



**AN ORDINANCE**

**AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY, GEORGIA,  
CHAPTER 16, ARTICLE VI, PERTAINING TO SMOKING IN PUBLIC PLACES AND  
FOR OTHER PURPOSES.**

**WHEREAS**, the Board of Commissioners of DeKalb County is authorized to adopt such 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 whose 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, stroke 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 DeKalb County residents; and

**WHEREAS**, approximately two thousand nine hundred DeKalb County residents were hospitalized for smoking related diseases in 1996; and

**WHEREAS**, two of the three leading causes of death in DeKalb County for persons 35 to 65 years of age are smoking-related;

**WHEREAS**, fifty-three percent of youth hospitalizations in DeKalb County in 1996 were asthma related; at least twenty percent of these were smoking related; and

**WHEREAS**, potential tobacco-related diseases cause more than 5,611 years of potential life lost and more than nineteen hundred deaths annually; 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; therefore,

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF DEKALB COUNTY, GEORGIA, AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF SAME**, that Chapter 16, Article VI of the Code of DeKalb County, Georgia, is hereby amended to read as follows:

**PART I. ENACTMENT**

Chapter 16, Article VI of the Code of DeKalb 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. 16-100. Title.

This article shall be known, cited, and referred to as the DeKalb County Clean Indoor Air Ordinance.

Sec. 16-101. Findings and Purpose.

- (a) The DeKalb 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 DeKalb 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, and
  - (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. 16-102. Definitions.**

*Child care facility* means any institution, society, agency, or facility, whether incorporated or not, which either primarily or incidentally provides full-time care for children under 17 years of age outside of their own homes, subject to such exceptions as may be provided in rules and regulations of the State Board of Human Resources, as defined by O.C.G.A. Section 49-5-3, as amended.

*Dining area* means an interior or exterior (such as porch, patio or courtyard) area containing a counter or tables upon which food is served.

*Employer* means any person who employs the services of an individual person.

*Employee* means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.

*Enclosed* means closed in by a roof and at least three sides with appropriate openings for ingress and egress. It includes areas commonly described as public lobbies or lobbies when they are in an area that is enclosed as defined herein.

*Establishment* means any business, store, office or other place where goods or services are sold or provided as part of a commercial venture. The term "establishment" includes but is not limited to the following: (1) automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale; (2) grocery, pharmacy, specialty, department and other stores which sell goods or merchandise; (3) service stations, stores or shops for the repair or maintenance of appliances, shoes, motor vehicles or other items or products; (4) barbershops, beauty shops, cleaners, laundromats and other establishments offering services to the general public; (5) video arcade, poolhall, and other amusement centers; (6) offices providing professional services such as legal, medical, dental, engineering, and architectural services; (7) banks, savings and loan offices, and other financial establishments; (8) hotels and motels and other places that provide accommodations to the public; and (9) restaurants and cafeterias.

*Freestanding Bar* means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and which derives at least 50 percent of its total annual gross food and beverage sales from the sale of beverages, including but not limited to taverns, nightclubs, cocktail lounges, and cabarets.

*Health care facility* means any licensed general or specialized hospital, institutional infirmary, public health center, or diagnostic and treatment center, as defined by O.C.G.A. Section 31-7-1(2), as amended.

*Intermediate care (nursing) home* means any long-term custodial care facility that provides for the physical and mental welfare of the aged.

*Personal care home* means a residential facility having at least 25 beds and providing, for compensation, protective care and oversight of ambulatory, nonrelated persons who need a monitored environment but who do not have injuries or disabilities which require chronic or convalescent care, including medical, nursing, or intermediate care. Personal care homes include those facilities which monitor daily residents' functioning and location, have the capability for crisis intervention, and

provide supervision in areas of nutrition, medication, and provision of transient medical care. Such term does not include old age residences which are devoted to independent living units with kitchen facilities in which residents have the option of preparing and serving some or all of their own meals, or boarding facilities which do not provide personal care. Personal care homes shall also mean residential care facilities for the elderly.

*Place of employment* means any enclosed area under the control of a public or private employer which employees frequent during the course of employment including, but not limited to, work areas, restrooms, hallways, employee lounges, cafeterias and snack bars, conference and meeting rooms, lobbies and reception areas. A private residence is not a place of employment unless it is used as a childcare facility, an adult day care facility, or a health care facility. The dining area of a restaurant shall be treated as a place of employment under this article.

