

December 15, 2005

## After Much Debate, City of Chicago Finally Passes No-Smoking Ordinance

Last week the City of Chicago joined New York City and Los Angeles, among many other major cities, in passing a ban on smoking in public places. The Chicago Clean Indoor Air Ordinance of 2005 will go into effect on January 16, 2006, for most of the public places covered by the new law.

The passage of the no-smoking ordinance was no small feat. It took more than four years for the city council to reach an agreement on language acceptable to a majority of the council members. The ordinance was approved by the city council by a 46 to 1 vote.

### Who Does the Ordinance Cover?

The city ordinance prohibits smoking in all enclosed public places and places of employment (covers both public and private employers) within the City of Chicago. The smoking ban also extends 15 feet from any entrance to a covered "enclosed" area. The ordinance defines a "public place" to mean:

[A]ny enclosed area to which the public is invited or in which the public is permitted, including without limitation banks, educational facilities, government buildings, health care facilities, laundromats, museums, public transportation facilities, reception areas, restaurants . . . retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms.

An "enclosed" area is defined generally as "all space between a floor and a ceiling, that is enclosed or semi-enclosed" by solid walls or windows, or solid walls with half wall partition and no windows. Thus, the ordinance covers enclosed places located in outdoor sports or recreational arenas. The only instance where a private residence would be treated as a covered "place of employment" is where a business is being run out of the home and that business is open to the public, such as a licensed child or adult day care business or a health care facility.

<sup>1</sup> The ordinance defines a retail tobacco store as an establishment which primarily sells tobacco products and accessories and where no one under the age of 18 is permitted to enter.

The smoking ban goes into effect in January for all public areas and places of employment *with the exception* of bars/taverns and restaurant bar areas. For these public areas, the smoking ban does not go into effect until July 1, 2008. Restaurants, however, will be required to comply with the ordinance starting in January. The ordinance defines a bar/tavern as an establishment that derives at least 65% or more of its gross proceeds from the sale of alcoholic beverages. A restaurant bar area is defined as an area in a restaurant that is "primarily devoted to the serving of alcoholic liquor." The ordinance further provides that smoking within a restaurant's bar area is limited to within 15 feet of the bar. This provision is only applicable from the effective date of ordinance to July 1, 2008, when restaurant bar areas must comply with the no-smoking ban.

The ordinance also permits owners or operators of non-covered establishments, facilities or outdoor areas to designate their areas as no-smoking, pursuant to the ordinance.

### Who Does the Ordinance Exclude From Coverage?

The following establishments are not covered by the City's smoking ban:

- ♦ Private residences (excluding those with home-based businesses open to the public);
- ♦ Hotel and motel rooms that have been designated as smoking rooms, provided that no more than 25% of the rooms available are so designated;
- ♦ Retail tobacco stores (provided that smoke does not infiltrate into areas where smoking is banned);<sup>1</sup>
- ♦ Private clubs or lodges, as defined by Section 4-156-305(g) of the Municipal Code; and
- ♦ Those covered public places or places of employment that can demonstrate to the satisfaction of both the city

commissioners of public health and of the environment that its establishment “has been equipped with air filtration or purification devices . . . to render the exposure to secondhand smoke . . . equivalent to such exposure to secondhand smoke in the ambient outdoor air surrounding the establishment.”

Because the ordinance expressly recognizes that current technology is not capable of eliminating known toxins from secondhand smoke, the last exemption is prospective in nature. The ordinance directs the public health and environmental city commissioners to draft regulations “specifying what types of technologies, when and if available . . . satisfy the requirements of this paragraph.” Proponents of the smoking ban were not happy with the inclusion of this language, seeing it as a major loophole for restaurants and bars.

## Enforcement

The city ordinance will be enforced by the Chicago Departments of Public Health and of Business Affairs and Licensing. Citizens seeking to file a complaint would do so through the Department of Public Health.

## Violations and Penalties

Persons who smoke in no-smoking areas will be subject to a fine of not less than \$100 and not more than \$500 for each infraction.

Persons who own, manage, operate or otherwise control a public place or place of employment and fail to comply with the non-smoking ordinance will be subject to the following fines:

- ◆ Up to \$100 (first violation);
- ◆ Up to \$500 (second violation, if it occurs within one year of first violation); and
- ◆ Up to \$2,500 (for any additional violations within one year) and a 60-day suspension or revocation of any permit or license issued for the premises on which the violation occurred.

Each day on which a violation occurs will be treated as a separate violation or infraction. In addition to the above penalties, injunctive relief may be sought against the owner, operator, manager or other person in control of a public place or place of employment.

The ordinance also prohibits anyone from retaliating against an individual, be s/he an employee or customer, for exercising his or her rights under the ordinance.

## What Do Employers Need to Do to Comply?

With the month of January just around the corner, Chicago employers need to do the following to comply with the non-smoking ban:

- ◆ Eliminate all designated, on-site (enclosed) smoking areas;
- ◆ Establish a 15-foot no-smoking perimeter around entrances to the workplace;
- ◆ Notify employees that, as of January 16, 2006, smoking will not be permitted anywhere within the workplace premises or within 15 feet of any entrance to the building; and
- ◆ Notify employees of their right to file a complaint in the event that smoking is allowed within the premises or within 15 feet of any entrance to the building, along with information pertaining to the penalties individuals will incur should they violate the no-smoking ban.

*If you have any questions on this new ordinance, please contact Elaine Fox at [efox@seyfarth.com](mailto:efox@seyfarth.com) or the Seyfarth Shaw attorney with whom you work with.*

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