

**FULTON COUNTY CODE OF ORDINANCES AND CODE OF RESOLUTIONS**

**CHAPTER 34 - HEALTH AND SANITATION**

**ARTICLE III – CLEAN INDOOR AIR ORDINANCE**

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## ARTICLE III. CLEAN INDOOR AIR ORDINANCE

### Sec. 34-66. Short title of article.

*Title.* This article shall be known as the Fulton County Clean Indoor Air Ordinance.

(93-RC-184, § 30-2-14.01, 4-21-93)

### Sec. 34-67. Findings and purpose.

- (a) *Findings.* Numerous studies, including those published by the Surgeon General of the United States and recent reports of the Environmental Protection Agency, have shown that secondhand smoke is a cause of disease, including lung cancer, in healthy nonsmokers; a major contributor to indoor air pollution; and particularly harmful to children, elderly people, and allergic individuals.
- (b) *Purpose.* Accordingly, the Fulton County Board of Commissioners finds and declares that the purpose of this article is to protect the public health and welfare by regulating smoking in public places and places of employment.

(93-RC-184, § 30-2-14.02, 4-21-93)

### Sec. 34-68. Definitions.

The following words and phrases, whenever used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

*Bar* means:

- (1) An enclosed area which is primarily devoted to the serving of alcoholic beverages, wine, malt beverages, and/or distilled spirits, for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages; or
- (2) Any adult entertainment premises as defined by Chapter 18, Article III of this Code. Although a food service establishment may contain a bar, the term "bar" shall not include the food service establishment dining area. The terms wine, malt beverages, and distilled spirits are defined in Chapter 6 of this Code.

*Department* means the Fulton County Department of Health and Wellness and its authorized representative(s).

*Designated smoking area (in a food service establishment)* means an area of contiguous seating where smoking is permitted and which is situated so existing barriers and ventilation systems are used to minimize the toxic effects of smoke, and marked by appropriate signs. The designated smoking area must be located so that the nonsmoker does not have to pass through any designated smoking area to utilize any nonsmoking area of the establishment.

**Sec. 34-68. Definitions (cont.)**

*Designated smoking area (in all other areas)* means any enclosed indoor area in which smoking is permitted. Such smoking area shall be clearly designated and separate from any area in which smoking is not permitted. In a place of employment, the designated smoking area shall be separate from a smoke-free work area by floor to ceiling walls or ventilation technology effective in reducing the effects of smoke on the smoke-free area other than portable air cleaning devices; provided, however, that no restrooms or employee lounges shall be designated smoking areas.

*Dining area* means any enclosed area containing a counter or tables upon which food is served.

*Employer* means any person, partnership, associate, corporation, or nonprofit entity which employs one or more persons, including the legislative, executive, and judicial branches of Fulton County government and any city governments located in Fulton County.

*Food sales establishment* means retail and wholesale grocery stores, retail seafood stores, and places of business; food processing plants, except those food processing plants which are currently required to obtain a license from the Commissioner under any other provision of law; bakeries; confectioneries; fruit, nuts, and vegetable stores and places of business, and similar establishments, mobile or permanent, engages in the sale of food primarily for consumption off the premises. This term shall not include food service establishments as defined in this article.

*Food service establishment* means any establishment for the preparation and serving of meals, lunches, short orders, sandwiches, frozen desserts, or other edible products either for carry out or service within the establishment. The term includes, restaurants, coffee shops, cafeterias, short order cafes, luncheonettes, taverns, bars, lunchrooms, places which retail sandwiches or salads, soda fountains, institutions both public and private, food carts, itinerant restaurants, industrial cafeterias, catering establishments, and similar facilities by whatever name called. Within a food service establishment, there may be a food sales component, not separately operated. This term shall not include any outdoor recreation activity sponsored by the state, a county, a municipality, or any department or entity thereof, any outdoor public school function, or any outdoor private school function. This term also shall not mean establishments for the preparation and serving of meals, lunches, short orders, sandwiches, frozen desserts, or other edible products if such preparation or serving is an authorized part of and occurs upon the site of a fair or festival.

