

10.2 An Ordinance to Amend the City of Ithaca Municipal Code to add Chapter 280 entitled "Smoking, Outdoor".

By Alderperson Dotson: Seconded by Alderperson Rosario

WHEREAS, smoking is the number one cause of preventable death in the United States, and

WHEREAS, in New York State there are 25,500 deaths every year from causes attributable to smoking; and

WHEREAS, tobacco smoke contains at least 172 toxic substances, including 3 regulated outdoor air pollutants and 33 hazardous air pollutants regulated by the Federal Clean Air Act, 47 chemicals restricted as hazardous waste and 67 known human or animal carcinogens, according to the 2006 academic textbook "*Exposure Analysis;*" and

WHEREAS, the aforementioned composition of tobacco smoke is the same whether tobacco smoke is inhaled in the act of smoking, or inhaled by nonsmokers out of the air indoors or outdoors; and

WHEREAS, according to the U.S. Environmental Protection Agency (EPA), exposure to fine particulate matter such as that contained in tobacco smoke can lead to serious health problems, including asthma attacks, chronic bronchitis, irregular heartbeat, and nonfatal heart attacks; and

WHEREAS, secondhand smoke has been designated as a known human carcinogen by the EPA; and

WHEREAS, secondhand smoke has been designated an occupational carcinogen by the National Institute for Occupational Safety and Health; and

WHEREAS, in 2005 the California Air Resources Board Office of Environmental Health Hazard Assessment determined outdoor tobacco smoke to be a "toxic air contaminant;" and

WHEREAS, the 2006 U.S. Surgeon General Report on Involuntary Exposure to Secondhand Smoke concludes that even brief exposures to secondhand smoke may increase the severity of asthma attacks and lower respiratory tract infections, especially in children, and have adverse effects on the heart; and

WHEREAS, the aforementioned Surgeon General Report cites comprehensive and conclusive scientific evidence that "there is no risk-free level of exposure to secondhand smoke;" and that "smoke-free environments are the most effective method for reducing exposures;" and

WHEREAS, a 2006 study by the California Air Resources Board found that at typical outdoor locations, persons may be exposed to tobacco smoke levels as high as indoor secondhand smoke concentrations; and

WHEREAS, according to a 2007 peer-reviewed Stanford University study, “Real-Time Measurement of Outdoor Tobacco Smoke Particles,” (Klepeis et al., *Journal of the Air and Waste Management Association*), during periods of active smoking, peak and average outdoor tobacco smoke levels measured in outdoor cafes, restaurants and bar patios near smokers rival indoor tobacco smoke concentrations; and

WHEREAS, other field studies and controlled experiments in Denmark (Boffi et al., 2006), Finland (Repace and Rupperecht, 2006), Maryland (Repace, 2005) and the Caribbean (Repace, 2005) demonstrate that, regardless of which way the wind blows, an individual in an outdoor café, transiting through a building doorway, or otherwise surrounded by a group of smokers, is always downwind from the source of smoke; and

WHEREAS, many of these studies and controlled experiments also show that under some conditions, outdoor levels of tobacco smoke can be as high as indoor levels; and

WHEREAS, according to the aforementioned Stanford University researchers (Klepeis et al.), a cigarette, while it has much smaller emissions than a power plant or automobile, is more likely to be very close to people and, therefore, to expose them to concentrated levels of air pollution; and

WHEREAS, these Stanford University researchers measured background air pollution from all distant sources, including automobiles, to be typically less than 10 or 20 micrograms per cubic meter of air, while, in contrast, they sometimes measured air pollution near a cigarette to be over 1000 micrograms, concluding that air in typical urban locations in California, even near roadways, to be generally quite clean compared to air in the vicinity of smokers; and

WHEREAS, children are currently unprotected from tobacco smoke in outdoor areas where they are likely to be present and concentrated in, such as our City’s playgrounds; and

WHEREAS, each day more than 4,000 youth nationwide try smoking for the first time, and another 2,000 youth become regular daily smokers; and

WHEREAS, concern over secondhand smoke is a powerful motivator of adolescent smoking behavior and can significantly deter adolescent smoking initiation according to recent research published in the *Journal on Adolescent Health*, 2009; and

