

GWINNETT COUNTY
BOARD OF COMMISSIONERS
LAWRENCEVILLE, GEORGIA

ORDINANCE ENTITLED: Smoke-free Air

READING AND ADOPTION:

At the regular meeting of the Gwinnett County Board of Commissioners held in the Justice and Administration Center, Auditorium, 75 Langley Drive, Lawrenceville, Georgia.

Name	Present	Vote
Nicole L. Hendrickson, Chairwoman		
Kirkland D. Carden, District 1		
Ben Ku, District 2		
Jasper Watkins, III, District 3		
Marlene M. Fosque, District 4		

On motion of **Commissioner** _____, which carried _____, the Gwinnett County Board of Commissioners hereby amends the Code of Ordinances of Gwinnett County by repealing Article V of Chapter 38, entitled "Clean Indoor Air" in its entirety and replacing it with a new Article V of Chapter 38, entitled "Smoke-free Air."

WHEREAS, the Board of Commissioners of Gwinnett County is authorized to adopt ordinances or regulations for the governing and policing of the County for the purpose of protecting and preserving the health, safety, welfare and morals of the citizens of the County; and

WHEREAS, in 2005, the Georgia General Assembly enacted the Georgia Smoke-free Air Act prohibiting smoking in most indoor public areas while providing specific guidelines for smoking in and around establishments serving the public; and

WHEREAS, in 2005, the Gwinnett County Board of Commissioners adopted a Clean Indoor Air Ordinance to protect the public health and welfare by prohibiting smoking in public places and private places of employment; and

WHEREAS, the smoking industry has changed significantly since 2005 with the development and increased use of e-cigarettes, including e-cigars, e-cigs, cigalikes, e-hookahs, mods, vape pens, vapes, and tank systems.

WHEREAS, tobacco use remains the leading preventable cause of death and disease in the United States; and

WHEREAS, in Georgia, 11,700 adults die from smoking-related illness each year; and

WHEREAS, tobacco use in Georgia has resulted and continues to result in significant monetary costs, including over \$3 billion in annual health care costs directly caused by smoking and over \$3 billion in productivity losses; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease in healthy non-smokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) indicates that there is no safe level of exposure to secondhand smoke; and

WHEREAS, the aerosol from e-cigarettes is not harmless and can contain cancer-causing chemicals and heavy metals, and

WHEREAS, the CDC indicated that comprehensive smoke-free policies have been successful in protecting non-smokers from secondhand smoke and are the only way to fully protect non-smokers' health; and

WHEREAS, normal ventilation cannot eliminate the health risks posed by secondhand smoke; and

WHEREAS, studies show that comprehensive smoke-free policies reduce secondhand smoke, reduce smoking, help prevent smoking initiation, do not negatively impact the hospitality industry, and result in high levels of compliance where adopted; and

WHEREAS, the Board of Commissioners has determined that smoking poses a threat to the health, safety, and welfare of the citizens of the County; and

WHEREAS, the Board of Commissioners seeks to regulate smoking in public places and places of employment in order to protect the health and welfare of its citizens; and

WHEREAS, the Board of Commissioners finds that amendment of the Gwinnett County Clean Indoor Air Ordinance is in the best interest of the citizens of Gwinnett County;

NOW, THEREFORE, BE IT ORDAINED that the Gwinnett County Board of Commissioners hereby repeals Article V of Chapter 38 of the Gwinnett County Code of Ordinances, entitled "Clean Indoor Air," and replaces it with a new Article V of Chapter 38

of the Gwinnett County Code of Ordinances, entitled "Smoke-free Air," which is attached hereto as Exhibit A and incorporated by reference herein.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this ordinance shall become effective 30 days after its adoption.

BE IT FURTHER RESOLVED that all ordinances, regulations or parts of the same in conflict with this Resolution are hereby rescinded to the extent of said conflict.

GWINNETT COUNTY BOARD OF COMMISSIONERS

By: _____
Nicole L. Hendrickson, Chairwoman

ATTEST:

By: _____
Tina King, County Clerk
(Seal)

APPROVED AS TO FORM:

By: _____
Theresa Cox, Deputy County Attorney

Exhibit A

Chapter 38

Article V – Smoke-free Air

Article V of Chapter 38, entitled “Clean Indoor Air” is hereby amended by repealing Article V in its entirety and replacing it with a new Article V of Chapter 38, entitled “Smoke-free Air”, as set forth below:

Sec. 38-101

This article shall be known, cited, and referred to as the Gwinnett County Smoke-free Air Ordinance.

Sec. 38-102 - FINDINGS AND PURPOSE

(a) The Gwinnett County Board of Commissioners does hereby find that:

(1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease in healthy non-smokers, including heart disease, stroke, respiratory disease, and lung cancer.