*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, employee lounges, conference and meeting rooms, lobbies and reception areas.

- (1) A private residence is not a place of employment unless it is used as a child care facility or a health care facility.
- (2) The dining area of a food service establishment shall not be treated as a place of employment under this article.

**Sec. 34-68. Definitions (cont.)**

*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, offices, waiting rooms, lobbies, public transit, restrooms, enclosed shopping malls, educational, recreational and health care facilities, child care facilities, auditoriums, theaters, sports arenas, service lines, airports, and meeting rooms. A private residence is not a public place unless it is used as a child care facility or a health care facility.

*Retail tobacco store* means a retail store in which the sale of tobacco products designed for smoking comprises more than 50 percent of its receipts.

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

*Smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other smoking equipment in any manner or form.

*Sports arena* means any enclosed sport pavilion, gymnasium, health spa, enclosed stadium, swimming pool, roller and ice rink, bowling alley, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

*Tobacco business* means a sole proprietorship, corporation, partnership, or other enterprise, in which the primary activity is the sale, manufacture, or promotion of tobacco, tobacco products, or accessories, and in which the sale, manufacture, or promotion of other products is merely incidental.

*Work area* means an area in a place of employment where one or more employees are routinely assigned and perform services for their employer.

(93-RC-184, § 30-2-14.03, 4-21-93)

**Cross reference(s)**--Definitions generally, § 1-2.

**Sec. 34-69. Regulation of smoking.**

- (a) *Smoking in public places.* Except as otherwise provided in this article, smoking is prohibited in all public places within all of Fulton County.
- (b) *Smoking in places of employment.* Except as otherwise provided in this article, smoking in all places of employment is prohibited in the following manner:
  - (1) Smoking shall be prohibited in auditoriums, gymnasiums, restrooms, elevators, classrooms, hallways, employee medical facilities, and rooms or areas which contain photocopying equipment or other office equipment used in common, and in company vehicles occupied by more than one person unless the occupants of such vehicle agree that smoking may be permitted.
  - (2) Smoking shall be prohibited in conference rooms and meeting rooms, unless everyone in that room agrees that smoking may be permitted.

**Sec. 34-69. Regulation of smoking (cont.)**

Notwithstanding the above prohibitions, employers in places of employment shall provide nonsmoking employees with a smoke-free work area, and provide for contiguous nonsmoking areas in employee cafeterias and lunchrooms. The contiguous nonsmoking areas in employee cafeterias and lunchrooms shall be sufficient to meet employee demand. An employer may not determine that no such demand exists. The employer shall not be required to make any expenditures or structural changes to create a smoke-free work area. In the event an employer cannot, after using its best efforts, comply with an employee's request for a smoke-free work area, the employer shall designate that employee's work area as a smoke-free work area.

(93-RC-184, § 30-2-14.04, 4-21-93)

**Sec. 34-70. Government facilities declared as a no smoking areas.**

*Government facilities.* Notwithstanding any other provisions in this article, all Fulton County government facilities are designated as no smoking areas.

(Res. of 9-20-89)

**Sec. 34-71. Exceptions.**

*Exceptions.* The regulation of smoking pursuant to this article shall not apply in the following areas:

- (1) Private homes, private residences, and private automobiles.
- (2) Bars.
- (3) Hotel and motel rooms rented to guests, except for those rooms designated by such hotels and motels as no smoking rooms.
- (4) Retail tobacco stores and tobacco businesses.
- (5) A designated smoking area in a food service establishment, provided that such designated smoking areas shall not comprise more than 50 percent of a food service establishment's seating capacity.
- (6) A designated smoking area in a place of employment, except that no designated smoking area shall be permitted in any health care or child care facility.
- (7) Work areas in any place of employment so long as the work area is exclusively occupied by smokers; everyone in the work area reaches an agreement that smoking may be permitted; the work area is not subject to regular entrance by the public or nonsmokers; and the work area is separate from a smoke-free work area by floor to ceiling walls or some other means, equally effective in reducing the effects of smoke on the smoke-free work area, other than portable air cleaning devices.
- (8) A designated smoking area in a public place.
- (9) Banquet or meeting rooms when these rooms are being used for private functions.