WHEREAS, there is a strong public preference for smoke free public spaces according to surveys conducted of Tompkins County adults in June of 2006 and June of 2008 by Tobacco Free Tompkins; and

WHEREAS, according to the 2008 survey, 8 out of 10 of the adults surveyed believe smoking should be either restricted or not allowed in public outdoor events, at a public beach or at a public park; and 9 out of 10 of the adults surveyed believe smoking should be either restricted or not allowed in public playgrounds or areas around public building entryways; and

WHEREAS, across the country, more than 700 state and local governments have passed laws restricting outdoor smoking at playgrounds, building entrances and other public areas, according to the American Nonsmokers' Rights Foundation; and

WHEREAS, policies and administrative orders that ban smoking in outdoor public spaces have been implemented by jurisdictions in New York State; and

WHEREAS, the City of Ithaca determines that creating smoke free zones in certain public spaces where children and/or adults are likely to be present or concentrated, and/or where persons can not readily escape from exposure to tobacco smoke, will protect the health, safety and welfare of the residents of our community; now, therefore, be it

RESOLVED, That Common Council cause this Ordinance to be reviewed periodically during the first five (5) years in order to gauge its effectiveness; and, be it further

Ordinance 10-_____

ORDAINED AND ENACTED by the Common Council of the City of Ithaca, as follows:

A new chapter (Chapter 280) entitled "Smoking, Outdoor," is hereby added to the Municipal Code of the City of Ithaca, to read as follows:

Section 1:

§280-1. Purpose.

The primary purpose of this chapter is to reduce the proximate exposure of the public, especially children, to the hazards and annoyance of second-hand tobacco smoke. Furthermore, this legislation is intended to reduce litter and possible contamination from discarded cigarette butts, in public places, and to reduce the likelihood that young persons will initiate tobacco use (by reducing the incidence of public smoking in places where young persons are likely to be present).

Section 2:

§280-2. Authority.

Pursuant to the New York State Constitution, the Common Council of the City of Ithaca may adopt and amend laws pertaining to the protection, conduct, safety, health and well-being of the persons and property in the City. Similarly, the Charter of the City of Ithaca provides that the Common Council may enact and enforce any ordinance (not repugnant to the Constitution or laws of the State) for any local purpose (except fluoridation of the water supply) pertaining to the preservation of order, peace and health, and the safety and welfare of the City and the inhabitants thereof.

The Clean Indoor Air Act adopted by the New York State Legislature (Public Health Law, Article 13-E, Sections 1399-n, *et seq*) addresses indoor smoking only, and, in any case, specifically provides that "nothing herein shall be construed to restrict the right of any county, city, town, or village to adopt and enforce additional local law, ordinances or regulations which comply with at least the minimum applicable standards set forth in this article."

Section 3:

§280-3. Definitions.

For the purposes of this chapter, the following terms shall have the following definitions:

1. **Child Care Center:** A facility where care and supervision are provided for children, in exchange for consideration. For the purposes of this chapter, a "child care center" refers only to such a facility that is licensed by New York State or Tompkins County to operate as such.
2. **Children:** Persons under the age of 18 years.
3. **City-owned Building:** Any structure owned by the City of Ithaca, except for any such structure that is subject to a written lease to another party, provided such

lease was entered into prior to the effective date of this chapter and provided such lease does not give the City the authority to regulate outdoor smoking on the leased premises.

4. **Entrance:** The means by which persons may enter a building, typically consisting of a door or doorway, which may be associated with a stoop or steps and/or a ramp. For the purposes of this chapter, “entrance” includes the stoop, steps or ramp leading from the sidewalk or pavement to such a door or doorway.

5. **Exit:** The means by which persons may leave a building, typically consisting of a door or doorway, which may be associated with a stoop or steps and/or a ramp. For the purposes of this chapter, “exit” includes the stoop, steps or ramp leading from the sidewalk or pavement to such a door or doorway.

6. **Facility:** The structures and activity areas (which may be partially enclosed or unenclosed) associated with an operation (which operation may be governmental, recreational, educational, commercial or of another type).

