

ORDINANCE NO. O-19-14

**Regulating Smoking in Workplaces and Public Places**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GADSDEN, ALABAMA, as follows:

**Section 1. Title**

Chapter 46, Article VI entitled "Smoke Free Environment" is hereby repealed and this ordinance is hereby substituted therefore and shall be known as the "City of Gadsden Smoke Free Air Ordinance".

**Section 2. Intent**

The purposes of this article is (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; (2) to address and abate a form of air pollution caused by the smoking of tobacco, a positive danger to health and a material public nuisance; and (3) to afford nonsmokers the right to breathe smoke-free air in public places and in places of employment.

**Section 3. Smoking in public places and places of employment**

**(a) Definitions.** In this Section, the following definitions shall apply:

- (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 a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit; including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- (3) "City" means the City of Gadsden, Alabama.
- (4) "Cigar Bar" means a licensed establishment in which the primary activity is the sale, manufacture or promotion of cigars or cigar accessories and in which the sale of other products is merely incidental.

- (5) "Common Area" means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, interior and/or exterior general public entryway or exit, refreshment area, or restroom.
- (6) "E-cigarette" means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, 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.
- (7) "Employee" means a person who works for an employer, whether in consideration for direct or indirect monetary wages or profit, or as a volunteer.
- (8) "Employer" means a person, association, trust, or a business, including a municipal corporation, with one or more employees.
- (9) "Enclosed Area" means all space between a floor and a 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 containing openings of any kind.
- (10) "Flow Line" means the face of the curb and gutter, or if no curb and gutter, the edge of the pavement.
- (11) "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, 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 shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- (12) "Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and employer vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- (13) "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. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body

chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities, requires applications to be filled out for membership, and maintains membership records that show the date of application, admission, name and address for each member, and serial number of the membership card issued. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

- (14) "Public Place" means an area to which the public is permitted. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
  - (15) "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 "restaurant" shall include a bar area within the restaurant.
  - (16) "Retail Tobacco Stores" means any person, government, or entity licensed to sell tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.
  - (17) "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, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
  - (18) "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
  - (19) "Smoke" or "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, E-cigarette or other tobacco or plant product intended for inhalation, in any manner or in any form.
  - (20) "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.
  - (21) "Tobacco Retailer" means any person, government, or entity who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.
- (b) **Public Places.** Smoking shall be prohibited in all enclosed public places within the City of Gadsden, including but not limited to, the following places:
- (1) Aquariums, galleries, libraries, and museums

- (2) Banks
- (3) Bar and lounges
- (4) Bingo facilities
- (5) Child care and adult day care facilities
- (6) Convention facilities
- (7) Educational facilities, both public and private
- (8) Elevators
- (9) Gaming facilities, including bingo facilities
- (10) Health care facilities
- (11) Hotels and motels
- (12) Laundromats
- (13) Lobbies, hallways, and other indoor common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities
- (14) Polling places
- (15) Private clubs
- (16) Professional offices
- (17) Public transportation vehicles, including buses and taxicabs, under the authority of the City of Gadsden, and ticket, boarding, and enclosed waiting areas of public transportation facilities, including bus, train, and airport facilities
- (18) Restaurants and retail food production
- (19) Restrooms, lobbies, reception areas, waiting rooms, hallways, and other indoor common-use areas
- (20) Retail service establishments
- (21) Retail stores
- (22) Rooms, chambers, places of meeting or public assembly, and other enclosed areas and

vehicles owned, leased, or operated by the City of Gadsden

(23) Service lines

(24) Shopping malls

(25) Sports arenas, including enclosed places in outdoor arenas

(26) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances

**(c) *Regulation of Smoking in Places of Employment.***

- (1) Smoking shall be prohibited in all enclosed areas of places of employment located within the City of Gadsden, including, but not limited to: common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, and restrooms.
- (2) This prohibition also applies to rooms, chambers, places of meeting or public assembly, and other enclosed areas and vehicles owned, leased, or operated by the City of Gadsden, including areas under the control of an agency, board, commission, or committee of the City, to the extent the place is subject to the jurisdiction of the City.
- (3) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Section and to all prospective employees upon their application for employment.