(2) Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive disease. Children exposed to secondhand smoke have an increased risk of asthma attacks, respiratory infections, sudden infant death syndrome, and developmental abnormalities.

(b) Accordingly, the Gwinnett County Board of Commissioners finds and declares that the purposes of this Ordinance are:

(1) To protect the public health and welfare by prohibiting smoking in public places and public and private places of employment;

(2) To guarantee the right of non-smokers to breathe smoke-free air; and

(3) To recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Sec. 38-103 DEFINITIONS

As used in this Article, the term:

Bar means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

Business means any corporation, sole proprietorship, partnership, limited partnership, limited liability corporation, limited liability partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether for profit or nonprofit.

Cigar bar or lounge means a lawfully established business that is open to the public where cigars are sold for consumption on and off the premises, and space and seating are provided for patrons to sit and smoke cigars. For cigar bars or lounges established after the adoption date of this ordinance, lawfully established shall mean cigar bars or lounges granted a Special Use Permit in accordance with the provisions of the Unified Development Ordinance. For cigar bars or lounges established prior to the date of adoption of this ordinance, such establishments shall demonstrate continuous consistent daily operation as a cigar bar or lounge and shall have either been continuously held out to the public as a cigar bar or lounge or shall be able to provide financial records verifying that 20% of gross annual sales are derived from the sale of cigars or cigar products. This definition shall not include establishments which hosted special or intermittent events which allowed cigar smoking on premises for such events or retail tobacco and/or cigar shops.

Electronic Smoking Device/Vapor Product means any product that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, intended to produce vapor or aerosol from nicotine or other substances for human consumption in a solution or other form. Such term shall include, but shall not be limited to, any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, vape pen or similar product or device and any vapor or aerosol cartridge or other container of nicotine or other substance in a solution or other form, including, but not limited to, a device component, part, or accessory of the device, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device..

Employee means an individual who is employed by a business in consideration for direct or indirect monetary wages or profit.

Employer means an individual, business, partnership, association, corporation, including, a trust or non-profit entity that employs the services of one or more individuals.

Enclosed area means all space between a floor and ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent, and whether or not it contains openings of any kind.

Health care facility means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, homes for the chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities. This definition shall not include long-term care facilities as defined in paragraph (3) of Official Code of Georgia Annotated § 31-8-81.

Hookah/Vapor bar or lounge means a lawfully established business that is open to the public where hookah, shisha, or vapor products are sold for consumption on and off the premises, and space and seating are provided for patrons to sit and smoke hookah, shisha, or vapor products. For businesses established after April 28, 2015, lawfully established shall mean hookah/vapor bars or lounges granted a Special Use Permit in accordance with the provisions of the Unified Development Ordinance. For hookah/vapor bars or lounges established prior to April 28, 2015, such establishments shall demonstrate continuous consistent daily operation as a hookah/vapor bar or lounge and shall have either been continuously held out to the public as a hookah/vapor bar or lounge or shall be able to provide financial records verifying that 20% of gross annual sales are derived from the sale of hookah, shisha, or vapor products. This definition shall not include establishments which hosted special or intermittent events which allowed hookah smoking or vaping on premises for such events or retail hookah or vape shops.

Place of employment means an enclosed area under the control of a public or private employer that employees utilize during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. A private residence is not a place of employment unless it is used as a licensed child care, adult day-care, or health care facility.

Playground means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on County-owned land.

Public place means an area to which the public is invited or in which the public is permitted, including, but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, parking structures, public

transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a public place unless it is used as a licensed child care, adult day-care, or health care facility.

Private Club means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain.

Public Event means an event which is open to and may be attended by the general public, including, but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

Recreational Area means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.

Restaurant means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term shall include a bar area within any restaurant.

Service line means an indoor or outdoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

Shopping mall means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product, including marijuana, intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

Sports arena means enclosed stadiums and enclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Sec. 38-104 - SMOKING PROHIBITED IN COUNTY FACILITIES

Smoking shall be prohibited in all enclosed facilities of, including buildings owned, leased, or operated by, Gwinnett County.

Sec. 38-105 GENERAL PROHIBITION OF SMOKING IN PUBLIC PLACES

Except as otherwise specifically authorized in Section 38-110, smoking shall be prohibited in all enclosed public places within unincorporated Gwinnett County, including but not limited to, the following places:

- (a) Aquariums, galleries, libraries, and museums.
- (b) Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- (c) Bars.
- (d) Bingo facilities.
- (e) Child care and adult day-care facilities.
- (f) Convention facilities.
- (g) Educational facilities, both public and private.
- (h) Elevators.
- (i) Gaming facilities.
- (j) Health care facilities.
- (k) Hotels and motels.
- (l) Parking structures.
- (m) Polling places.
- (n) Public transportation vehicles, including public transportation and buses, under the authority of Gwinnett County, and public transportation facilities, including bus, train, and airport facilities.
- (o) Restaurants.
- (p) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (q) Retail stores.
- (r) Rooms, chambers, places of meeting or public assembly, under the control of the County.
- (s) Service lines.
- (t) Shopping malls.