7. **Mass Transit Shelter:** A structure that is enclosed on at least three sides and has a roof, intended for use by persons waiting for a bus or other mass transit vehicle.

8. **Mobile Vending:** An activity consisting of the offering of goods and/or services for sale, from a non-permanent base of operations, including but not necessarily limited to a cart, kiosk, table or vehicle.

9. **Outdoor Dining:** An activity consisting of the provision of facilities that are available to members of the public (with or without payment) for eating and/or drinking in an area that is not fully enclosed by a permanent structure (walls, roof, etc).

10. **Outdoor Recreation Area:** An area that is not fully enclosed and that is designated for recreational purposes or activities.

11. **Pavilion:** A structure that is at least partially unenclosed (for example, with open sides) and that is intended for public use.

12. **Playground:** An outdoor recreation area that is designed and intended for use by children. For the purposes of this chapter, a playground that is fenced or otherwise physically demarcated shall be deemed to include all of the area inside such fence or demarcation; a playground that is not fenced or otherwise demarcated shall be deemed to include all open space that is associated with or adjacent to it.

13. **Playing Field:** That portion of an outdoor recreation area that is set up and marked in some way for the playing of one or more specific games (such as baseball, football or soccer). For the purposes of this chapter, a playing field that is fenced or the outside perimeter of which is otherwise physically demarcated shall be deemed to include all of the area inside such fence or demarcation, together with any bleachers or other, designated viewing area; a playing field that is not fenced or otherwise demarcated (as to its outside perimeter) shall be deemed to include all of the area customarily required for playing the game for which it is being used, together with any bleachers or other designated viewing area.

14. **Permit:** Written permission for an activity proposed to be conducted on property of the City of Ithaca (including any conditions placed upon such permission), issued and signed by the appropriate regulatory authority of the City.

15. **School:** The facility where an educational institution licensed by New York State and serving students in any grade from kindergarten through 12th grade is located.

16. **Smoke:** The emission produced by the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco.

17. **Smoking:** The burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco.

Section 4:

§280-4. Prohibition of outdoor smoking in certain public places.

Smoking shall not be permitted and no person shall smoke in the following outdoor areas, subject to the limited exception for streets open to regular traffic as set forth in Section 280-5, below:

A. At or near playgrounds, child care centers and schools, as follows:

1. At any playground that is open to use by the public, or on any public property that is within 25 feet of such a playground.
2. On any public property that is within 25 feet of any entrance, exit, window or ventilation intake of any licensed child care center or its facility.
3. On any public property that is within 25 feet of any entrance, exit, window or ventilation intake for a school, school building or school facility.
4. The owner of any such playground, child care center or school shall be required to post and maintain signage acceptable to the City advising the public of the above restrictions.

B. In other areas or at events where persons cannot readily escape nearby second-hand smoke, as follows:

1. Within any outdoor dining area (whether covered or not) located on City-owned property, including the Ithaca Commons, as follows:
 - a. Within any seating area for outdoor dining and/or drinking associated with a bar or restaurant, that is on City property and subject to a City license, and that is in use for that purpose; and
 - b. Within any seating area for outdoor dining and/or drinking established or maintained by the City or its agent, and that is in use for that purpose; and
2. On any public property that is within 25 feet of the area occupied by a mobile vending cart or other mobile vendor operating on City-owned (or City-leased) property.
3. At outdoor events on City-owned property, as follows:
 - a. Within the outdoor seating and viewing areas for open-air concerts, dances, parades, other performances, lectures, motion picture or video presentations, or similar open-air presentations, for which a permit from the City is required and when in use for that purpose;
 - b. Within the outdoor seating and viewing areas associated with unenclosed (or partially enclosed) sports areas or similar open-air recreational facilities;
 - c. During outdoor festivals, block parties and similar events, on public property, for which a permit from the City is required, that will involve the concentration of persons in small or constrained spaces. For such an event, smoking is prohibited within the area covered by the City permit, except within a designated smoking area as described in Section B3d, below.
 - d. If the sponsor of an outdoor event (per Section B3a, B3b or B3c, above) wishes to allow smoking at the event, the sponsor must

propose and request (from the permit issuer) a “designated smoking area” associated with event (which must be so marked, may not be in a permanently smoke-free area, and would result in little or no direct exposure of non-smokers to 2nd-hand smoke); if no such exception is requested and granted, the event must be entirely smoke-free. For an event occupying a portion of the Ithaca Commons, the designated smoking area shall be that part of Commons where outdoor smoking is not otherwise prohibited. (See Section 208-4.C.1, below.)