**Sec. 34-71. Exceptions (cont.)**

- (10) Persons residing within long-term care facilities, as that term is defined by state law, so long as the resident does not interfere with the rights of others or unless prior to admission the resident, guardian, or representative is informed of written admission policies which limit or ban smoking.
- (11) Jails, prisons, municipal, county, and state places of incarceration wherein persons who are charged with the commission of criminal offenses or have been convicted of criminal offenses are housed.
- (12) Wholly or partially enclosed private boxes in indoor sports arenas and in such designated smoking areas of the sports arena.
- (13) Limousines under private hire by an individual or corporation.

(93-RC-184, § 30-2-14.05, 4-21-93)

**Sec. 34-72. Declaration of smoke-free environment.**

*Declaration of smoke-free environment.* Nothing in this article shall be deemed, interpreted, or construed to restrict or prohibit any person in charge of any public place or place of employment from designating that place a smoke-free facility and prohibiting smoking in areas which otherwise would be permitted by this article.

(93-RC-184, § 30-2-14.06, 4-21-93)

**Sec. 34-73. Posting of signs.**

- (a) *Adequate signage.* Because ordinances regulating smoking are primarily self-enforcing, adequate signage is important.
- (b) *Signage required.* Signs reading "smoking allowed only in designated area", or "no smoking allowed" posted in conjunction with the international symbol for "no smoking", whichever is appropriate, shall be conspicuously posted at each entrance in every public place, place of employment and food service establishment where smoking is regulated by this article by the person in charge of such facility. The international symbol for "no smoking", shall consist of a pictorial representation of a burning cigarette (black color) enclosed in a red circle, with a red bar diagonally across it. (See Appendix A). Lettered signs shall be configured as follows: a minimum size requirement of four (4) inches by four (4) inches and containing letters of not less than one (1) inch in height.

(93-RC-184, § 30-2-14.07, 4-21-93)

**Sec. 34-74. Enforcement of article.**

- (a) *Department enforcement.* Although smoking ordinances are primarily self-regulating, enforcement of this article shall be the ultimate responsibility of the department.
- (b) *Police enforcement.* The department may initiate any action to seek enforcement of this article on its own motion or upon information provided by any citizen. Any officer of the Fulton County Police Department also may initiate an action for violation of this article if a violation occurs in his/her presence. Any other police officer whose jurisdiction is

**Sec. 34-74. Enforcement of article (cont.)**

located within Fulton County may initiate an action for violation of this article if a violation occurs in his/her presence, provided that the violation occurs within that officer's jurisdiction.

- (c) *Owner responsibility.* Any owner, operator, or manager of any establishment regulated by this article shall inform persons violating this article of this article's provisions.
- (d) *Priority for smoke-free air.* In any dispute arising under this article, the need to breathe smoke-free air shall be given precedence over the need to smoke.

(93-RC-184, § 30-2-14.08, 4-21-93)

**Sec. 34-75. Other applicable laws.**

*Applicable laws.* This article shall not be interpreted or construed to permit smoking where it is otherwise restricted or prohibited by other applicable laws, regulations, or policies.

(93-RC-184, § 30-2-14.09, 4-21-93)

**Sec. 34-76. Severability.**

*Severability.* If any portion of this article or the application thereof shall be held invalid or unconstitutional, the other provisions of this article shall not be affected, and to this end the provisions of this article are declared to be severable.

(93-RC-184, § 30-2-14.10, 4-21-93)

**Sec. 34-77. Nonretaliation.**

*Nonretaliation.* 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 afforded by this article.

**Sec. 34-78. Penalty for violation of article.**

*Penalty.* Any person who smokes, allows smoking, or violates any provision of this article shall be guilty of a misdemeanor. Each and every violation of the provisions of this article shall constitute a separate offense.

(93-RC-184, § 30-2-14.11, 4-21-93)

**State law reference(s)**--Punishment for misdemeanors generally, O.C.G.A. § 17-10-3; maximum punishments which may be imposed for violations of county ordinances, O.C.G.A. § 36-1-20(b).