

ORDINANCE NO. _____

AN ORDINANCE ADDING ARTICLE XV TO CHAPTER 46 OF THE CODE OF ORDINANCES OF THE TOWN OF CICERO, ILLINOIS TO INSTITUTE CLEAN AIR REGULATIONS FOR THE TOWN OF CICERO, COUNTY OF COOK, STATE OF ILLINOIS.

WHEREAS, the Town of Cicero (the “Town”) was created by a charter enacted by the Illinois General Assembly (the “Charter”); and

WHEREAS, the Corporate Authorities of the Town (as defined below) are governed by the Charter and the Constitution of the State of Illinois and the statutes of the State of Illinois when not specified in the Charter; and

WHEREAS, the Town is a home rule unit of local government as is provided by Article VII, Section 6 of the Illinois Constitution of 1970, and as a home rule unit of local government the Town may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, pursuant to Section 11-19.1-11 of the Illinois Municipal Code (65 ILCS 5/11-19.1-11 (Ill. Gen. Assembly 2007)), the corporate authorities of a town have the authority to, among other things, prescribe, by ordinance, for the regulation of uses of land connected with the emission of air contaminants and may abate an operation, activity or use causing air contamination; and

WHEREAS, pursuant to Section 11 of the Illinois Clean Indoor Air Act (410 ILCS 80/11 (Ill. Gen. Assembly 2007)) (the “Act”), a unit of local government may regulate smoking in public places, but that regulation must be no less restrictive than the Act; and

WHEREAS, the abovementioned regulations may be instituted to, among other matters, help reduce the negative consequences of secondhand smoke; and

WHEREAS, secondhand smoke, which contains more than fifty (50) carcinogens, is a known cause of lung cancer, heart disease, low birth-weight births and chronic lung ailments, such as bronchitis and asthma (particularly in children); and

WHEREAS, children exposed to secondhand smoke have an increased risk of asthma, acute respiratory infections, sudden infant death syndrome and middle ear infections; and

WHEREAS, the Town President (the “President”) and the Board of Trustees of the Town (the “Town Board” and with the President, the “Corporate Authorities”) considered whether it would be appropriate to amend the Code of Ordinances of the Town of Cicero, Illinois (the “Town Code”) to provide for certain clean air regulations; and

WHEREAS, in order to balance individual freedoms with the health risks associated with secondhand smoke, the Corporate Authorities find that it is in the best interests of the health, safety and welfare of the residents of the Town to amend the Town Code to provide certain standards and regulations regarding smoking in public places within the Town; and

WHEREAS, based on the foregoing findings, the Corporate Authorities have determined that it is necessary and desirable to add Article XV to Chapter 46 of the Town Code as set forth below; and

NOW, THEREFORE, BE IT ORDAINED by the President and the Board of Trustees of the Town of Cicero, County of Cook, State of Illinois, as follows:

**ARTICLE I.
IN GENERAL**

Section 1.00 Incorporation Clause.

The Corporate Authorities hereby find that all of the recitals hereinbefore stated as contained in the preambles to this Ordinance are full, true and correct and do hereby, by reference, incorporate and make them part of this Ordinance as legislative findings.

Section 2.00 Purpose.

The purpose of this Ordinance is to add Article XV to Chapter 46 of the Town Code to provide certain standards and regulations regarding smoking in public places within the Town.

**ARTICLE II.
ADDITION OF ARTICLE XV TO CHAPTER 46 AND CHAPTER 46,
SECTION 46-659; CHAPTER 46, SECTION 46-660; CHAPTER 46, SECTION 46-661;
CHAPTER 46, SECTION 46-662 AND CHAPTER 46, SECTION 46-663 TO THE
CODE OF ORDINANCES OF THE TOWN OF CICERO, ILLINOIS**

Section 3.00 Addition of Article XV to Chapter 46.

That Article XV is hereby added to Chapter 46 of the Town Code, notwithstanding any provision, ordinance, resolution or Town Code section to the contrary, which Article shall read as follows:

CLEAN INDOOR AIR REGULATIONS

Section 3.01 Addition of Chapter 46, Section 46-659.

That the Town Code is hereby amended, notwithstanding any provision, ordinance, resolution or Town Code section to the contrary, by adding Chapter 46, Section 46-659, which Section shall read as follows:

Definitions.