4. Any licensee or permit holder for an outdoor dining area, vending or outdoor event on City-owned property shall be required to inform members of the public of applicable restrictions on outdoor smoking (for example, through signs posted on a mobile vending cart, at the perimeter of an outdoor dining area or outdoor event, and/or in the publicity for an event).

C. In certain other areas, as follows: <<< [Click for Amendment to Subsection C](#)

1. On a portion of the Ithaca Commons (and the alleys to the south of it), as follows (as illustrated on the attached map):

At all times, within the inner portion of Ithaca Commons, which area is intended to encompass all that portion of the right-of-way of North Tioga Street commonly referred to as “Bank Alley” from the centerline of East State/Martin Luther King Street northerly for a distance of 203 feet; and all that portion of the right-of-way of East State/Martin Luther King Street easterly from the centerline of North Tioga Street for a distance of 188 feet; and all that portion of the right-of-way of East State/Martin Luther King Street westerly from the centerline of North Tioga Street for a distance of 425 feet; also, within the so-called Home Dairy Alley and its southerly extension beneath the Green Street Parking Garage and within that part of the City-owned portion of the alley between the Green Street Parking Garage and the property to the north commonly referred to as “Center Ithaca” that is west of the easterly stairway located in said alley. [NOTE: On the Commons, the northerly boundary of the smoke-free area coincides with the property line between the Tompkins Trust Company and M&T Bank buildings; the westerly boundary is at the most westerly edge of the low concrete wall enclosing the chess-table area; and the easterly boundary is at the most easterly edge of the large concrete planter located to the east of the playground area.]

2. Outside City-owned buildings, as follows:
At all times, on any public property within 25 feet of any entrance or exit or window or ventilation intake for any building owned by the City of Ithaca.
3. In City-owned parks, as follows:
 - a. Within certain City-owned parks or areas of certain City-owned parks, as follows:
 - (1) In Stewart and Cass Parks, as follows:

Smoking is prohibited in designated, smoke-free areas (see below, and see attached maps); outdoor smoking is otherwise permitted in these parks, except that the managers of City-operated programs in these parks shall have authority to designate (with appropriate signage) additional smoke-free areas when in use for those programs, when such designation is reasonably necessary for the protection of public health.

(a) Cass Park smoke-free areas (in addition to playground areas) are:

- i. All playing fields when in active use for recreational purposes, and within 25 feet of the boundary of a playing field when the field is in use for such purpose;
- ii. Inside any pavilion, or within 25 feet of it;
- iii. Inside the skating rink structure, or within 25 feet of it;
- iv. Within the fenced area around the swimming pool; and
- v. The tennis courts, when in active use for recreational purposes.

(b) Stewart Park smoke-free areas are:

- i. The "Playground/Pavilion Area," namely, the area bordered by the "inner" park roads, plus the large pavilion and a 25-foot buffer around it (includes carousel and sprinkler area; runs to Lake shore);
- ii. The tennis courts, when in active use for recreational purposes; and
- iii. Inside the Boathouse and within 25 feet of any entrance, exit, window or ventilation intake.

(2) Anywhere within any other City-owned or operated park (including DeWitt Park), except that this prohibition shall not apply to the City-owned "Festival Lands"/Off-Leash Area, currently operated as part of Allan H. Treman State Park.

4. On the following City-owned trails and special, multi-purpose walkways:

- a. Cayuga Waterfront Trail
- b. Six Mile Creek Creekwalk
- c. Inlet Island Promenade

5. In City-owned Natural Areas, as follows:

No smoking within the following designated (or otherwise specified) Natural Areas, both within and outside the boundaries of the City of Ithaca:

- a. Six Mile Creek
- b. Fuertes Sanctuary
- c. Ithaca Falls

d. Southwest Substitute Parkland (pending designation as natural area)

6. At Other City-Operated Facilities, as follows:

No smoking in the following places:

- a. Elevators in City parking garages;
- b. Within the fenced area of the Alex Haley Pool, or within the fenced area of the adjacent Melvyn Bell Memorial basketball court when in use for recreational purposes.

