

ORDINANCE NO. 2006-05-068

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

WHEREAS, it is recognized by the ~~City of Urbana~~ City Council, the scientific and medical community, the Surgeon General of the United States, the United States Environmental Protection Agency ~~of the United States~~, ~~and the public generally~~, that exposure to ambient smoke ~~by smokers~~ in enclosed environments has been shown to constitute a ~~real and~~ significant health risk to anyone exposed to such smoke; ~~persons who choose not to 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, and increases 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 ~~that~~ 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 further concludes that no current ventilation, air cleaning or other technologies have been demonstrated to control health risks from environmental tobacco smoke exposure in spaces where smoking occurs~~; and

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

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~~WHEREAS, following advance public notice in a newspaper of general circulation in Urbana of the Urbana City Council's held intent to adopt local regulations under (Ord. No. 7677 XX, etc.), and following a public hearing, and public study session on a draft no-smoking proposal which the City Council held on the proposed regulations, the City had considered the proposed regulations and has heard and considered the comments of numerous members of the public on the proposal said regulations; and~~

~~WHEREAS, in consideration of the results of the local scientific Public Opinion Poll of November 2004 in which seventy six percent of the voting public support smoking restrictions, the recommendations of the Urbana City staff, and the public input which the City has received during the above-referenced public meetings, and hearings, petitions to the City, and other ~~known communications~~, the Urbana City Council has 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. (1) to protect the best interests and the health, safety and welfare of the citizens of, workers of, and visitors to the City of Urbana, and (2) to guarantee the right of members of the public with a reasonable opportunity to breathe smoke free air by enacting regulations prohibiting smoking in public places and places of employment, as defined herein, within the City of Urbana, Illinois.~~

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 ~~at public meetings, except in designated smoking areas.~~ 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.~~for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.~~

"**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 which that is enclosed or semi-enclosed on three or more sides by walls or windows substantially or totally enclosed on all sides by walls, windows, doorways, or combinations thereof which (exclusive of door or passage ways), including all space therein screened by partitions which do not extend from the floor to the ceiling. ~~or are not solid, "office landscaping" or similar structures.~~

"**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

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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) ~~which~~ the owner, lessee, or occupant of a building or portion thereof uses exclusively for club purposes at all times,
- (2) ~~which~~ is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, -but not for pecuniary gain, -and
- (3) where the sale of alcoholic beverages is incidental to its operation.
- (4) ~~which~~ 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 are considered "places of employment" if they employ paid or volunteer staff.

Private clubs ~~are~~ shall be considered "places of employment" if they employ paid or volunteer staff.

"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, waiting rooms, enclosed parking garages, and any private function in an area normally considered a public area.~~

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

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or not such service involves the exchange of money.

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

"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.

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

No person shall smoke within the enclosed spaces 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, ~~bars~~ private clubs ~~with employees~~, 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;

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(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.

~~(19) Outdoor areas as defined herein. (see as set forth in Section 11-37.) Smoking shall be prohibited in all outdoor public seating areas except in designated smoking areas as listed below. These shall include but not be limited to:~~

~~(13) 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;~~

~~(18) Ques and service lines?????~~

~~(19) Outdoor areas (see Section 11-37.) Smoking shall be prohibited in all outdoor public seating areas except in designated smoking areas as listed below. These shall include but not be limited to:~~

~~(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.~~

Sec. 11-36. Policies regarding smoking in places of employment.

(a) It shall be the responsibility of employers to provide a smoke-free workplace for all employees. Employers ~~having a place of employment located within the city~~ City of Urbana shall adopt, implement, ~~make known and maintain~~ and publicize a written smoking policy which shall contain, at minimum, the following requirements:

(1) Smoking shall be prohibited in all enclosed facilities within ~~a~~ the place of employment, ~~without exception. This includes~~ ing 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~~;~~ ;

(2) The smoking policy shall be communicated to all employees within three weeks of its adoption~~;~~ ;

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

Sec. 11-37. Smoking in Outside areas, and Reasonable distance.

(a) Smoking is prohibited within eight (8) feet of the main entrance of ~~any prohibited areas set forth in Section 35. a reasonable minimum 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. A Reasonable distance shall be defined as: 8 feet from the main entrance. It shall be a violation for smoke to be detected in any area where smoking is prohibited. The intent of this provision is to insure that smoke does not infiltrate into areas where smoking is not allowed. These~~ For the purpose of this section, prohibited areas shall include:

- ~~(1) Cafe, restaurant, and bar outdoor seating and service areas.~~
- ~~(2) Food service areas within courtyards and other areas where air circulation is impeded by architectural or other barriers;~~
- ~~(3) Queues and Service lines~~

(b) ~~{Outside} Designated Outside Smoking Areas: Smoking shall be allowed in clearly marked designated outside smoking areas for employees and customers use may be established in outside areas, which:~~

- ~~(1) Are at least 8 feet from all public areas, work areas, or service areas where smoking is prohibited, providing such designated areas do not conflict with any provision of this document Article; and which are clearly marked and;~~
- ~~(2) Which shall The designated space does not consist in area of more than one half of the total outdoor available seating area of an establishment.~~

Sec. 11-38. Where smoking not regulated. 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 of this Article:

- ~~(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 under the provisions of this Article. 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.~~

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(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, at whose written request are placed in rooms where smoking is permitted, as a designated smoking room, which and which meets all the criteria for hotel and motel rooms rented to guests as smoking designated rooms, per in accordance with Section 11-38, (a)(2), 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;

~~(b) 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.~~

Sec. 11-39. Public Notice and Removal ~~Posting of signs~~ ~~Removing 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.

