

GWINNETT COUNTY CLEAN INDOOR AIR ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF GWINNETT COUNTY, GEORGIA,
CHAPTER 42, ARTICLE VI, PERTAINING TO SMOKING IN PUBLIC PLACES
AND PLACES OF EMPLOYMENT, AND FOR OTHER PURPOSES.

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, 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, employers who eliminate smoking in the workplace report a dramatic decrease in the maintenance costs for their business; and

WHEREAS, smokers who work in smoke-free buildings are thirty-eight percent more likely to quit smoking than those working where smoking is permitted; and

WHEREAS, an eight-hour shift in a smoky workplace is the equivalent of smoking almost three packs of cigarettes; and

WHEREAS, secondhand smoke causes asthma attacks, heart attacks, strokes and lung cancer in adults and Sudden Infant Death Syndrome, middle ear infections, bronchitis, asthma, pneumonia and low birth weight in children; and

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

WHEREAS, a non-smoker living with a smoker has a ninety percent greater risk of developing heart disease than a non-smoker living with a non-smoker; and

WHEREAS, tobacco use is associated with seven of the ten leading causes of death to Gwinnett County residents; and

WHEREAS, a substantial number of Gwinnett County residents were hospitalized for smoking related diseases in 2004; and

WHEREAS, a substantial percentage of youth hospitalizations in Gwinnett County in 2004 were asthma related; 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;

WHEREAS, in light of the State Legislature's enactment of the Georgia Smokefree Air Act of 2005, 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 BY THE BOARD OF COMMISSIONERS OF GWINNETT COUNTY, GEORGIA, AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF SAME, that Chapter 42, Article VI of the Code of Gwinnett County, Georgia, is hereby amended to read as follows:

Part I. ENACTMENT

Chapter 42, Article VI of the Code of Gwinnett County, Georgia, is hereby amended by deleting Article VI and replacing

it with a new Article VI, and substituting the following in lieu thereof:

Sec. 42-121 TITLE

This Article shall be known, cited and referred to as Gwinnett County Clean Indoor Air Ordinance.

Sec. 42-122 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, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.

(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. 42-123 DEFINITIONS

As used in this Article, the term:

(1) '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.

(2) '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.

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

(4) 'Employer' means an individual or a business that employs one or more individuals.

(5) 'Enclosed area' means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.

(6) '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.

(7) 'Infiltrate' means to permeate an enclosed area by passing through its walls, ceilings, floors, windows, or ventilation systems to the extent that an individual can smell secondhand smoke.

(8) '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. This term shall not include vehicles used in the course of employment.

(9) 'Public place' means an enclosed area to which the public is invited or in which the public is permitted,

including, but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation 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.

(10) 'Restaurant' means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school 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.

(11) 'Retail tobacco store' means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(12) 'Secondhand smoke' means smoke emitted from lighted, smoldering, or burning tobacco when the person smoking is not inhaling, smoke emitted at the mouthpiece during puff drawing, and smoke exhaled by the person smoking.

(13) 'Service line' means an indoor 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.

(14) 'Shopping mall' means an enclosed public walkway or

hall area that serves to connect retail or professional establishments.

(15) 'Smoking' means inhaling, exhaling, burning, or carrying any lighted tobacco product including cigarettes, cigars, and pipe tobacco.

(16) 'Smoking area' means a separately designated enclosed room which need not be entered by an employee in order to conduct business that is designated as a smoking area and, when so designated as a smoking area, shall not be construed as to deprive employees of a nonsmoking lounge, waiting area, or break room.

(17) '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. 42-124 SMOKING PROHIBITED IN COUNTY FACILITIES

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

Sec. 42-125 GENERAL PROHIBITION OF SMOKING IN PUBLIC PLACES

Except as otherwise specifically authorized in Section 42-127, smoking shall be prohibited in all enclosed public places within unincorporated Gwinnett County.

Sec. 42-126 GENERAL PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT

(a) Except as otherwise specifically provided in Section 42-127, smoking shall be prohibited in all enclosed areas within places of employment, including, but 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.

(b) Such prohibition on smoking shall be communicated to all current employees, by September 1, 2005, and to each prospective employee upon their application for employment.