- (u) Sports arenas, including enclosed places in outdoor arenas.
- (v) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 38-106 - GENERAL PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT

Except as otherwise specifically provided in Section 38-110, smoking shall be prohibited in all enclosed areas within places of employment. This includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

Sec. 38-107 – PROHIBITIONS FOR CERTAIN ENCLOSED FACILITIES

Smoking shall be prohibited in the following enclosed facilities:

- (a) All private clubs.
- (b) All private and semi-private rooms and common areas in nursing homes.
- (c) All hotel and motel guest rooms.

Sec. 38-108 PROHIBITION OF SMOKING IN OUTDOOR PUBLIC PLACES

Smoking shall be prohibited in the following outdoor places:

- (a) Within 15 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- (b) Within 15 feet of, outdoor seating or serving areas of restaurants.
- (c) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited within 15 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- (d) In outdoor public recreational areas, including playgrounds.
- (e) Within 15 feet of all outdoor public transportation stations, platforms, and shelters under the authority of the County.
- (f) Within 15 feet of any outdoor service lines.
- (g) In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, which must be located at least 15 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

38-109 - PROHIBITION OF SMOKING IN OUTDOOR PLACES OF EMPLOYMENT

Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, but is not limited to, work areas, construction sites, and temporary offices such as trailers, restroom facilities, and vehicles.

Sec. 38-110 - EXEMPTIONS

Notwithstanding any other provision of this Article, the following areas shall be exempt from the smoking prohibitions in this Article:

- (a) Private residences, except when used as a licensed child-care, adult day-care, or health care facility
- (b) Hookah/Vapor Bars or Lounges, as defined by this chapter, provided the establishment:
 - 1. Shall deny access to any person under the age of 21
 - 2. Shall not employ any individual under the age of 21
 - 3. Shall not sell or permit the use of:
 - i. Cigars
 - ii. Cigarettes
 - iii. Unrolled, loose, or pipe tobacco
 - 4. Shall adhere to the supplemental use standards in the Unified Development Ordinance, as applicable
- (c) Cigar Bars or Lounges, as defined by this chapter, provided the establishment:
 - 1. Shall deny access to any person under the age of 21
 - 2. Shall not employ any individual under the age of 21
 - 3. Shall not sell or permit the use of:
 - i. Electronic smoking devices or vapor products
 - ii. Hookah or shisha products
 - iii. Cigarettes
 - iv. Unrolled, loose, or pipe tobacco
 - 4. Shall adhere to the supplemental use standards in the Unified Development Ordinance, as applicable

Sec. 38-111 - OWNER'S ELECTION

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that the entire establishment, facility, or outdoor area is a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of subsection (a) of Section 38-113 is posted.

Sec. 38-112 - NONRETALIATION

No person or employer shall in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident reports a violation of this Chapter.

Sec. 38-113 POSTING OF SIGNS AND REMOVAL OF ASHTRAYS

- (a) 'No Smoking/No Vaping' signs or the international 'No Smoking' symbol, and similar symbol for vaping, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it may be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public place and place of employment where smoking is prohibited by this Article.
- (b) All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person in control of the area, unless such ashtray is permanently affixed to an existing structure.

Sec. 38-114 - EDUCATIONAL PROGRAM

Gwinnett County may engage or assist in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Article.

Sec. 38-115 - ENFORCEMENT

The Chief of Police and his or her duly authorized agents are authorized and empowered to enforce compliance with this Article and, in connection therewith, to enter upon and inspect the premises of any establishment or business at any reasonable time and in a reasonable manner.

Sec. 38-116 - VIOLATIONS AND PENALTIES

- (a) A person found to be in violation of this Article by smoking in an area where smoking is prohibited under this Article shall be guilty of an ordinance violation punishable by a fine not exceeding fifty dollars (\$50).
- (b) A person who owns, manages, operates, or otherwise controls a public place or place of employment who is found to be in violation of this Article shall be guilty of an ordinance violation, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- (c) Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.
- (d) In addition to any other available remedies, Gwinnett County may seek injunctive relief to enforce the provisions of this Article in any court of competent jurisdiction or seek any other available remedy.

Sec. 38-117 - CONSTRUCTION

- (a) This Article shall not be construed to permit smoking where it is otherwise restricted by other applicable laws.
- (b) This Article shall be liberally construed so as to further its purposes.

Sec. 38-118 - SEVERABILITY

Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the Ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All Ordinances or Resolutions, or parts thereof, in conflict with this Ordinance are repealed.