

ORDINANCE NO. 2017 BCCO-_____

**AN ORDINANCE ADOPTING
SMOKE FREE AIR REGULATIONS FOR WORKPLACES
AND PUBLIC PLACES IN HOWARD COUNTY**

WHEREAS, there is overwhelming consensus in the medical and scientific communities that exposure to secondhand smoke causes death and disease in nonsmokers. Numerous major scientific reports have confirmed and reaffirmed that there is no known safe level of exposure to secondhand smoke. Ventilation systems, smoking rooms, or other contrivances simply don't work to provide health protection. The only known way to eliminate the health hazards of secondhand smoke to workers and the public is a 100% smokefree environment, especially inside of an enclosed or semi-enclosed area. Additionally, because secondhand smoke leaves a toxic residue called "thirdhand smoke" that can harm people long after the active smoking has ended, it is also important that an area be smokefree 24/7, not just during certain hours, and with no exemptions for special events; and

WHEREAS, based upon this consensus, the Howard County Board of Commissioners finds and declares that the purposes of this ordinance are: (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke. This Ordinance is believed to be in the best interests of the public health and welfare of the citizens of Howard County; and

WHEREAS, the City of Kokomo has previously adopted Ordinance No.6445 regulating this particular conduct within the corporate boundaries of the City; and so long as Kokomo's Ordinance No. 6445 remains in force and effect, this Ordinance shall not apply to or be effective within Kokomo's corporate boundaries.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. Definitions.

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

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

(b) "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.

(c) "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.

(d) "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, or vape pen or under any other product name or descriptor.

(e) "Employee" means a person who is employed by an employer in consideration for direct or indirect wages or profit, and a person who volunteers his or her services.

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

(g) "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.

(h) "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 also include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within healthcare facilities.

(i) "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.

(j) "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.

(k) "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.

(l) "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 by-laws 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.

(m) "Public Event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

(n) "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.

(o) "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.

- (p) "Retail Tobacco Store" means a business which:
 - (A) Is primarily engaged in the sale of tobacco products and smoking instruments intended for off-premises consumption or use, with at least 75 percent of the gross revenues of the business resulting from such sales;
 - (B) Prohibits persons under 18 years of age from entering the premises;
 - (C) Does not sell, offer or allow on-premises consumption of food or beverages, including alcoholic beverages;
 - (D) Is a stand-alone business with no other businesses or residential property attached to the premises;
 - (E) Allows smoking only for the purpose of sampling tobacco products for making retail purchase decisions;

(q) "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.

(r) "Shopping Mall" means a public walkway or hall area that serves to connect retail or professional establishments.

(s) "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 Ordinance.

(t) "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.

(u) "Tobacco Product" means any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or

ingested by any other means, including, but not limited to, a cigarette, a cigar, hookah, pipe tobacco, chewing tobacco, snuff, or snus. "Tobacco product" also means electronic smoking devices and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, and liquids used in electronic smoking devices, whether or not they contain nicotine. Tobacco product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

Section 2. Prohibition of Smoking.

Except as provided in Sections 5 and 14 below, smoking shall be prohibited in all enclosed public places within Howard County 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 Events, subject to Section 4 which permits a designated smoking area located more than 8 feet from all Public Event activities;
- (p) Public transportation vehicles, including buses and taxicabs, under the authority of Howard County, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities;
- (q) Restaurants;
- (r) Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- (s) Retail stores;
- (t) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of Howard County to the extent the place is not subject to the jurisdiction of the City of Kokomo, Indiana;
- (u) Service lines;
- (v) Shopping malls;
- (w) Sports arenas, including enclosed places and outdoor arenas;
- (x) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances;

Section 3. Prohibition 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 Ordinance and to all prospective employees upon their application for employment.

Section 4. Reasonable Distance.

Smoking shall be prohibited outdoors within a reasonable distance from an enclosed area where smoking is prohibited by this Ordinance, so as to insure that tobacco smoke does not enter into establishments designated as smoke free under this Ordinance through entrances, windows, ventilation intakes or other means. As used in this Section, the term "reasonable distance" shall mean no closer than 8' to the enclosed area.

Section 5. Exemptions.

Notwithstanding the smoking prohibitions in Section 2, smoking is permitted in the following locations:

- (a) Private residences, unless used as a licensed childcare, adult day care or health care facility.
- (b) Retail Tobacco Stores.
- (c) None of the areas set forth in this Section shall be exempt from the provisions of this Ordinance 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 Ordinance.

Section 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 restricted to individuals over the age of 18 years of age;
- (b) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in and within eight feet (8') of bleachers and grandstands for use by spectators at sporting and other public events;
- (c) Within eight feet (8') of all outdoor playgrounds;
- (d) Within eight feet (8') of all outdoor public transportation stations, platforms, and shelters under the authority of Howard County, Indiana; and
- (e) 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

percent (25%) of the total outdoor common area, which must be located at least eight feet (8') outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Section 7. Removal of Smoking Paraphernalia and Signage Requirements.

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

(b) 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 "Howard County Prohibits Smoking Within 8 Feet of this Entrance".

Section 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.

Section 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 Section 11, violation of this subsection shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000) for each violation.

(b) An employee who works in an outdoor area restricted to individuals over the age of 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.

Section 10. Enforcement.

(a) The Howard County Health Department shall enforce this Ordinance and may, while an establishment is undergoing otherwise mandated health-related inspections, inspect for compliance with this Ordinance.

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

(c) Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Howard County Department of Health.

(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 Section, the Howard County Legal Department or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 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 (1st) violation.
- (b) A fine of two hundred dollars (\$200.00) for the second (2nd) violation within the same calendar year.
- (c) A fine of four hundred dollars (\$400.00) for the third (3rd) violation within the same calendar year.
- (d) A fine of eight hundred dollars (\$800.00) for the fourth (4th) 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 Howard County Legal Department 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 Howard County Legal Department is authorized to bring civil action against any alleged violator of this Ordinance for all unpaid fines, and any and all expenses incurred by Howard County 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.

Section 12. Repeal.

Any other ordinance which is inconsistent or in conflict with any part of this ordinance is expressly repealed to the extent of such inconsistency or conflict and the remainder of such ordinance or *Howard County Code* provision shall be unaffected and remain in effect.

Section 13. Severability.

If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions 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. Jurisdiction.

This Ordinance shall apply to and be effective in all areas of Howard County (including Greentown and Russiaville), except for the corporate limits of the City of Kokomo so long as Kokomo's Ordinance No. 6445 remains in effect.

Section 15. Effective Date

Upon adoption and signature by this Board and publication as required by law, this Ordinance shall be in full force and effect commencing on April 1, 2017; provided, however, subsections 2(c), 2(n) and 6(a) shall not become effective until July 1, 2017.

READ AND ADOPTED THIS 6th DAY OF MARCH, 2017.

HOWARD COUNTY BOARD OF COMMISSIONERS

Paul G. Wyman, President

Tyler O. Moore, Vice President

Robert B. Bray, Member

ATTEST:

Martha J. Lake, Howard County Auditor

Publish three (3) times in the Kokomo Tribune and Kokomo Herald

This Ordinance was prepared by Lawrence R. Murrell, Howard County Attorney.