(passed 8-1 (Banach))

ORDINANCE 03-06
TO AMEND TITLE 6 ENTITLED "HEALTH AND SANITATION" IN ORDER TO REPEAL AND REENACT CHAPTER 6.12 ENTITLED "SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT"

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, including lung cancer, in nonsmokers; and

WHEREAS, at special risk are children, elderly people, individuals with cardiovascular disease, and individuals impaired with respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, health hazards induced by breathing second-hand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and broncho-spasm; and

WHEREAS, the City of Bloomington Common Council finds and declares that the purposes of this ordinance are to protect the public health and welfare by prohibiting smoking in public places and places of employment;

NOW, THEREFORE BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Chapter 6.12 of the Bloomington Municipal Code, entitled "Smoking in Public Places" shall be repealed and reenacted and bear the following title: Chapter 6.12 "Smoking in Public Places and Places of Employment"

SECTION 2. Section 6.12.010 entitled "Definitions" shall read as follows:

6.12.010 Definitions

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

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

"Bars with Lawful, Preexisting Designated Smoking Areas" means any business which:
(a) is solely open to patrons and employees who the law requires to be at least eighteen (18) years of age; and,
(b) was in operation or had commenced construction before July 1, 1994, and has not ceased to operate for at least six (6) months, changed location, or changed ownership after that date.

"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, 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 between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

"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 not a "place of employment" unless it is used as a child care, adult day care or health care facility.

Private Club means a facility:

(a) owned or operated by an association or corporation, which shall:

(1) not be operated for pecuniary gain; and

(2) consist of a membership:

(i) formed as a lodge, local chapter, or corresponding unit of a fraternal order recognized on a national basis; or

(ii) comprised of persons who have served in the armed forces of the United States; or

(iii) 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

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

"Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a "public place."

"Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

"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. The term does not include retail stores where food or beverages are sold for consumption on the premises or where an area has been set aside on the premises for customers to consume food or beverages.

"Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance 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.

SECTION 3. Section 6.12.020 entitled "Application of City-Owned Facilities" shall read as follows:

6.12.020 Application of City-Owned Facilities

All enclosed facilities owned by the City of Bloomington shall be subject to the provisions of this chapter including city vehicles.

SECTION 4. Section 6.12.030 entitled "Prohibition of Smoking in Public Places" shall read as follows:

6.12.030 Prohibition of Smoking in Public Places

a) Smoking shall be prohibited in the following public places and other public places similarly situated, including, but not limited to, the following areas:

(1) Elevators

(2) Restrooms, lobbies, reception areas, hallways and any other common-use areas.

(3) Buses, taxicabs, and other means of public transit under the authority of the City of Bloomington, and ticket, boarding, and waiting areas of public transit depots.

(4) Service lines

(5) Retail stores

(6) All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public.

(7) Restaurants, bars, and private clubs, except as provided for in Section 6.12.060 (b).

(8) Public areas of aquariums, galleries, libraries, and museums.

(9) Any facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a theatrical production.

(10) Sports arenas and convention halls, including bowling facilities.

(11) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.

(12) Hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices.

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

(14) Polling places

(15) Places of employment

(16) The following outdoor areas:

(A) Seating provided by eating establishments and bars,

(B) Within courtyards and other areas where air circulation may be impeded by architectural, landscaping or other barriers,

(C) Any place where people are using or waiting for a service, entry, or a transaction, including but not limited to ATM's, bank teller windows, telephones, ticket lines, bus stops and cab stands,

(D) Any place where food and/or drink is offered for sale.

(17) Private functions in other public places like bars, restaurants, hotels, and motels.

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

SECTION 5. Section 6.12.040 entitled "Policies Regarding Smoking in Places of Employment" shall read as follows:

6.12.040 Policies Regarding Smoking in Places of Employment

(a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.

(b) Within 120 days of the adoption of this chapter, each employer having an enclosed place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles with more than one occupant, and all other enclosed facilities.

(c) The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

(d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

SECTION 6. Section 6.12.050 entitled "Reasonable Distance" shall read as follows:

6.12.050 Reasonable Distance

Smoking shall occur at a reasonable distance outside any area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means. It shall be a violation for smoke to be detected in any area where smoking is prohibited.

