

AN ORDINANCE

**AN ORDINANCE TO AMEND THE CODE OF DEKALB COUNTY,
AS REVISED 1988, CHAPTER 16, PERTAINING TO SMOKING, AND
FOR OTHER PURPOSES.**

The DeKalb County Governing Authority makes and adopts the following findings and conclusions in the enactment of this ordinance:

WHEREAS, the Governing Authority of DeKalb County is authorized to adopt ordinances that protect and preserve the health, safety, and general welfare of the citizens of DeKalb County; and

WHEREAS, the Governing Authority has determined that smoking poses a threat to the health, safety, and welfare of adults and children; and

WHEREAS, secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; and

WHEREAS, adults' exposure to secondhand smoke has immediate adverse effects on the cardiovascular system, causing coronary heart disease and lung cancer, and there is no risk-free level of exposure to secondhand smoke; and

WHEREAS, secondhand smoke causes asthma attacks, heart attacks, strokes, and lung cancer in adults, and sudden infant death syndrome, low birth weight, middle ear infections, bronchitis, asthma and pneumonia in children; and

WHEREAS, a nonsmoker's exposure to secondhand smoke increases his/her risk of heart disease by 25 to 30 percent; and

WHEREAS, over 12,000 DeKalb County residents were hospitalized for smoking-related illnesses in 2008, and three of the five leading causes of death in DeKalb County for persons 35 to 65 years of age are smoking-related; and

WHEREAS, employees who work in places that maintain or implement smoke-free policies are nearly twice as likely to stop smoking as employees who work in places that allow smoking everywhere; and

WHEREAS, establishing smoke-free public places and workplaces is the only effective way to ensure that secondhand smoke exposure does not occur because ventilation and other air cleaning methods cannot completely prevent the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Governing Authority seeks to regulate smoking in public places, places of employment, common areas, and certain outdoor areas in order to protect the health, safety, and welfare of its citizens;

NOW, THEREFORE, be it ordained by the Governing Authority 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, as Revised 1988, is hereby amended to read as follows:

PART I. ENACTMENT

Chapter 16, Article VI, of the Code of DeKalb County, as Revised 1988, is hereby amended by deleting Article VI, Division 2, and replacing it with a new Article VI, Division 2, to read as follows:

DIVISION 2. SMOKE-FREE AIR ORDINANCE

Section 16-100. Title.

This article shall be known and may be cited as the DeKalb County Smoke-Free Air Ordinance.

Section 16-101. Findings and purpose.

- (a) The Governing Authority finds that tobacco smoke is a major contributor to indoor air pollution, and breathing secondhand smoke is a cause of disease in healthy nonsmokers. Secondhand smoke is particularly hazardous to children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function. Children exposed to secondhand smoke have an increased risk of middle ear infections, bronchitis, asthma, sudden infant death syndrome, and pneumonia.
- (b) The Governing Authority finds that there is no risk-free level of exposure to secondhand smoke and exposure to secondhand smoke has immediate, serious adverse effects on the physical health of adults and children. Smoke-free public places, common areas, places of employment and certain outdoor areas are imperative to protect the health of adults and children and providing such smoke-free areas is the only effective way to ensure that adverse secondhand smoke exposure does not occur. Ventilation and other air cleaning methods cannot completely prevent the exposure of non-smokers to secondhand smoke.
- (c) Accordingly, the Governing Authority finds and declares that the purposes of this ordinance are: (1) to protect the health, safety and welfare of individuals by prohibiting smoking in public places, places of employment, common areas, and certain outdoor areas; (2) to reduce exposure to secondhand smoke; and (3) to recognize that an individual's need to breathe smoke-free air.

Sec. 16-102. Definitions.

Words or phrases not defined in this division, but defined in applicable state law or the Code of DeKalb County, as Revised 1988, shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context requires otherwise. The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them below except where the text clearly indicates a different meaning:

Bar means an establishment that is devoted to the serving of alcoholic beverages for consumption by patrons on the premises, including but not limited to adult entertainment establishments, taverns, nightclubs, cocktail lounges, and cabarets.

Common area means indoor and outdoor areas of apartments, condominiums, townhomes, rooming houses, retirement facilities, nursing homes, personal care homes, and other multi-unit residential property, that are either commonly used or owned by its residents, intended for the common enjoyment of its residents, or accessible to residents of more than one dwelling located on the property. Common areas include, but are not limited to, elevators, hallways, indoor and outdoor recreational areas within a development, laundry rooms, lobbies, lounges, mailrooms, meeting rooms, open space that is the central organizing feature of a development, and stairwells.