For the purpose of this Chapter, certain terms and words shall have the meanings ascribed to them in this Section, unless different meanings are plainly indicated by the context in which the word or term is used.

Where applicable, words used in the present tense include the future tense of the word and words in the singular include the plural form of the word.

Bar/Tavern means an establishment whose primary business is the sale of alcoholic liquor for consumption on the premises and that is subject to a license for the sale of such alcoholic liquor.

Enclosed Indoor 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 partitions and no windows (exclusive of doorways) without limitation to lobbies and corridors.

Proprietor means any individual or his or her designated agent who, by virtue of his or her office, position, authority or duties, has legal or administrative responsibility for the use or operation of property.

Public Place means any Enclosed Indoor Area used by the public or serving as a place of work including, but not limited to, hospitals, Restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, libraries, art museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, arenas, and meeting rooms. Public Place does not include bowling establishments, Bars, Taverns, rooms rented for the purpose of living quarters, sleeping or housekeeping accommodations from a hotel, as defined in the Hotel Operators' Occupation Tax Act (35 ILCS 145/1, *et seq.*), and private, enclosed offices occupied exclusively by smokers, even though such offices may be visited by nonsmokers.

Restaurant means any building, room, enclosure, place or establishment occupied and used as a place of business where food or drink is routinely served for public consumption on the premises, with charge.

Smoking means the act of inhaling the smoke from or possessing a lighted cigarette, cigar, pipe, or any other form of tobacco or similar substance used for smoking.

Section 3.02 Addition of Chapter 46, Section 46-660.

That the Town Code is hereby amended, notwithstanding any provision, ordinance, resolution or Town Code section to the contrary, by adding Chapter 46, Section 46-660, which Section shall read as follows:

Prohibition of Smoking.

No person shall smoke in a Public Place, except in that portion of a Public Place which may be established and posted as a Smoking area in accordance with Section 46-661 of this Chapter. This prohibition does not apply in cases in which an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the Proprietor or person in charge of the place. Furthermore, this prohibition shall not apply to factories, warehouses and similar places of work not usually frequented by the general public.

Smoking is prohibited in any portion of the living quarters including, but not limited to, sleeping rooms, dining areas, restrooms, laundry areas, lobbies and hallways, of a

building used in whole or in part as a student dormitory that is owned and operated or otherwise utilized by a public or private institution of higher education. The foregoing does not apply to any commercial area within the building.

Section 3.03 Addition of Chapter 46, Section 46-661.

That the Town Code is hereby amended, notwithstanding any provision, ordinance, resolution or Town Code section to the contrary, by adding Chapter 46, Section 46-661, which Section shall read as follows:

Designation of Smoking Areas.

The elected officials of the Town, elected officials of any school district, or their respective designees, who have control over the property of the Town or of a school district, which includes a Public Place, and the Proprietor of a structure, which includes a Public Place, may establish an area on the premises as a Smoking area where Smoking shall be permitted, unless otherwise prohibited by law or ordinance. When establishing an area as a Smoking area, a person establishing such area shall utilize existing physical barriers, ventilation systems and other physical elements of the premises to minimize the intrusion of smoke into areas where Smoking is not permitted. When a Public Place is a single room or enclosure, a person establishing such an area may satisfy the purposes and provisions of this Section by establishing a reasonable portion of the room or enclosure as a Smoking area.

Restaurants located within the Town that allow Smoking shall establish areas where Smoking is permitted and areas where Smoking is not permitted, in accordance with the abovementioned requirements.

The Town, school district officials or their respective designee(s) or a Proprietor and the Proprietor's agents in control of a place, which includes a Public Place, shall make reasonable efforts to prevent Smoking in a Public Place outside of established Smoking areas by posting appropriate signs, contacting law enforcement or by other appropriate means.

Section 3.04 Addition of Chapter 46, Section 46-662.

That the Town Code is hereby amended, notwithstanding any provision, ordinance, resolution or Town Code section to the contrary, by adding Chapter 46, Section 46-662, which Section shall read as follows:

Enforcement.

