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ORDINANCE NO. F-1327

AN ORDINANCE AMENDING CHAPTER 52 OF THE WHEATON CITY CODE (REGULATION OF SMOKING IN PUBLIC PLACES AND WORK PLACES)

WHEREAS, the City of Wheaton adopted Chapter 52 (formerly Chapter 43) "Smoke Free Regulations" which became effective January 1, 2007 (hereinafter the "Ordinance"); and

WHEREAS, the State of Illinois adopted Public Act 095-0017, "Smoke Free Illinois Act" effective January 1, 2008 (hereinafter the "Act"); and

WHEREAS, the Corporate Authorities of the City of Wheaton deem it necessary and appropriate to make certain amendments to its Ordinance based upon the Act.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois, in the exercise of its home rule powers, as follows:

Section 1: That Section 52-3. Definitions, is hereby amended by deleting the definition for "Club" in its entirety and replacing it as follows:

" *Club* means a private not-for-profit association, corporation or other entity which owns, leases or uses a building or portion the use of which is restricted primarily to members and their guests; is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain; and only sells alcoholic beverages incidental to its operation. For purposes of this definition, club means a private organization that is managed by a board of directors, executive committee, or similar body chosen by the members at an annual meeting, has established bylaws, a constitution, or both to govern its activities, and has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. 501. "

Section 2: That Section 52-3. Definitions, is hereby amended by deleting the definition for "Enclosed Public Place" together with subparagraphs 1 thru 4 in their entirety and replacing it as follows:

" *Enclosed Public Place* means an enclosed area that is open to and used by the general public regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the City or any other public entity regardless of whether a fee is charged for admission, or any area to which the public is invited or in which the public is permitted, including without limitation:

- (1) vehicles of public conveyance;
- (2) common or public areas (including without limitation lobbies, hallways, reception areas, public restrooms, elevators and staircases) of apartment buildings, condominiums, dormitory buildings, nursing home care facilities, and other multiple family residential structures;
- (3) common or public areas (including without limitation lobbies, hallways, reception areas, public restrooms, elevators and staircases) of any building or structure that is

accessible to the public including without limitation office, commercial, and industrial buildings, banks and financial institutions, educational institutions, health care facilities such as hospitals, clinics and doctor's offices, museums, libraries, restaurants, polling places, government and City-owned buildings, food stores, cafeterias, theaters, auditoriums, train and bus stations, hotels, motels, clubs, and retail and service establishments;

(4) rooms, chambers, halls, or other locations within which meetings, hearings, or gatherings are held, to which the public is invited or in which the public is permitted, including specifically, but without limitation, any enclosed area under the control of the City of Wheaton where there is in progress any public meeting.”

Section 3: That Section 52-3. Definitions, is hereby amended by deleting in its entirety subparagraph (3) of the paragraph entitled, “ ‘Enclosed Public Place’ shall not include:”.

Section 4: That Section 52-11. Exemptions, is hereby amended by deleting in their entirety existing subparagraphs (2) and (3), and re-numbering existing subparagraph (4) as (2).

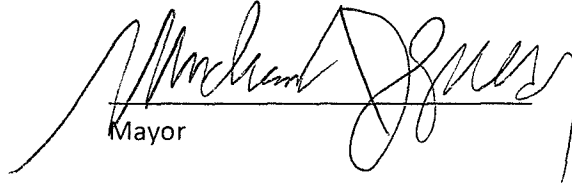
Section 5: That Section 52-12. Penalties, subparagraphs (a) and (b) are deleted in their entirety and replaced as follows:

“ (a) Any person who smokes in an area where smoking is prohibited under the provisions of this Chapter shall be guilty of an offense punishable by a fine of not less than one hundred (\$100) dollars and not more than two hundred fifty dollars (\$250).

(b) Any person who owns, manages, operates or otherwise controls an enclosed public place, a place of employment or an open air dining area that permits smoking in an area where smoking is prohibited under the provisions of this Chapter, shall be guilty of an offense punishable by a fine of not less than (i) two hundred fifty dollars (\$250) for the first violation, (ii) not less than five hundred dollars (\$500) for a second violation within one year after the first violation, and (iii) not less than two thousand five hundred dollars (\$2,500) within one year after the second violation. If offenses occur more than one year from a prior offense date, the cycle of minimum fines set forth in this subsection shall renew. Upon a third violation within a two year period by a person/entity holding a City license/permit, the Mayor, after a hearing in which the violator may contest the violation or penalty, may suspend or revoke any City license/permit for the premises in which the violation occurred. “

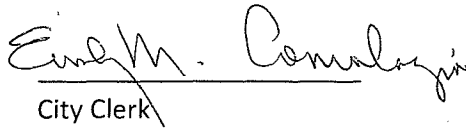
Section 6: Any ordinance or any provision of any ordinance inconsistent with this Ordinance or provision of this Ordinance is repealed to the extent of such inconsistency.

Section 7: This Ordinance shall become effective upon its passage, approval and publication in pamphlet form in the manner prescribed by law.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote:

- Councilman Mouhelis
- Councilman Prendiville
- Councilman Suess
- Councilwoman Corry
- Councilman Johnson
- Councilman Levine
- Mayor Gresk

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: January 7, 2008

Published: January 8, 2008