, shall post the following sign at the main entrance: "Warning: This is a Smoking Establishment."

10-8-5 Chapter 5: Violations and Enforcement

10-8-5-1

It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Chapter to fail to comply with any of its provisions.

10-8-5-2

It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Chapter to knowingly or willfully allow smoking to occur where prohibited by this Chapter. 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.

10-8-5-3

It shall be unlawful for any person to smoke in any area where Smoking is prohibited by the provisions of this ordinance.

10-8-5-4

Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Fort Wayne/Allen County Board of Health. In addition to employees of the Fort Wayne/Allen County Board of Health, sworn police officers and members of paid municipal fire departments are hereby authorized to enforce this ordinance within their respective municipalities.

10-8-5-5

An alleged violator may be issued a citation on either the Uniform Indiana Traffic Ticket form or the Allen County Parking Ticket form, or such other form as may be designated from time to time by the Board of Commissioners, indicating the time and place before which the alleged violator must appear to admit or deny violation of the ordinance and if admitting, pay the civil fine set forth hereinafter.

10-8-5-6

For the purposes of this ordinance, the Fort Wayne/Allen county Board of Health is designed the ordinance violations bureau (“Bureau”) and shall handle the processing of all citations for violations of this ordinance. The Bureau shall accept written appearances, waivers of trial, admissions of violations and payments of penalties as set forth hereinafter, all in accordance with I.C. 33-36-3-1 *et seq.*

(Amended 5-25-07 by Ordinance # 5-25-07-13)

10-8-5-7

If a person or business

- 1) denies violation of this ordinance;
- 2) fails to pay the civil penalty after admission of a violation; or
- 3) fails to appear within the time designated

which results in an enforcement action being brought against said person or business and said enforcement action results in an unfavorable decision against said person or business, said business or person shall be liable, in addition to the penalties set forth hereinafter, for the assessment of reasonable attorney’s fees and costs for bringing said action.

10-8-6 Chapter 6: Penalty

10-8-6-1

A Business entity which allows a violation of this ordinance or otherwise fails to comply with same shall be subject to a civil fine of up to \$250.00 per day per violation.

10-8-6-2

A person who violates this ordinance shall be subject to a civil fine of up to \$25.00 for a first violation, \$100.00 for a second violation and \$250.00 for each additional violation.

10-8-7 Chapter 7: Other Applicable Laws

10-8-7-1

This Article shall not be construed to permit Smoking where it is otherwise restricted d
supersede any local laws which are more restrictive.

10-8-8 Chapter 8: Non-Retaliation

10-8-8-1

No person or Employers shall discharge, refuse to hire or in any manner retaliate against any Employee, applicant for employment, or customer because such Employee, applicant, or customer exercises any right to a smoke free environment afforded by this ordinance.

10-8-9 Chapter 9: Severability

10-8-9-1

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

10-8-10 Chapter 10: Opt-Out

10-8-10-1

Any Municipality may opt out of the requirements of this ordinance for the territory under its jurisdiction by adopting an ordinance so stating and filing the same with the Board of Commissioners of the County of Allen. A municipality may elect to add exemptions to those allowed for the territory under its jurisdiction by adopting an ordinance so stating and filing same with the Board of Commissioners of the County of Allen and the Fort Wayne/Allen County Board of Health.

10-8-11 Chapter 11: Effective Date

10-8-11-1

This Ordinance shall become effective June 1, 2007

(Amended 12-6-06 by Ordinance #12-06-06-26)

[Ordinance # 11-22-06-25, passed 11 / 22 / 06]