SECTION 7. Section 6.12.060 entitled "Where Smoking Not Regulated" shall read as follows:

6.12.060 Where Smoking Not Regulated

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

(1) Private residences, except when used as a child care, adult day care or health care facility.
(2) Twenty-five percent (25%) of hotel and motel rooms rented to guests.
(3) Retail tobacco stores.

(b) Bars with lawful, preexisting designated smoking areas and private clubs shall not be subject to the smoking restrictions of this chapter until January 1, 2005. These businesses and entities shall lose their designated smoking areas before that time if, after passage of this ordinance, they cease to operate for at least six (6) months, change location, change their name, or change ownership.

(c) Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

SECTION 8. Section 6.12.070 entitled "Posting Signs - Removing of Paraphernalia" shall read as follows:

6.12.070 Posting of Signs - Removing of Paraphernalia

(a) "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.

(b) Every public place 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 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 such area.

SECTION 9. Section 6.12.080 entitled "Enforcement" shall read as follows:

6.12.080 Enforcement

(a) Enforcement of this chapter shall be implemented by the Mayor's Office, or his or her designee(s).

(b) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the department or positions designated by the Mayor's Office.

(c) Upon finding that any provision of this chapter has been violated, the enforcement designee(s) shall issue a Notice of Violation (NOV) to the person(s) responsible for the violation. The NOV shall be in writing and shall be served upon the person(s) responsible for the violation by one or more of the following methods: delivery in person or first class mail. The NOV shall state:

(1) The location of the violation;
(2) The nature of the violation;
(3) The fine assessed for the violation;
(4) That the fine is paid at the City Legal Department; and
(5) That the fine may be contested in the Monroe County Circuit Courts.

SECTION 10. Section 6.12.090 entitled "Violations and Penalties" shall read as follows:

6.12.090 Violations and Penalties

(a) 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.

(b) 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.

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

(d) Any person who violates any provision of this chapter shall be subject to a fine of one hundred dollars ($100) for each violation of this chapter, which shall be processed through the ordinance violations bureau established by Chapter 2.27 of the Bloomington municipal code. If, after multiple violations by the same person or at the same business, the City Legal Department has reason to believe that the fines will not be effective in enforcing this chapter, then the City Legal Department shall be empowered to seek any other remedies provided by law.

SECTION 11. Section 6.12.100 entitled "Public Education" shall read as follows:

6.12.100 Public Education

The City may engage in programs to explain and clarify the purposes and requirements of this chapter 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 chapter.

SECTION 12. Section 6.12.110 entitled "Other Applicable Laws" shall read as follows:

6.12.110 Other Applicable Laws

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

SECTION 13. 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 declared to be severable.

SECTION 14. Aside from Section 6.12.040(Policies Regarding Smoking in Places of Employment) and Section 6.12.060, Part (b), (Where Smoking Not Regulated), the provisions of this ordinance shall take effect on August 1, 2003.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this ~~26th~~ 27th day of ~~MARCH~~ MARCH, 2003.
27th day of March, 2003 at 1:45 PM.
RMJ 3/27/03

CHRIS GAAL, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 27th day of MARCH, 2003.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 27th day of March, 2003.

JOHN FERNANDEZ, Mayor
City of Bloomington

Signed copies to:
legal (5) file
mayor CA/CA(2)
BMC file

Synopsis

This ordinance is sponsored by Councilmember Pizzo and would prohibit smoking in all enclosed public places and places of employment.

Note: Numerous sections of this ordinance were revised after the packet was released and before the ordinance was introduced. Changes to Section 2 (Definitions), Section 4 (Prohibition) and Section 7 (Where Smoking Not Regulated) define and exempt private clubs from these regulations. The change in Section 9 removed language that allowed for the citation to be posted at a conspicuous location on the premises. The change in Section 10 adds the words "reasonable and" before the words "timely fashion" in the second sentence of part (b) of that provision.

Note: On March 26, 2003, the Council adopted the ordinance by a vote of 8-1, with three amendments. Amendment 10 was adopted by a vote of 5-4, which delayed the smoking regulations for bars with existing designated smoking areas as well as private clubs until January 1, 2005. Amendment 2 was adopted by a vote of 8-1, which delayed the effective date of most of the provisions from July , 2003, to August 1, 2003. And, Amendment 8 was adopted by a vote of 5-4, which prohibited smoking in all city vehicles (whether or not occupied by more than one person).