



Board of Commissioners of Cook County

118 North Clark Street
Chicago, IL

Legislation Text

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PROPOSED ORDINANCE

TRANSFERRING SMOKING BAN FROM ENVIRONMENTAL CONTROL TO PUBLIC HEALTH

BE IT ORDAINED, by the Cook County Board of Commissioners, that Chapter 38, Health and Human Services, Article VII, Clean Indoor Air of the Cook County Code is hereby enacted as Follows:

ARTICLE VII. - CLEAN INDOOR AIR

DIVISION 1. - COUNTY CLEAN INDOOR AIR ORDINANCE

Sec. 38-201. - Title.

This division shall be known as the "Cook County Clean Indoor Air Ordinance."

Sec. 38-202. - Interpretation with other laws.

Nothing in this division supersedes any existing elimination of smoking that is already covered by fire code restrictions.

Sec. 38-203. - Definitions.

The following words and phrases, wherein used in this division, shall have the following meanings:

Arcade means a place of amusement, which contains four or more automatic amusement devices and is not licensed to serve alcoholic liquor.

Bar/tavern means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests and patrons on the premises and does not have an on-site kitchen to prepare food. Food service is limited to providing snack items or commercially prepared or wrapped foods that require no preparation.

Business means any sole proprietorship, partnership, joint venture, corporation, limited liability company or other business entity formed for profit-making 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.

Cook County facilities or *County facilities* means all Cook County owned or leased facilities, including, without limitation, Cook County facilities housing administrative offices, courthouses, detention facilities, clinics, hospitals, jails, storage facilities, garages and field locations.

Electronic cigarette means any electronically activated device which in operation causes the user to exhale any smoke, vapor, or other substance other than those produced by unenhanced human exhalation. "Electronic Cigarette" includes any device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or under any other product name or descriptor. The term "electronic cigarette" does not include any asthma inhaler or other device that has been specifically approved by the

United States Food and Drug Administration.

Employee means 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 means 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 means all space between a floor and ceiling that is enclosed or semi-enclosed with (i) solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling, or (ii) solid walls with half wall partition and no windows (exclusive of doorways) without limitation to lobbies and corridors.

Health-care facility means any office or institution providing medical care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including without limitation hospitals, clinics, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists and all specialists within these professions. The 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 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 childcare, adult day care, health care facility, or home-based business of any kind open to the public.

Public place means any enclosed area to which the public is invited or in which the public is permitted, including without limitation banks, educational facilities, government buildings (excluding County Facilities), health care 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 childcare, adult daycare, health care facility, or home-based business of any kind open to the public.

Private club or lodge means any not-for-profit association that: (i) has been in active and continuous existence for at least three years; and (ii) has a membership roll of more than 50 bona fide members who pay membership dues on an annual or other periodic basis. For purposes of this section bona fide members do not include members who pay membership dues at the time of an amusement produced, presented or conducted by the club or lodge or in conjunction with contracting for production, presentation or conduct of an amusement by the club, as a condition to entering the premises where the amusement is produced, presented or conducted.

Private function means 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.

Restaurant means an eating establishment, including without limitation coffee shops, cafeterias, sandwich shops, and private and public school cafeterias that 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 restaurant bar area.

Restaurant bar area means an area of a restaurant that is primarily devoted to the serving of alcoholic liquor.

Retail tobacco store means 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 18 is permitted.

Secondhand smoke or involuntary smoking is a mixture of the smoke given off by the burning ends of a cigarette, pipe, cigar, bidis, and kreteks (sidestream smoke) and the smoke emitted at the mouthpiece and exhaled from the lungs of smokers (mainstream smoke).

Service line means 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 means any enclosed walkway or hall area that serves to connect retail or professional establishments.

Smoke or smoking for the purposes of this division, means either:

- (1) The carrying, smoking, burning, inhaling, or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, or other lighted tobacco product in any manner or in any form; or
- (2) The use of any electronic cigarette.