A person, corporation, partnership, association or other entity, who violates Section 46-660 of this Chapter is guilty of a petty offense. Any designee of the Town, Code Enforcement inspector or police officer who witnesses a person whom said Town designee, Code Enforcement inspector or police officer reasonably believes to be in violation of this Chapter may stop and detain the person for the purpose of verifying the person's identity and age, and the Proprietor of the premises. If the Town designee, Code Enforcement inspector or police officer determines that the person is in violation of this Chapter, the Town designee, Code Enforcement inspector or police officer shall issue a citation to the person and the Proprietor. Any person or Proprietor who knowingly or willfully permits a person to violate the provisions of this Chapter or any Proprietor who fails to take reasonable steps to ensure compliance with this Chapter shall be fined not less than twenty-five and no/100 U.S. dollars (\$25.00) nor more than seven hundred fifty and no/100 U.S. dollars (\$750.00) for a first offense; not less than one hundred and no/100 U.S. dollars (\$100.00) nor more than seven hundred fifty and no/100 U.S. dollars (\$750.00) for a second offense; and not less than two hundred fifty and no/100 U.S. dollars (\$250.00) nor more than seven hundred fifty and no/100 U.S. dollars (\$750.00) for a third or subsequent offense within a one (1) calendar year period. A rebuttable presumption shall exist that a Proprietor has failed to take reasonable steps to ensure compliance with this Chapter upon a finding that two (2) or more persons have violated the provisions of this Chapter simultaneously, or upon a third or subsequent violation within the premises within a one (1) calendar year period. The foregoing presumption may be overcome by clear and convincing evidence to the contrary.

A local board of health or any individual personally affected by repeated violations of this Chapter may institute, in circuit court, an action to enjoin violations of this Chapter and may seek such other relief deemed necessary to ensure compliance with this Chapter.

Section 3.05 Addition of Chapter 46, Section 46-663.

That the Town Code is hereby amended, notwithstanding any provision, ordinance, resolution or Town Code section to the contrary, by adding Chapter 46, Section 46-663, which Section shall read as follows:

Nondiscrimination.

No individual may be discriminated against in any manner because of the exercise of any rights afforded by this Chapter or the Illinois Clean Indoor Air Act (410 ILCS 80/1, *et seq.*).

Section 3.06 Other Actions Authorized.

The officers, employees and/or agents of the Town shall take all action necessary or reasonably required to carry out, give effect to and consummate the amendments contemplated by this Ordinance and shall take all action necessary in conformity therewith. The officers, employees and/or agents of the Town are specifically authorized and directed to draft and disseminate any and all necessary forms to be utilized in connection with the amendments.

**ARTICLE III.
HEADINGS, SAVINGS CLAUSES, PUBLICATION,
EFFECTIVE DATE**

Section 4.00 Headings.

The headings of the articles, sections, paragraphs and sub-paragraphs of this Ordinance are inserted solely for the convenience of reference and form no substantive part of this Ordinance nor should they be used in any interpretation or construction of any substantive provision of this Ordinance.

Section 5.00 Severability.

The provisions of this Ordinance are hereby declared to be severable and should any provision of this Ordinance be determined to be in conflict with any law, statute or regulation by a court of competent jurisdiction, said provision shall be excluded and deemed inoperative, unenforceable and as though not provided for herein and all other provisions shall remain unaffected, unimpaired, valid and in full force and effect.

Section 6.00 Superseder.

All code provisions, ordinances, resolutions, rules and orders, or parts thereof, in conflict herewith are, to the extent of such conflict, hereby superseded.

Section 7.00 Publication.

A full, true and complete copy of this Ordinance shall be published in pamphlet form or in a newspaper published and of general circulation within the Town as provided by the Illinois Municipal Code, as amended.

Section 8.00 Effective Date.

This Ordinance shall be effective and in full force immediately upon passage and approval.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

ADOPTED this _____ day of _____, 2007, pursuant to a roll call vote as follows:

	YES	NO	ABSENT	PRESENT
Virruso				
Alanis				
Reitz				
Ayala				
Punzo-Arias				
Raleigh				
Walsh				
(President Dominick)				
TOTAL				

APPROVED by the President on _____, 2007

 LARRY DOMINICK
 PRESIDENT

ATTEST:

 MARYLIN COLPO
 TOWN CLERK