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Judge upholds WL smoking ban

By JOE GERRETY
jgerrety@journalandcourier.com

June 28, 2007

West Lafayette's workplace smoking ban will go into effect on Sunday.

Judge Thomas Busch of Tippecanoe Superior Court 2 on Wednesday granted a motion for summary judgment in favor of the city and against two plaintiffs -- Harry's Chocolate Shop, a West Lafayette bar; and David Rollings, a bartender and manager at the Wabash Yacht Club.

The plaintiffs filed a lawsuit in March seeking a declaratory judgment and court order prohibiting the city from enforcing the ban.

"The desire of the plaintiffs to continue to operate as they have done in the past is understandable," Busch wrote in an eight-page order upholding the smoking ban.

"The city could have accommodated this interest by granting all bars the option of allowing or forbidding smoking. However, the City Council decided to draw the line in a different place. ... The plaintiffs' remedies are in the political process, not the courts."

The ban will take effect at 12:01 a.m. Sunday.

"I'm glad," Al Antaran of Lafayette said of the court's support for the ordinance.

A Purdue University graduate student and native of California, where cities started imposing smoking restrictions 20 years ago, Antaran, a nonsmoker, said he hopes Lafayette considers similar legislation.

"It'll be a nice transition to be going into a restaurant and not have to worry about" whether smoking is permitted, he said.

Thomas Herr, a Lafayette attorney representing the plaintiffs, had little to say in reaction to the decision.

"I'm extremely disappointed, but my clients haven't even seen the order," Herr said Wednesday morning. "I disagree with it. Especially with Mr. Rollings, it really doesn't analyze the issues."

City councilwoman Patti O'Callaghan, who authored the ordinance, was thrilled with the ruling.

"I'm very much looking forward to Sunday. I think the majority of residents of West Lafayette will be pleased, as well as many people in Lafayette," O'Callaghan said. "I think we'll see people coming over to the west side of the river to support the ordinance."

But Scott Guinn and Ryan Puetz of Lafayette, who were enjoying a smoke outside Von's in West Lafayette on Wednesday morning, suspect the opposite will happen.

"It'll just make that downtown (Lafayette) area boom economically," Puetz said.

Puetz and Guinn said they'll take the indoor smoking ban in stride.

"It doesn't really matter," Guinn said. "You adapt to it."

"You just do what you gotta do," Puetz said. "Just step outside if you want to smoke."

The plaintiffs alleged that the ordinance violates the equal privileges and immunities clause of the Indiana Constitution because it exempts certain businesses, giving those businesses and their employees privileges denied the plaintiffs.

The most controversial exemption built into the ordinance appears to affect only one business -- Hookah!, a restaurant in Chauncey Hill Mall a few doors down from the Wabash Yacht Club where the main attraction is flavored tobacco smoked through rented pipes.

Such "tobacco bars," defined as establishments that derive at least 25 percent of their revenue from the sale of tobacco products and the rental of smoking devices, are exempt from the ban.

Nakia Collins, a Purdue graduate student in sociology and a smoker, said she understands the premise of the law -- to protect people from second-hand smoke. But she thinks proprietors should be allowed to run their businesses as they choose and let their customers decide whether they will tolerate the smoke.

"If you don't want to go to a business that allows smoking, don't go to it," Collins said. "I think it should be left up to the people. That's not something that we need to regulate."

Busch noted in his order that businesses such as Harry's and the Wabash Yacht Club could take advantage of the tobacco bar exemption by adopting a business plan that derives 25 percent of its revenue from tobacco sales -- "it could operate a back-room mail order tobacco business," Busch wrote.

The ordinance bans smoking in almost all city workplaces and indoor public gathering areas. Other exceptions are retail tobacco stores, private clubs, private homes, certain hotel rooms and outdoor areas.

Violators could be fined $50 for a first offense, $100 for a second offense and $250 for a third offense.