~~(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 Article, by the owner, operator, manager or other person having control of such building or other area.~~

~~(b) A conspicuous sign clearly stating that smoking is prohibited shall be posted at every entrance of every public place where smoking is prohibited by this Article, by the owner, operator, manager or other person having control of such area.~~

(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.

~~(c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager or other person having control of such area.~~

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~~(d) Means of safely extinguishing and disposing of smoking materials shall be provided at the entrance to public buildings, courtyards, and other areas covered by this ordinance.~~

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

Notwithstanding any other provision of 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() of this Article.

Sec. 11-41. Enforcement.

(a) Notice of the provisions of this Article shall be given to all applicants for a business license 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 the City of Urbana Department of the facts surrounding the complaint.

(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.

~~(a) Enforcement of this Article shall be implemented by the mayor's office, or his or her designee(s). ~~the office of the city Environmental Manager, (public nuisance office) or his or her designee(s).~~ [Mayor: this needs staff and your discussion. Champaign chose to use the County Health Dept. can we impose this task on them and will they accept it?]~~

~~(b) Any citizen who desires to register a complaint under this Article may initiate enforcement with the department or positions designated by the mayor's office.~~

~~(c) Upon finding that any provision of this Article has been violated, the enforcement designee(s) shall issue a notice of violation (N.O.V.) to the person(s) responsible for the violation. The N.O.V. 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 N.O.V. shall state:~~

~~(1) The location of the violation;~~

~~(2) The nature of the violation;~~

~~(3) The fine assessed for the violation;~~

~~(4) The city department at which the fine may be paid; and~~

~~(5) That the fine may be contested in the Champaign County Circuit Courts.~~

Sec. 11-42. Public education.

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The City and 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.

~~(a) It shall be unlawful for any person as an employer, occupant, lessee or who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Article to fail to comply with any of its provisions.~~

~~(1) Any person who fails to comply with any provision of this Article under Sec. 11-41(a) shall, on conviction thereof, be subject to a fine of \$_____ for each violation, and provided that for the second conviction of any violation within one year, the fine shall be \$_____ and for the third or subsequent conviction of any violation within one year, the fine shall be \$_____. Each day during which a violation continues beyond the specified time for correction shall constitute a separate offense. [Use standard Urbana city fines levels for similar ordinance violations.]~~

~~(b) It shall be unlawful for any person as an employer, occupant, lessee or who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Article to knowingly or willfully allow smoking to occur where prohibited in said public places Sec. 11-35 or places of employment Sec. 11-36.~~

~~(1) Any person who violates any provision of this Article under Sec. 11-41(b) shall, on conviction thereof, be subject to a fine of \$_____ for each violation, and provided that for the second conviction of any violation within one year, the fine shall be \$_____ and for the third or subsequent conviction of any violation within one year, the fine shall be \$_____. Each day during which a violation continues beyond the specified time for correction shall constitute a separate offense.~~

~~(c) It shall be unlawful for any person as an employer, occupant, lessee or who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Article to fail to post signage or remove ash trays and other smoking paraphernalia as provided in Sec. 11-39 of this Article.~~

~~(1) Any person who violates any provision of this Article under Sec. 11-41(c) shall, on conviction thereof, be subject to a fine of \$____ [50] for each violation. Each day during which a violation continues beyond the specified time for correction shall constitute a separate offense.~~

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

~~(1) Any person who violates any provision of this Article shall, on conviction thereof, be subject to a fine of \$ ~~[\$50]~~ for each violation.~~

~~Fines shall be processed through the ordinance violations bureau established by Chapter 2 of the Urbana 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 Article, then the city legal department shall be empowered to seek any other remedies provided by law such as, but not limited to:~~

~~(2) In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.~~

~~(3) Violation of this Article is hereby declared to be a public nuisance, which may be abated by the office of the mayor or its designee by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.~~

~~(4) In addition to the remedies provided by the provisions of this Section, the mayor's office or designee or any person aggrieved by the failure of the employer, owner, occupant, lessee, or other person in control of a public place or a place of employment, including an operator or manager, to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.~~

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.

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Section 6. Effective Date. This Article shall be effective August 1, 2006.

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 ____ day of _____, 2006.

AYES:

NAYS:

PRESENT:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, 2006.

Laurel Lunt Prussing, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis D. Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the ____ day of _____, 20____, the corporate authorities of the City of Urbana passed and approved Ordinance No.

_____, entitled " **AN ORDINANCE AMENDING CHAPTER 11, HEALTH AND SANITATION, OF THE URBANA CODE IN RELATION TO SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT**", which provided by its terms that it should be published in pamphlet form.

The pamphlet form of Ordinance No. _____ was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the ____ day of _____, 20____, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this ____ day of _____, 20____.

(SEAL)

CITY CLERK