7. Inside, or on any public property within 25 feet of, any mass transit shelter;

8. At facilities leased or licensed to others, as follows:

- a. Whenever the City is negotiating a new or renewed lease or license for use of City land or buildings, the City shall include in such lease or license a provision that will apply outdoor smoking rules comparable to those for other, comparable City property (as set forth herein).
- b. As for existing leases, where this ordinance would not apply automatically, the City shall ask such lessees to agree (voluntarily) to operate the outdoor areas of the leased premises in a manner that is consistent with City regulation of smoking in comparable outdoor areas.

Section 5:

§280-5. Exception for streets open to regular traffic.

Streets open to regular vehicular traffic are exempt from the prohibitions on outdoor smoking emanating from an adjacent area, except that such prohibition shall extend into the parking lane of such a street and to persons in or on a vehicle in an affected parking area on public property (such as near a school or playground).

Section 6:

§280-6. Referenced maps are approximations

All maps referenced in this Chapter are visual approximations of legislative intent as expressed in the language of this Chapter.

Section 7:

§280-7. Enforcement; penalties.

Any person who violates any provision of this chapter, by smoking in an area where outdoor smoking is hereby prohibited, shall be guilty of an offense punishable by the following penalties:

1 st offense:	\$75.00
2 nd offense:	\$150.00
3 rd or subsequent offense:	\$250.00

Section 8:

§280-8. Effective date.

This chapter shall take effect on August 1, 2010, upon publication of notice as provided in the Ithaca City Charter.

Section 9:

Severability

If any clause, sentence, paragraph, section, Article or part of this resolution or ordinance, now or through supplementation or amendment in the future, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, Article or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Ayes (9) Coles, Dotson, Clairborne, Rosario, Zumoff, Rooker, Myrick,
Mohlenhoff, Cogan
Nays (1) McCollister

Carried

PLEASE TAKE NOTICE that the Common Council of the City of Ithaca, New York, at a Regular Meeting on October 6, 2010 adopted the following ordinance:

Ordinance 2010-07

BE IT ORDAINED AND ENACTED by the Common Council of the City of Ithaca, as follows:

Section 1.

Section 280-4, Subsection C, of Chapter 280 (entitled "Smoking, Outdoor") of the Municipal Code of the City of Ithaca is hereby amended to read as follows:

From CHAPTER 280 ("Smoking, Outdoor")

§280-4. Prohibition of outdoor smoking in certain public places.

Smoking shall not be permitted and no person shall smoke in the following outdoor areas, subject to the limited exception for streets open to regular traffic as set forth in Section 280-5, below:

...

C. In certain other areas, as follows:

1. On any part of the Ithaca Commons, and within the alleys to the south of it, as follows
 - a. For the purpose of this section, the Ithaca Commons consists of the entirety of the public right-of-way of the 100 block of North Tioga Street lying to the south of the southerly curblineline of East Seneca Street, and the entirety of the public right-of-way of the 100 and 200 blocks of East State/Martin Luther King Street lying between the easterly curblineline of Cayuga Street, and the westerly curblineline of Aurora Street;
 - b. Smoking is also prohibited within the so-called Home Dairy Alley (running south from the Commons) and its southerly extension beneath the Green Street Parking Garage (to the northerly curblineline of East Green Street), and within that part of the City-owned portion of the alley between the Green Street Parking Garage and the property to the north commonly referred to as "Center Ithaca" that is west of the easterly stairway located in said alley.

Section 2. Effective Date.

This ordinance shall take effect on November 1, 2010, and upon publication of notice as provided in the Ithaca City Charter.

Section 3. Severability.

If any clause, sentence, paragraph, section, Article or part of this ordinance, now or through supplementation or amendment in the future, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, Article or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Publish Date: October 21, 2010