

**AN ORDINANCE AMENDING CHAPTER 11, HEALTH AND SANITATION,
OF THE URBANA CITY CODE IN RELATION TO SMOKING
IN PUBLIC PLACES AND PLACES OF EMPLOYMENT**

WHEREAS, it is recognized by the Urbana City Council, the scientific and medical community, the Surgeon General of the United States, and the United States Environmental Protection Agency that exposure to ambient smoke in enclosed environments has been shown to constitute a significant health risk to anyone exposed to such smoke; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, and is particularly hazardous to elderly people, individuals with cardiovascular disease, impaired respiratory function, as well as increasing the risk of heart attack, stroke, respiratory disease, lung cancer, and numerous health problems in children; and

WHEREAS, there is no safe level of exposure to secondhand smoke, and a recently promulgated American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Position Document on Environmental Tobacco Smoke concludes that at present, the only means of eliminating health risks associated with indoor exposure is to ban all smoking activity; and

WHEREAS, the purpose of this Ordinance is to protect the public health, comfort and environment by prohibiting smoking in public places and places of employment; and

WHEREAS, the Urbana City Council held a public hearing, and public study session on a draft no-smoking proposal and determined that the public health, life and safety of the citizens of Urbana requires the enactment of substantial changes to the Health and Sanitation Code of the City of Urbana, in regard to prohibitions on smoking in public places and places of employment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That Chapter 11, Article III entitled "Smoking" is hereby repealed.

Section 2. That the following is enacted as Chapter 11, Article III, of the Urbana Code of Ordinances:

"Chapter 11 HEALTH AND SANITATION

Article III. SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

Sec. 11-32. Purpose.

The purpose of this article is to protect the public health, comfort and environment by prohibiting smoking in public places and places of employment.

Sec. 11-33. Definitions.

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

"Bar" means an establishment that is primarily devoted to the serving of alcoholic beverages and which is licensed by the City of Urbana pursuant to Chapter 3, Article III of the Urbana City Code.

"Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including 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" means any person who is employed by any employer for direct or indirect monetary wages or profit or other compensation, including those employed full-time, part-time, on a temporary basis, or by contract through a third party.

"Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.

"Enclosed area" means all space in any structure, or portion thereof, located between a floor and ceiling that is enclosed or semi-enclosed on three or more sides or totally enclosed on all sides by walls, windows, doorways, or combinations thereof which extend from the floor to the ceiling.

"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 or other clinics, including 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. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

"Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is a "place of employment" when it is used as a child care, adult day care, health care facility, or any home-based business open to the public or having employees.

"Private club" means, a facility whether incorporated or not, which:

(1) the owner, lessee, or occupant of a building or portion thereof, is used exclusively for club purposes at all times;

(2) is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, -- but not for pecuniary gain;

(3) where the sale of alcoholic beverages is incidental to its operation.

(4) consists of a membership:

(i) Where 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,

(ii) Where the organization has established bylaws and/or a constitution to govern its activities,

(iii) Where the organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501,

(iv) Where entry into, and use of the facility is restricted to members and guests of members.

Private clubs shall be considered "places of employment" if they employ paid staff, but shall not be considered places of employment for the purpose of this article if they employ only volunteer staff and serve only club members.

"Public place" means any enclosed area to which the public is invited or in which the public is permitted.

"Restaurant" means any eating establishment which gives or offers for sale food to the public, guests, students, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. The term "restaurant" shall include a bar area within the restaurant.

"Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

"Service line" means any walk-up line at which one or more persons are waiting for or receiving service, entry, or transaction of any kind, whether

or not such service involves the exchange of money.

"Smoking" means inhaling, exhaling, burning or carrying any lighted or burning cigar, cigarette, pipe, hookah pipe, pipe weed, or other lighted tobacco product, in any manner or in any form.

"Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

"Tobacco" means any substance containing tobacco leaf, including but not limited to, any cigar, cigarette, leaf tobacco, pipe tobacco or tobacco in any of its forms.

Sec. 11-34. Application of city-owned facilities.