Tobacco product for the purposes of this division, means any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from tobacco, which product is intended to enable human consumption of the tobacco or nicotine, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by other means. The term "Tobacco products" excludes any product that has been specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

Enclosed or semi-enclosed sports arena or recreational area means any sports pavilion, stadium, gymnasium, health spa, boxing 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.

Sec. 38-204. - Prohibition of smoking in County facilities.

(a) *Smoking in County facilities.* Smoking tobacco products is not permitted in any area of any County Facility. This ban on smoking tobacco products in County facilities applies to all public areas of Cook County Facilities as well as all areas used only by County employees or officials, including, without limitation, individual offices of the separately elected or appointed officials operating and conducting business in County facilities.

(b) *Reasonable distance.* Smoking tobacco products is prohibited within fifteen (15) feet of an enclosed area of any County facility, except for County owned health facilities in which case smoking tobacco products is prohibited within thirty (30) feet, so as to prohibit congestion at exits that could constitute fire hazard in the event of an emergency evacuation of the County facility. However, if the County operates County facilities within buildings owned by third parties and the County's use in those buildings is not exclusive; this subsection shall apply only insofar as it restricts the conduct of County employees.

(c) *Smoking tobacco products in Cook County owned or Cook County leased vehicles.* Smoking tobacco products is prohibited in all vehicles owned or leased by the County of Cook.

(d) *Implementation.* All appropriate County representatives, including the Chief of the Bureau of Human Resources, Director of Facilities Management and the Chief Administrative Officer, and all elected officials shall implement the foregoing ban.

(e) *Effect of section.* This section supersedes and replaces any and all earlier Resolutions and Ordinances pertaining to the subject of a smoking policy and the smoking of tobacco products in County facilities. It is intended for this section to apply to County facilities. However, to the extent that any provision of this section is less restrictive in regulating the

smoking of tobacco products in County facilities than another Ordinance, the more restrictive provision shall apply.

Sec. 30-205. - Prohibition of smoking in public places.

(a) *Smoking in public places.* Smoking shall be prohibited in all enclosed public places and places of employment within the County of Cook, including without limitation the following places:

- (1) Arcades.
- (2) Aquariums, galleries, libraries, and museums.
- (3) Bars/taverns.
- (4) Bingo facilities.
- (5) Bowling alleys.
- (6) Convention facilities.
- (7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- (8) Health care facilities and adult day care facilities.
- (9) Day care centers, nursery schools, elementary schools, high schools, community colleges, technical training establishments, specialty schools, colleges, and universities.
- (10) Lobbies, hallways and other common areas in apartment buildings, condominiums and enclosed common areas in trailer parks.
- (11) Polling places.
- (12) Public transportation under the authority of government agencies, including without limitation buses, trains, taxicabs, and limousines, and ticket boarding and waiting areas of public transit stations.
- (13) Restaurants, including if applicable, a restaurant bar area.
 - (14) Restrooms, lobbies, reception areas, hallways, and other enclosed common-use areas.
 - (15) Public elevators and all retail stores where merchandise is displayed and offered for sale.
- (16) Rooms, chambers, places of meeting or public assembly, including without limitation school buildings, under the control of an agency, board, commission, committee or council or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the County.
 - (17) Service lines.
 - (18) Shopping malls.
 - (19) Sports arenas or recreational areas, including without limitation, enclosed places in outdoor areas.
 - (20) Grocery stores.

- (21) Public meetings.
- (22) Gymnasiums.
- (23) Gaming facilities.
- (24) Public and private school buildings.
- (25) Private clubs or lodges.

(b) *Reasonable distance.* Smoking is prohibited within fifteen (15) feet of any entrance, exit, windows that open or ventilation intakes to an enclosed area in which smoking is prohibited.

Sec. 38-206. - Where smoking is not regulated.

