

10/8/2007
8/16/2007

81-O-07

AN ORDINANCE

**Amending Various Sections of the
Evanston Clean Air Ordinance**

WHEREAS, the City of Evanston is a home rule unit of government under Article VII of the 1970 Illinois Constitution; and

WHEREAS, the City, as a home rule unit of government, has the authority to adopt ordinances and to promulgate rules and regulations governing smoking that protect the public health, safety, and welfare of its citizens; and

WHEREAS, the Evanston City Council adopted Ordinance 10-O-06, the "Clean Air Act – Smoking" (the "Ordinance"), codified as Title 8, Chapter 21 of the Evanston City Code of 1979, as amended ("City Code"); and

WHEREAS, Governor Blagojevich signed Public Act 095-0017, the "Smoke Free Illinois Act" (the "Act"), into law on July 23, 2007; and

WHEREAS, Section 65 of the Act states that:

any home rule unit of local government... may regulate smoking in public places, but that regulation must be no less restrictive than this Act. This subsection (a) is a limitation on the concurrent exercise of home rule power under subsection (i) of Section 6 of Article VII of the Illinois Constitution; ...

and

WHEREAS, various portions of the Ordinance, are in fact less restrictive than the Act; and

WHEREAS, at its September 17, 2007, meeting, the Human Services Committee considered amendments to the Ordinance that correspond to, if not exceed, the more restrictive provisions of the Act and recommended City Council approval thereof; and

WHEREAS, at its September 24, 2007, and October 8, 2007, meetings, the City Council considered, amended, and adopted the records and recommendations of the Human Services Committee, as amended,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Section 8-21-3 of the City Code is hereby further amended to read as follows:

8-21-3: DEFINITIONS:

The following words and phrases, whenever used in sections 8-21-4 through 8-21-9 of this chapter, shall have the following meanings:

ARCADE: A public place of amusement as defined in title 3, chapters 6 and 8 of this code, which contains automatic amusement devices and is not licensed to serve alcoholic liquor.

BUSINESS: Any sole proprietorship, partnership, joint venture, corporation, limited liability company or other business entity formed for profitmaking purposes, including, without limitation, 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.

EMPLOYEE: Any 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 for a nonprofit entity.

EMPLOYER: Any person, business, partnership, association, corporation, including, without limitation, a municipal corporation, trust, or nonprofit entity that employs the services of one or more individual persons.

ENCLOSED AREA: All space between a floor and a ceiling, that is enclosed or semienclosed with: a) solid walls or windows (exclusive of doorways), or b) solid walls with half wall partitions and no windows (exclusive of doorways) which extend from the floor to the ceiling, without limitation to lobbies and corridors.

ENCLOSED OR SEMIENCLOSED SPORTS ARENA OR RECREATIONAL AREA: Any sports pavilion, stadium, gymnasium, health spa, boxing arena, wrestling arena, swimming pool, roller and ice rink, bowling alley, and other similar places where members of the general public assemble either to engage in physical exercise, or participate in athletic competition or recreational activity, to witness sports, cultural, recreational or other events.

HEALTHCARE FACILITY: Any office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, without limitation, hospitals, rehabilitation hospitals, clinics, nursing homes, homes for the aging or chronically ill, retirement hotels, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semi private rooms and wards within health care facilities. This definition specifically excludes licensed long term care facilities.

PERFORMANCE ENTERTAINMENT VENUE: A commercial land use in which the principal activity is the provision of performance entertainment in a nontheatrical setting without a theatrical stage other than a raised platform or without fixed seating. A performance entertainment venue may or may not, subject to all applicable legislation, include the service of alcoholic liquor, and may or may not allow dancing. A performance entertainment venue is not an establishment in which the principal use is the service of prepared food and beverages and in which the land user provides entertainment as an accessory or incidental to the service of prepared food and beverages, nor is a performance entertainment venue a cultural facility in which performance entertainment is provided in a theatrical setting or with fixed seating.

A performance entertainment venue includes, without limitation:

- (A) Live music venues;
- (B) Venues for the provision of musical entertainment which is not live for compensation;
- (C) Dance or "DJ" (disc jockey) halls or clubs in which, for compensation, live or recorded musical entertainment is provided with or without a dance floor;

(D) Comedy clubs; and

(E) Rap clubs.

PLACE OF EMPLOYMENT: Any enclosed area under the control of a public or private employer that employees frequent during the course of employment, including, without limitation, work areas, employee lounges, restrooms, conference rooms, classrooms, employee cafeterias, hallways and vehicles. A private residence is not a "place of employment" unless it is used as a residential care home, a child residential care home, childcare, adult daycare, healthcare facility or home based business of any kind open to the public.

PRIVATE FUNCTION: A gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement or dining where membership or specific invitation is a prerequisite to entry and where the event is not intended to be open to the public.

PUBLIC PLACE: Any enclosed area to which the public is invited or in which the public is permitted, including, without limitation, banks, educational facilities, government buildings, healthcare facilities, laundromats, museums, public transportation facilities, reception areas, restaurants, bars/taverns, 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 residential care home, child residential care home, childcare, adult daycare, healthcare facility or home based business of any kind open to the public.

RESTAURANT: Any retail "food establishment," as that term is defined in section 8-8-2 of this title. The term "restaurant" shall include, if applicable, a restaurant bar area.

