

## ORDINANCE 1780

### AN ORDINANCE ADOPTING SMOKE FREE AIR REGULATIONS FOR WORKPLACES AND PUBLIC PLACES

**WHEREAS**, the Town Council of the Town of Munster is the municipal legislative body of the unit; and

**WHEREAS**, with the passage of time various ordinances, codes, procedures of the Town of Munster must be amended; and

**WHEREAS**, with the passage of time various practices, policies and procedures must be updated; and

**WHEREAS**, the Town Council desires to adopt smoke free air regulations for workplaces and public places.

Now, therefore, be it **ORDAINED** by the Town Council of the Town of Munster, Lake County, Indiana as follows:

#### ARTICLE 13. - SMOKE FREE AIR REGULATIONS FOR WORKPLACES AND PUBLIC PLACES

##### Article 1- Definitions.

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

*Ashtray* means any receptacle that is used for disposing of smoking materials, including, but not limited to ash and filters.

*Bar* means an establishment used primarily for the sale of alcoholic beverages for consumption by patrons on the premises and which holds a retailer's permit under the laws of the State of Indiana. The term includes, but is not limited to, taverns, nightclubs, and cocktail lounges.

*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.

*Electronic smoking device* means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, stig, or vape pen or under any other product name or descriptor.

*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.

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

*Enclosed area* means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

*Health care facility* means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals, addiction treatment hospitals and facilities, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. The term "Health Care Facility" shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within healthcare facilities.

*Hookah* means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

*Place of employment* means an area under the control of a public or private employer including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles.

*Playground* means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on Munster grounds.

*Private club* means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. 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. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

*Public place* means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, 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 childcare, adult day care, or health care facility.

*Restaurant* means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which

food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

*Service line* means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

*Shopping mall* means a public walkway or hall area that serves to connect retail or professional establishments.

*Smoking* means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookah and marijuana, in any manner or in any form. "Smoking" also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

*Sports arena* means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

#### Article 2- Prohibition of smoking.

Except as provided in Article 5, smoking shall be prohibited in all enclosed public places within the Town of Munster including but not limited to, the following places:

- (a) Aquariums, galleries, libraries, and museums;
- (b) Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments;
- (c) Bars;
- (d) Bingo facilities;
- (e) Child care and adult day care facilities;
- (f) Convention facilities;
- (g) Educational facilities, both public and private;
- (h) Elevators;
- (i) Gaming facilities;
- (j) Health care facilities;
- (k) Hotels and motels;

- (l) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
- (m) Polling places;
- (n) Private clubs;
- (o) Public transportation vehicles, including buses and taxicabs, under the authority of the Town of Munster, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities;
- (p) Restaurants;
- (q) Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- (r) Retail stores;
- (s) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the Town of Munster, Indiana or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the Town of Munster, Indiana;
- (t) Service lines;
- (u) Shopping malls;
- (v) Sports arenas, including enclosed places and outdoor arenas;
- (w) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances;
- (x) Tobacco specialty bars; and
- (y) Tobacco retail stores.

### Article 3 - Prohibition of smoking in enclosed places of employment.

- (a) Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- (b) The prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

#### Article 4 - Reasonable distance.

Smoking shall be prohibited outdoors within a reasonable distance of fifteen (15) feet outside entrances, open windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.

#### Article 5 - Exemptions.

Notwithstanding the smoking prohibitions in Article 3, smoking is permitted in the following locations:

- (a) Private residences, unless used as a licensed childcare, adult day care or health care facility.
- (b) None of the areas set forth in this Article shall be exempt from the provisions of this Article if smoke from any area enters, either directly or indirectly, through entrances, windows, ventilation systems, or other means, where smoking is otherwise prohibited by this Article.

#### Article 6 - Prohibition of smoking in outdoor public places.

Smoking shall be prohibited in the following outdoor places:

- (a) Outdoor seating areas of restaurants, bars, private clubs, and businesses except those seating areas restricted to individuals over the age of eighteen (18) years of age;
- (b) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in and within fifteen (15) feet of bleachers and grandstands for use by spectators at sporting and other public events;
- (c) Within fifteen (15) feet of all outdoor playgrounds; and
- (d) In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multi-unit residential facilities, except in designated smoking areas, not to exceed twenty-five (25) percent of the total outdoor common area, which must be located at least fifteen (15) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

#### Article 7 - Removal of smoking paraphernalia and signage requirements.

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

An owner, operator, manager, or official in charge of a public place or place of employment, except vehicles, shall post conspicuous signs at each outdoor entrance that read "The Town of Munster Prohibits Smoking Within 15 Feet of this Entrance".

#### Article 8 - Declaration of establishment as nonsmoking.

Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that the entire establishment, facility, or outdoor areas are a smoke free place.

#### Article 9 - Non-retaliation and non-waiver of rights.

- (a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance. Notwithstanding Article 11, violation of this subsection shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) for each violation.
- (b) An employee who works in an outdoor area restricted to individuals over the age of eighteen (18) years of age 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.

#### Article 10 - Enforcement.

(a) The Town of Munster Code Enforcement and the Town of Munster Police Department shall enforce this Ordinance.

(b) Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the Town of Munster.

(c) Any citizen who desires to register a complaint under this Ordinance may register it with the Code Enforcement Department.

(d) An owner, manager, operator, or employee of an establishment regulated by this Ordinance, shall inform person(s) in violation of the appropriate provisions thereof and shall ask those persons to refrain from smoking. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator or employee shall contact a law enforcement agency.

(e) In addition to the remedies provided by the provisions of this Article, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

#### Article 11 - Penalties for violations.

Any owner, manager, operator, or other person in control of an establishment, facility, or outdoor area found to be in violation of this Ordinance shall, when found to be in violation be fined as follows:

- (a) The issuance of a verbal and written warning for the first (1<sup>st</sup>) violation.
- (b) A fine of two hundred dollars (\$200.00) for the second (2<sup>nd</sup>) violation within the same calendar year.
- (c) A fine of four hundred dollars (\$400.00) for the third (3<sup>rd</sup>) violation within the same calendar year.
- (d) A fine of eight hundred dollars (\$800.00) for the fourth (4<sup>th</sup>) violation within the same calendar year.

- (e) A fine of one thousand five hundred dollars (\$1,500.00) for each additional violation occurring thereafter within the same calendar year.
- (f) Repeated violation of this Ordinance is declared to be a public nuisance, which may be abated by the Town of Munster seeking a restraining order, preliminary and permanent injunction, or other means provided for by law, and may bring action to recover the costs of the nuisance abatement.
- (g) The Town of Munster is authorized to bring civil action against any alleged violator of this Ordinance for all unpaid fines, and any and all expenses incurred by the City to enforce the provisions of this Ordinance to seek compliance from the alleged violator.
- (h) Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation. Each violation of this Ordinance shall constitute a separate offense.

Now, therefore, be it **ORDAINED** that the above-referenced Ordinance adopting smoke free air regulations for workplaces and public places are hereby enacted.

**ORDAINED and ADOPTED** by the Town Council of the Town of Munster, Indiana, on the \_\_\_\_ day of October 2019, by a vote of \_\_\_\_ in favor and \_\_\_\_ opposed.

**TOWN COUNCIL OF THE TOWN OF MUNSTER,  
LAKE COUNTY, INDIANA**

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**Dr. Andy Koultourides, President**

**ATTEST:**

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**David F. Shafer, IAMC, CMC, Clerk-Treasurer**