Day care facility means a state-licensed and state-regulated establishment operated by any person, with or without compensation, providing care, supervision, and protection of one or more children under eighteen (18) years of age, or one or more persons over the age of eighteen (18) for less than twenty-four (24) hours per day, without transfer of legal custody. The term "day care facility" includes child day care centers, adult day care centers and all state-licensed and state-regulated entities providing day care to children and adults.

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

E-cigarette means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which creates a vapor of nicotine and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

Employee means a person who is employed by an employer for direct or indirect monetary wages or profit, but includes a person who volunteers his/her services for a non-profit entity.

Employer means a person, business, partnership, association, corporation, a trust, or non-profit organization or entity that utilizes employees.

Enclosed area means all space between a floor and a ceiling that is bounded on all sides by walls, doorways, or windows, whether open or closed. The term "walls" includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

Entertainment arena means a place where people assemble to engage in physical exercise, participate in athletic competition, or participate in or witness sports or other recreational, artistic, or entertainment events, including but not limited to concert venues, sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice skating rinks, and bowling alleys.

Health care facility means establishments that provide 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, clinics, weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition includes all waiting rooms, hallways, private rooms, semi-private rooms, and wards within a health care facility.

Personal care home means state-licensed and state-regulated establishments that provide housing, meals, and twenty-four hour continuous oversight for one (1) or more ambulatory adults or one (1) or more children under eighteen (18) years of age. The term “personal care home” includes all state-licensed and state-regulated entities providing personal care home services to adults or children.

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 auditoriums, cafeterias, classrooms, conference rooms, convention halls, elevators, hallways, lobbies, lounges, mailrooms, meeting rooms, private offices, reception areas, restrooms, service lines, snack bars, indoor and outdoor stairwells, vehicles used during the course of employment, and work areas. Porches, courtyards, or decks with a contiguous connection to a place of employment shall also be considered a place of employment.

Playground means any outdoor park or recreational area designed to be used by children, including areas containing play or sports equipment, areas designated or landscaped for play or sports activities, or any similar area located on public or private school grounds, or owned, leased or operated by DeKalb County.

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, and which only sells alcoholic beverages incidental to its operation. In order to qualify as a private club, the affairs and management of the organization must be conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization must establish bylaws and/or a constitution to govern its activities. The organization must maintain an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

Public place means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to auditoriums, cafeterias, classrooms, conference rooms, convention halls, elevators, hallways, lobbies, lounges, mailrooms, meeting rooms, private offices, reception areas, restrooms, service lines, snack bars, indoor and outdoor stairwells, and work areas. Porches, courtyards, or decks with a contiguous connection to a public place shall also be considered a public place. The term “public place” includes but is not limited to businesses, stores or offices where goods or services are sold or provided as part of a commercial or non-profit venture; airports; aquariums; banks and financial institutions; bars; bingo facilities; day care facilities; entertainment arenas, gaming facilities; health care facilities; hotels and motels; laundromats; museums; personal care homes; private clubs; public and private schools and related facilities; public transit systems; restaurants; shopping malls; taxicabs and other vehicles for hire; theaters; and polling places.

Restaurant means an eating establishment which gives or offers food for sale 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 “restaurant” includes but is not limited to food courts in shopping malls, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, bar areas within restaurants, and any dining area located within a personal care home, or a health care, educational, or day care facility.

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

Service line means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco intended for inhalation, in any manner or in any form. The term "smoking" includes the use of an e-cigarette or the use of any oral smoking device.

Sec. 16-103. Smoking on County property and applicability of ordinance.

Smoking shall be prohibited in all enclosed areas, buildings, vehicles, parks and recreational areas which are owned, leased, or operated by DeKalb County. This ordinance does not regulate smoking on any property owned or leased by a municipality, the State of Georgia, or the federal government.

Section 16-104. Smoking prohibitions.

Smoking shall be prohibited in all public places, places of employment, and common areas.

Section 16-105. Smoking in outdoor areas.