*Public place* means any enclosed area to which the public is invited or in which the public is permitted including, but not limited to, restaurants, stores, waiting rooms, lobbies, reception areas, hallways, public transit, restrooms, enclosed shopping malls, elevators, service lines, service stations, offices providing professional services, banks and other financial institutions, educational, recreational and health care facilities, child care facilities, auditoriums, theaters, arenas, meeting rooms, repair shops, automobile dealerships, convention halls, bowling facilities, polling places, and bingo games. Porches, courtyards or decks with a contiguous connection to a public place shall be considered a public place. A private residence is not a public place unless it is used as a childcare facility, an adult daycare facility or a healthcare facility.

*Restaurant* means any establishment or area which is primarily devoted to the serving of food to the public or guests and which contains a dining area. The term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a freestanding bar area as previously defined. The term "restaurant" shall include any dining area located within a health care, educational, or childcare facility. Food courts within enclosed shopping malls shall be treated as restaurants under this article.

*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.

*Service line* means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

*Smoking* means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form.

**Sec. 16-103. Prohibited Smoking.**

Except as otherwise provided in this article, smoking is prohibited in all public places, and places of employment within unincorporated DeKalb County.

**Sec. 16-104. Prohibition of Smoking Applicable to County Property.**

This ordinance shall apply to all enclosed facilities including buildings and vehicles owned or operated by DeKalb County.

**Sec. 16-105. Reasonable Distance.**

Smoking may occur outdoors but no less than twenty (20) feet from any entrance to any public place or place of employment where smoking is prohibited.

**Sec. 16-106. Exceptions.**

(a) The smoking prohibition shall not apply in the following areas:

- (1) "Freestanding Bar" areas;
- (2) Retail Tobacco stores;
- (3) Adult Entertainment Establishments, as defined by this code;
- (4) Private residences, including private residences which may serve as an office workplace, except if used as a childcare, an adult day care or a health care facility;
- (5) Any property owned or leased by municipalities, the state of Georgia, or the federal government;
- (6) Designated smoking rooms in hotels and motels rented by guests provided that such designated smoking rooms shall not comprise more than twenty-five percent (25%) of the total number of rooms available for rent; and
- (7) Outdoor areas of places of employment, except where an owner or employer declares that the outdoor area is a smokefree environment, as provided in this article.

(c) Notwithstanding any other provision of this article, any owner, operator, manager or other person who controls any establishment described in this article may declare that the entire establishment is a non-smoking establishment.

**Sec. 16-107. Employers' Responsibility.**

- (a) It is the responsibility of employers to provide a smoke-free workplace for all employees of public places, and places of employment but employers are not required to make expenditures or structural changes to create a smoke-free work area.
- (b) Each employer having an enclosed place of employment located within unincorporated DeKalb County is encouraged to adopt, implement, make known and maintain a written smoking policy that incorporates the smoking prohibitions of this article.
- (d) The written smoking policy should be provided to all employees.

**Sec. 16-108. Posting of Signs and Notification.**

- (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) shall be clearly and conspicuously posted in every building where smoking is prohibited by this article, by the owner, operator, manager or other person having control of such building or area.
- (b) Every public place where smoking is prohibited by this ordinance shall have posted at every entrance into a public place and place of employment a conspicuous sign clearly stating that smoking is prohibited.
- (c) Notice of the provisions set forth in this article shall be given to all applicants for a business license in DeKalb County.

**Sec. 16-109. Enforcement.**

- (a) Any police officer, as defined by Georgia law, may issue a citation for any violation of this article.
- (b) Any citizen who desires to register a complaint under this article may initiate enforcement with the chief of police or designee.
- (c) Any owner, operator or manager of any establishment regulated by this article shall inform persons whom they witness violate this article of the appropriate provisions, and request compliance. In the event persons violating this article refuse to comply with this article after being informed by such owner, operator, or manager, the person smoking, and not the owner, operator, or manager, shall be subject to an action for violation of this article.

**Sec. 16-110. Non retaliation.**

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment as afforded by this article.

**Sec. 16-111. Violations and Penalties.**

Any person who violates any provision of this article shall be subject to the following penalties:

- (a) A fine not exceeding fifty dollars (\$50) for a first violation;
- (b) A fine not exceeding seventy-five dollars (\$75) for a second violation of this article within one (1) year; and
- (c) A fine not exceeding one hundred dollars (\$100) for each additional violation of this article within one (1) year.

**Sec. 16-112. Other Applicable Laws and Disclaimer.**

This ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. By regulating smoking the county is assuming an undertaking only to promote the general health and welfare of its citizens. By this enactment, neither the county, its officers nor its employees are liable in money damages to any person who claims that any breach of this article caused injury.

**PART II. EFFECTIVE DATE**

This article shall become effective sixty (60) days after adoption by the Board of Commissioners and approval by the Chief Executive Officer.

**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 DeKalb County Board of Commissioners, this 19<sup>th</sup> day of December 2002.