All enclosed facilities owned, leased, or operated by the City of Urbana shall be subject to the provisions of this chapter including city vehicles.

Sec. 11-35 Prohibition of smoking in public places.

No person shall smoke within the enclosed areas containing the following public places within the City of Urbana:

- (1) Establishments required to be licensed on an annual basis for the sale of alcoholic beverages.
- (2) Restaurants, private clubs, betting establishments;
- (3) Galleries, libraries, museums, and other similar attractions;
- (4) Healthcare facilities;
- (5) Any facility which is used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, including their backstage and dressing room areas;
- (6) Lecture halls, auditoriums, and classrooms;
- (7) Day care centers, nursery schools, elementary schools, high schools, universities and community colleges, technical training establishments and specialty schools;
- (8) Polling places;
- (9) Restrooms, lobbies, reception areas, hallways and any other common-use areas;
- (10) Places where public meetings are held;
- (11) Sports arenas and convention halls;
- (12) Grocery stores, supermarkets, retail stores, including areas where merchandise is exposed, stored, or warehoused;
- (13) Buses, taxicabs, and other means of public transit under the authority of the City, or church, private school, or transportation

service, and any ticketing, boarding, and waiting areas of public transit depots;

(14) Elevators;

(15) Service lines;

(16) All areas available to and used by the public in all businesses and non-profit entities patronized by the public;

(17) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

(18) Bowling centers;

(19) Places of employment as defined herein.

(20) Outside areas as set forth in Section 11-36.

Sec. 11-36. Smoking in Outside areas.

Sec. 11-36. Smoking in Outside areas.

(a) Smoking is prohibited within six (6) feet of any entrance, exit, open window, or air intake vent of any prohibited area set forth in Section 35.

(b) Outdoor service areas of licensed food service establishments, outdoor cafes, establishments holding licenses for the sale of alcoholic liquor, and private clubs open to the public shall offer designated smoking and non-smoking areas which are clearly posted with appropriate signage.

Sec. 11-37. Allowable Smoking Areas.

(a) Notwithstanding any other provision of this Article to the contrary, the following areas shall not be subject to the smoking restrictions:

(1) Private residences, except when used as a child care, adult day care, health care facilities, or any home-based business open to the public or having employees;

(2) Twenty percent of hotel and motel rooms rented to guests; All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms. Smoking and non-smoking rooms shall be clearly marked on or next to their entrances.

(3) Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.

(4) Stage productions, where a cast member smokes as part of a role in a live theatrical performance.

(5) Private and semi-private rooms in a long term care nursing home or private facility occupied by one or more persons who are smokers and who

request in writing to be placed in rooms where smoking is permitted, and which meets all the criteria for hotel and motel rooms rented to guests as smoking designated rooms, in accordance with Section 11-37, (a), above.

(6) Private vehicles, not including public transportation or government vehicles;

(7) Smoking as part of a bona fide religious ceremony;

(8) Smoking in a health care facility if such smoking is part of any therapeutic treatment plan required by the health care provider;

Sec. 11-38. Obligations of Employers and Owners.

(a) No employer, owner, occupant or lessee, as the case may be, in control of a public place shall knowingly permit smoking in any enclosed area as delineated in Section 11-35.

(b) Each employer, owner, occupant or lessee, as the case may be, in control of a place where smoking is prohibited under Section 11-35 shall request any person who smokes in an area where smoking is prohibited to refrain from smoking, and if the person continues to smoke, request the person to leave and use other means which may be appropriate to obtain compliance.

(c) Each employer, owner, occupant or lessee, as the case may be, in control of a place where smoking is prohibited under Section 11-35 shall notify employees regarding the requirements of this article.

Sec. 11-39. Public Notice and Removal of Paraphernalia.

Each owner, lessee, occupant, employer, or other person in control of a place where smoking is prohibited under Section 11-35 shall be responsible for doing the following:

(a) Posting conspicuous signs in the enclosed spaces or the entrance or vestibule to the public place, place of employment, or the building where they are located, where smoking is prohibited under Section 11-35, bearing the text "No Smoking" or the international "No Smoking" symbol, which consists of a pictorial representation of a cigarette enclosed in a circle with a bar across it.