- (a) Smoking shall be prohibited in all outdoor areas that are within twenty (20) feet of outside entrances, operable windows, and ventilation systems of a public place, place of employment, common area, or other area where smoking is prohibited.
- (b) Smoking shall be prohibited within twenty (20) feet of all outdoor seating, dining, and serving areas of bars and restaurants.
- (c) Smoking shall be prohibited in all playgrounds, outdoor entertainment arenas and within twenty (20) feet of seating, bleachers, or grandstands used by participants or spectators at outdoor sporting, recreational, educational, entertainment, or other public events. Smoking shall be prohibited in all outdoor service lines.
- (d) Smoking shall be prohibited within twenty (20) feet of all outdoor public transportation stations, platforms, and shelters.

Sec. 16-106. Areas where smoking is allowed.

- (a) Smoking is allowed in a private residence that is not a public place or a place of employment. For example, smoking is prohibited in a private residence used as a day care facility, personal care home, or health care facility.

- (b) Smoking is allowed in not more than ten percent (10%) of hotel and motel sleeping rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this division. Once designated, the status of hotel or motel rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms.
- (c) Except as prohibited in section 16-105, smoking is allowed in outdoor areas of places of employment, unless the employer declares the entire outdoor area to be a smoke-free environment.
- (d) Multi-unit residential facilities may designate a smoking area(s) in an outdoor common area so long as the smoking area in total does not exceed twenty-five percent (25%) of the total outdoor common area, and the designated smoking area must be located at least twenty (20) feet away from entrances, exits, operable windows, ventilation systems or other outdoor areas where smoking is prohibited.
- (e) Smoking is allowed in retail tobacco stores.

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 a place of employment located within unincorporated DeKalb County is encouraged to adopt, implement, and maintain a written smoking policy that incorporates the smoking prohibitions of this division. The written smoking policy should be provided to all employees.
- (c) Notwithstanding any other provision of this division, any owner, operator, manager, or other person who controls any public place or place of employment may declare the entire establishment, including all outdoor areas, to be smoke-free.

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

- (d) All ashtrays shall be removed from any area where smoking is prohibited by this division by the owner, operator, manager or other person having control of the area.

Sec. 16-109. Enforcement, violations and penalties.

- (a) The provisions of this division may be enforced by police officers, code enforcement officers or other authorized county employees.
- (b) Any citizen who desires to register a complaint under this division may initiate enforcement with the chief of police or his/her designee.
- (c) Any owner, operator, or manager of any establishment regulated by this division shall inform persons whom they witness violate this division of the appropriate provisions and request compliance. In the event persons violating this division refuse to comply with this division 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 division.
- (d) Any person who does anything prohibited or fails to do anything required by this division, upon citation by a police officer, a code enforcement officer, or other authorized county employee, and conviction of the violation in a court of competent jurisdiction, which includes the Recorder's Court of DeKalb County, shall be subject to fine and/or imprisonment in accordance with section 1-10, with the following minimum penalties:
 - (1) A fine not exceeding fifty dollars (\$50.00) for a first violation;
 - (2) A fine not exceeding seventy-five dollars (\$75.00) for a second violation of this division within one (1) year measured from the date of any previous conviction of a violation of this division; and
 - (3) A fine not exceeding one hundred dollars (\$100.00) for each additional violation of this division within one (1) year measured from the date of any previous conviction of a violation of this division.

Sec. 16-110. Public education.

DeKalb County shall partner with the DeKalb County Board of Health to develop and implement an ongoing program to educate citizens about the purposes and requirements of this ordinance, and to provide guidance to employers, employees, owners, operators, and managers so that their establishments comply and remain in compliance with the requirements of this ordinance. This partnership program may include publication of brochures explaining the requirements of this ordinance for distribution to affected businesses and individuals.

Sec. 16-111. 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 as afforded by this division.

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 to any person who claims that any breach of this division 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 ____ day of _____, 2011.

LARRY L. JOHNSON, MPH
Presiding Officer
Board of Commissioners
DeKalb County, Georgia

APPROVED by the Chief Executive Officer of DeKalb County, this ____ day of _____, 2011.

W. BURRELL ELLIS, JR.
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

BARBARA H. SANDERS, CCC
Clerk to the Board of Commissioners and
Chief Executive Officer

APPROVED AS TO FORM:

LISA E. CHANG

County Attorney
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

S. ELIZABETH FORD, M.D., M.B.A.

District Health Director
DeKalb County Board of Health
DeKalb County, Georgia