Sec. 42-127 EXEMPTIONS

(a) Notwithstanding any other provision of this Article, the following areas shall be exempt from the provisions of Sections 42-125 and 42-126:

(1) Private residences, except when used as a licensed child care, adult day-care, or health care facility;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20 percent of rooms rented to guests in a hotel or motel may be so designated;

(3) Retail tobacco stores, provided that secondhand smoke from such stores does not infiltrate into areas where smoking is prohibited under the provisions of this Article;

(4) Long-term care facilities as defined in paragraph (3) of Official Code of Georgia Annotated § 31-8-81;

(5) Outdoor areas of places of employment;

(6) All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, all tobacco storage facilities, and any other entity set forth in Official Code of Georgia Annotated § 10-13A-2;

(7) Private and semiprivate rooms in health care facilities licensed under Official Code of Georgia Annotated Title 31 that are occupied by one or more persons, all of whom have written authorization by their treating physician to smoke;

(8) Bars and restaurants, as follows:

(A) All bars and restaurants to which access is denied to any person under the age of 18 and that do not employ any individuals under the age of 18; or

(B) Private rooms in restaurants and bars if such rooms are enclosed and have an air handling system independent from the main air handling system that serves all other areas of the building and all air within the private room is exhausted directly to the outside by an exhaust fan of sufficient size;

(9) Convention facility meeting rooms and public and private assembly rooms contained within a convention facility not wholly or partially owned, leased, or operated

by the State of Georgia, its agencies and authorities, or any political subdivision of the state, municipal corporation, or local board or authority created by general, local, or special Act of the General Assembly while these places are being used for private functions and where individuals under the age of 18 are prohibited from attending or working as an employee during the function;

(10) Smoking areas designated by an employer which shall meet the following requirements:

(A) The smoking area shall be located in a nonwork area where no employee, as part of his or her work responsibilities, shall be required to enter, except such work responsibilities shall not include custodial or maintenance work carried out in the smoking area when it is unoccupied;

(B) Air handling systems from the smoking area shall be independent from the main air handling system that serves all other areas of the building and all air within the smoking area shall be exhausted directly to the outside by an exhaust fan of sufficient size and capacity for the smoking area and no air from the smoking area shall be recirculated through or infiltrate other parts of the building; and

(C) The smoking area shall be for the use of employees only.

The exemption provided for in this paragraph shall not

apply to restaurants and bars; and

(11) Common work areas, conference and meeting rooms, and private offices in private places of employment, other than medical facilities, that are open to the general public by appointment only; except that smoking shall be prohibited in any public reception area of such place of employment.

(12) Private clubs, military officer clubs and noncommissioned officer clubs.

(b) In order to qualify for exempt status under subsection (a) of this Section, any area described in subsection (a) of this Section, except for areas described in paragraph (1) of subsection (a) of this Section, shall post conspicuously at every entrance a sign indicating that smoking is permitted.

Sec. 42-128 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 42-129 is posted.

Sec. 42-129 POSTING OF SIGNS AND REMOVAL OF ASHTRAYS

(a) 'No Smoking' signs or the international 'No Smoking' symbol 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. 42-130 EDUCATIONAL PROGRAM

The Gwinnett County Board of Health may engage 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. 42-131 ENFORCEMENT

The Gwinnett County Board of Health and the Chief of Police, and their 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. 42-132 COOPERATION

The Gwinnett County Board of Health may annually request other governmental and educational agencies having facilities within Gwinnett County to establish local operating procedures

in cooperation and compliance with this Article.

Sec. 42-133 VIOLATIONS AND PENALTIES

A person smoking tobacco in violation of this Article shall be deemed to have violated a County Ordinance and shall be punished by a fine of not less than \$100.00 nor more than \$500.00.

Sec. 42-134 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.

PART II. EFFECTIVE DATE

This Article shall become effective on November 1, 2005.

PART III. 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.

ADOPTED by the Gwinnett County Board of Commissioners, this
the 21st day of September, 2005.

**BOARD OF COMMISSIONERS
GWINNETT COUNTY, GEORGIA**

By: _____

**CHARLES E. BANNISTER
CHAIRMAN**

ATTEST:

**BRENDA MADDOX, COUNTY CLERK
(SEAL)**

APPROVED AS TO FORM:

**VAN STEPHENS
CHIEF ASSISTANT COUNTY ATTORNEY**