(b) Removing all smoking paraphernalia from areas where smoking is prohibited, and providing a means of disposing of smoking materials at the entrance of all public buildings, courtyards, and areas covered by this Article.

(c) Notifying employees regarding the requirements of this Article.

Sec. 11-40. Declaration of Establishments as Non-Smoking.

Notwithstanding any other provision of this Article III, any owner, occupant, lessee, operator, manager, or other person in control of any public place or place of employment may designate any area of the public place or place of employment, including outdoor areas, as an area where smoking is prohibited provided that such employer, owner, lessee or occupant shall

conspicuously post signs prohibiting smoking in the manner described in Section 11-39(a) of this Article.

Sec. 11-41. Enforcement.

(a) Notice of the provisions of this Article shall be given to all applicants for a Fire Prevention Permit in the City of Urbana.

(b) Any citizen who desires to register a complaint under this Article may notify the Champaign-Urbana Public Health District or appear in person at the City of Urbana Police Department, 400 South Vine, Urbana, to register a complaint, which shall be forwarded to the Public Health District for further action.

(c) The Fire Department and the Community Development Department may, while an establishment is undergoing an otherwise mandated inspection, inspect for compliance with this Article.

(d) An employer, owner, lessee, manager, operator or employee of an establishment regulated by this Article shall inform persons violating this Article of the provisions thereof and request compliance.

Sec. 11-42. Public education.

The City and its designees shall engage in programs to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such programs may include publication of a brochure for affected businesses and individuals explaining the provisions of this Article.

Sec. 11-43 Nonretaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. An employee who works in a setting 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. 11-44. Violations and penalties. Violations of this Article III shall be subject to the general penalty provisions of Section 1-18 of the Urbana City Code with minimum fines as provided by Chapter 11 in Section 1-18 for other offenses. The City shall be responsible for the prosecution of violations forwarded by the Public Health District.

Section 3. Other applicable laws. This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 4. Liberal construction. This Article shall be liberally construed so as to further its purposes.

Section 5. 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 6. Effective Date. This Article shall be effective August 1, 2006 for all establishments herein with the exception of bars, which shall be effective January 1, 2007.

Section 7. Publishing. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

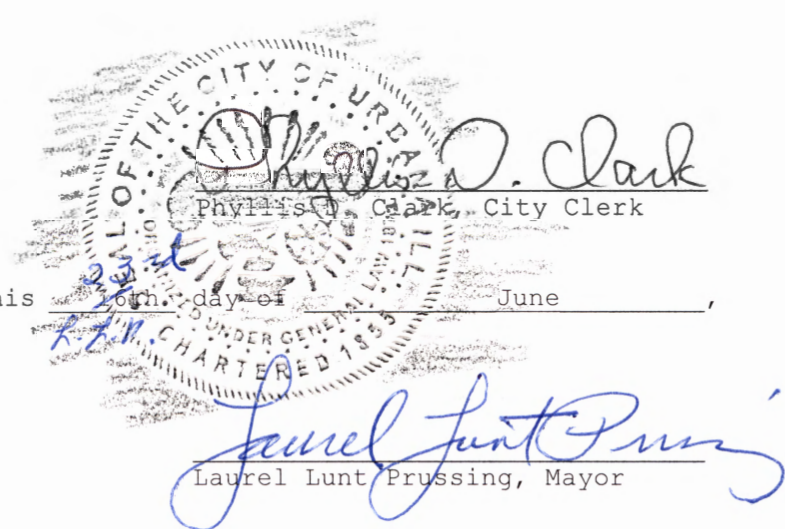
PASSED by the City Council this 5th day of June,
2006 .

AYES: Barnes, Bowersox, Chynoweth, Lewis, Roberts, Smyth

NAYS: Stevenson

ABSTAINS:

APPROVED by the Mayor this 7th day of June,
2006 .



Phyllis D. Clark
Phyllis D. Clark, City Clerk

Laurel Lunt Prussing
Laurel Lunt Prussing, Mayor