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of this division, provided smoking is not limited in such areas under the Illinois Clean Indoor Air Act:

- (1) Private residences, except when used as a licensed childcare, adult care facility, health care facility, or a home-based business of any kind open to the public.
- (2) Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited. Not more than 25 percent of the rooms rented to guests in a hotel or motel may be so designated. The status of rooms as smoking or nonsmoking may not be changed, except to permanently add additional nonsmoking rooms.
- (3) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed or to remain, as the case may be, in a room where smoking is permitted and the smoke shall not infiltrate other areas of the nursing home.

Sec. 38-207. - Declaration of establishment as nonsmoking.

Notwithstanding any other provision of this division, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this division is posted.

Sec. 38-208. - Posting of signs.

- (a) Every County facility, public place, and place of employment where smoking is prohibited by this division shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (b) The operator, manager or other person having control of an area where smoking is prohibited by this division shall remove all ashtrays and other smoking paraphernalia intended for use where smoking is prohibited.

Sec. 38-209. - 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 division or reports or attempts to prosecute a violation of this division.

Sec. 38-210. - Enforcement.

- (a) Any law enforcement agency and certified local public health department with jurisdiction shall be authorized to enforce this division within its jurisdiction. The certified local public health department is the Cook County Department of Public Health, except within those areas within Cook County which are served by another local health department certified by the Illinois Department of Public Health, in which case said certified local health department shall be authorized to enforce this division.
- (b) Any resident who desires to register a complaint under this division may file a complaint with the Cook County Department of Public Health. If it does not have jurisdiction, the Cook County Department of Public Health shall transmit the complaint to the appropriate certified local health department.
- (c) The Cook County Department of Public Health or designees shall, while an establishment is undergoing other public health inspections, inspect for compliance with this division.
- (d) Any owner, manager, operator, or employee of an establishment regulated by this division shall inform persons violating this division of the appropriate provisions thereof.
- (e) In addition to the remedies provided by the provisions of this division, the applicable certified local health department 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 section may apply for injunctive relief to enforce these provisions in any court of competent jurisdiction.

Sec. 38-211. - Violations and penalties.

- (a) A person who smokes in an area where smoking is prohibited by this division shall be guilty of an infraction, punishable by a fine not more than \$100.00.
- (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 division shall be guilty of an infraction, punishable by:
- (1) A fine not exceeding \$250.00 for the first violation.
 - (2) A fine of not more than \$500.00 for the second violation within one year of the first violation.
 - (3) A fine of not more than \$2,500.00 for each additional violation within one year and a 60-day suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- (c) Each day on which a violation of this division occurs shall be considered a separate and distinct violation.
- (d) Fines collected pursuant to this division will be deposited into a special fund created and maintained by the Cook County Treasurer. This special fund shall be utilized as directed by the Cook County Board of Commissioners for enforcement, public education purposes relating to the health hazards associated with smoking and for lung-related illness programs. The Cook County Board of Commissioners may enter into intergovernmental agreements with local governmental entities to allow distribution of a portion of such special fund to such local governmental entities, for use in accordance with these purposes.

Sec. 38-212. - Public education.

The Cook County Department of Public Health within its jurisdiction shall engage in a continuing program to explain and clarify the purposes and requirements of this division to residents affected by it, and to guide owners, operators, and managers in their compliance with it. Within their jurisdictions, local health departments certified by the

Illinois Department of Public Health are authorized to provide the same continuing programs.

Sec. 38-213. - Other applicable laws.

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

Sec. 38-214. - Severability.

If any provision, clause, sentence or paragraph of this division or the application thereof to any person or circumstances shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this division which can be given effect without the invalid provision or application, and to this end the provisions of this division are declared to be severable.

Sec. 38-215. - Applicability of this division.

This division shall apply to all areas within Cook County, Illinois, except those areas which are governed by an ordinance of another governmental entity which, by law, may not be superseded by this division.

Secs. 38-216-38-250. - Reserved.

Effective date: This ordinance shall be in effect immediately upon adoption.