RESTAURANT BAR AREA: An area of a restaurant that is primarily devoted to the serving of alcoholic liquor.

RETAIL TOBACCO STORE: Any retail store utilized primarily for the sale of tobacco products and accessories, and in which the sale of other products is merely incidental and where no one under eighteen (18) is permitted. "Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.

SERVICE LINE: Any indoor line at which one or more persons are waiting for or receiving services of any kind, whether or not the service involves the exchange of money.

SHOPPING MALL: Any enclosed walkway or hall area that serves to connect retail or professional establishments.

SMOKE OR SMOKING: Inhaling, exhaling, or carrying any lighted and/or burning smoking materials. "Smoking" does not include the burning or carrying of incense in a religious ceremony or the use of matches or lighters for nonsmoking purposes. "Smoke" shall also mean the byproduct of the burning of any smoking materials.

SMOKING MATERIALS: Any cigar, cigarette, pipe, weed, plant or other organic substance grown, manufactured or processed which is intended to be used for smoking in any form. "Smoking materials" do not include candles, incense or other similar items.

SECTION 2: That Section 8-21-7 of the City Code is hereby further amended to read as follows:

8-21-7: WHERE SMOKING IS NOT REGULATED:

Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the provisions of Sections 8-21-5 and 8-21-6 of this Chapter:

- (A) Private residences, except when used as a licensed childcare, adult care facility, healthcare facility, or a home based business of any kind open to the public, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter.
- (B) Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms provided, however, that all smoking rooms on the same floor must be contiguous and smoke from these places must not infiltrate into areas where smoking is prohibited under the provisions of this Chapter. Not more than twenty five percent (25%) of the rooms rented to guests in a hotel or motel may be designated as rooms where smoking is allowed. The status of rooms as smoking or nonsmoking may not be changed, except to permanently add additional nonsmoking rooms.
- (C) Retail tobacco stores in operation prior to the effective date of Ordinance 81-O-07, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter. Any retail tobacco store that begins operation after the effective date of Ordinance 81-O-07 may only qualify for an exemption if the store is located in a freestanding structure, occupied solely by the business, and

smoke therefrom does not migrate into an enclosed area where smoking is prohibited.

- (D) Private clubs or lodges, as defined in section 5-2-1 of this Code.

SECTION 3: That Section 8-21-11 of the City Code is hereby further amended to read as follows:

8-21-11: VIOLATIONS AND PENALTIES:

- (A) A person who smokes in an area where smoking is prohibited by this Chapter shall be guilty of an infraction, punishable by a fine not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00).
 - 1. Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.
- (B) A person who owns, manages, operates or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Chapter shall be guilty of an infraction, punishable by:
 - 1. A fine of two hundred fifty dollars (\$250.00) for the first violation.
 - 2. A fine of five hundred dollars (\$500.00) for the second violation within one year of the first violation.
 - 3. A fine of two thousand five hundred dollars (\$2,500.00) for each additional violation within one year of the first violation and a sixty (60) day suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
 - 4. Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.

SECTION 4: That Title 8, Chapter 21 of the City Code is hereby further amended by adding a new Section 8-21-14 to read as follows:

8-21-14: POSTING OF SIGNS; REMOVAL OF ASHTRAYS:

- (A) "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it, shall be clearly and conspicuously posted in each public

place and place of employment where smoking is prohibited by this Chapter by the owner, operator, manager, or other person in control of that place.

- (B) Each public place and place of employment where smoking is prohibited by this Chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (C) All ashtrays 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.

SECTION 5: That Title 8, Chapter 21 of the City Code is hereby further amended by adding a new Section 8-21-15 to read as follows:

8-21-15: DESIGNATION OF OTHER NON-SMOKING AREAS:

Notwithstanding any other provision of this Chapter, any employer, owner, occupant, lessee, operator, manager, or other person in control of any public place or place of employment may designate a non-enclosed area of a public place or place of employment, including outdoor areas, as an area where smoking is also prohibited provided that such employer, owner, lessee or occupant shall conspicuously post signs prohibiting smoking in the manner described in 8-21-14 of this Chapter.

SECTION 6: That Section 8-21-16 of the City Code is hereby further amended to read as follows:

8-21-6: REASONABLE DISTANCE:

Smoking is prohibited within twenty five feet (25') of any entrances, exits, windows that open, ventilation intakes, or other means by which smoke may infiltrate into an enclosed area in which smoking is prohibited.

SECTION 7: That Section 8-21-9 of the City Code is hereby further amended to read as follows:

8-21-9: NONRETALIATION:

No individual may be discriminated against in any manner because of the exercise of any rights afforded by this Chapter.

SECTION 8: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 9: That if any provision of this Ordinance 81-O-07 or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance 81-O-07 that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

SECTION 10: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

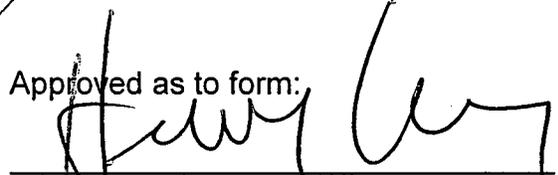
Introduced: September 24, 2007 Approved:

Adopted: October 8, 2007 October 9, 2007


Lorraine H. Morton, Mayor

Attest:

Mary P. Morris, City Clerk

Approved as to form:

Corporation Counsel