**(d) *Regulation of Smoking in Residential Facilities.*** Smoking shall be prohibited in the following enclosed residential facilities:

- (1) All private and semi-private rooms in nursing homes.
- (2) All hotel and motel rooms that are rented to guests.

**(e) *Regulation of Smoking in Outdoor Public Places.*** Smoking shall be prohibited in the following outdoor places:

- (1) In and within, 20 feet outside of front public entrances, windows, and ventilation systems of buildings where smoking is prohibited, so as to prevent tobacco smoke from entering those buildings. However, the 20 foot requirement shall not apply to entrances which are not intended for public use.
- (2) In and within, outdoor seating or serving areas of restaurants and bars located in a public place. However, smoking shall be allowed in outside areas designated as a smoking area but service of food or beverage shall not be provided.
- (3) In all outdoor arenas, stadiums, and amphitheaters, smoking shall also be prohibited in, and within 20 (twenty) feet of, bleachers and grandstands for use by spectators at sporting

and other public events.

(4) In, and within 20 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City of Gadsden.

(5) In all outdoor service lines.

**(f) Exemptions.** Notwithstanding any other provision of this Section to the contrary, the following areas shall be exempted from the provisions of this section:

(1) Smoking shall not be prohibited in private residences, except when used as a childcare, adult day care, or health care facility.

(2) Cigar Bars as defined in Section 2.4. Cigar bars must satisfy all of the following:

a. Generates 10 (ten) percent or more of its quarterly gross revenue from the sale of alcoholic beverages for consumption on the premises by customers;

b. Generates 50 (fifty) percent or more of its quarterly gross revenue from the rental of humidors and the sale of cigars for consumption on the premises by customers;

c. Has a functioning walk-in commercial grade humidor on the premises;

**(g) Designation of an Establishment or Outdoor Area as Nonsmoking.** Notwithstanding any other provision of this Section, an owner or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a “no-smoking” sign is posted.

**(h) Nonretaliation; nonwaiver of rights.** No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, because that employee, applicant, or customer exercises any rights afforded by this Section or reports or attempts to prosecute a violation of this Section. Notwithstanding Section 3(k), violation of this provision shall be a misdemeanor, punishable by a fine not to exceed \$1,000 for each violation.

**(i) Enforcement.**

(1) This Section shall be enforced by any duly sworn police officer employed by the City of Gadsden.

(2) Notice of the provisions of this Section shall be given to all applicants for a business license in the City of Gadsden.

(3) Any citizen who desires to register a complaint under this Section may initiate enforcement with an entity responsible for enforcement, such as the Police Department.

(4) Any owner, manager, operator, or employee of an area regulated by this Section shall direct a person who is smoking in violation of this Section to extinguish the product

being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.

- (5) In addition to the remedies provided by the provisions of this Section, the City of Gadsden, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Section may apply for injunctive relief to enforce those provisions in the municipal court.

**(j) *Violations and penalties.***

- (1) A person who violates this article commits a violation, punishable by a fine of \$50 for each violation. A charge of violation shall be treated in the same manner as a traffic violation. Any law enforcement officer may issue a citation pursuant to this section.
- (2) Except as otherwise provided in Section I (1), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Section shall be guilty of an offense, punishable by:
  - a. A fine of one hundred dollars (\$100) for a first violation. A charge of violation shall be treated in the same manner as a traffic violation.
  - b. A fine of two hundred dollars (\$200) for a second violation within one (1) year. A charge of violation shall be treated in the same manner as a traffic violation.
  - c. A fine of five hundred dollars (\$500) for each additional violation within one (1) year. A charge of violation shall be treated in the same manner as a traffic violation.
- (3) In addition to the fines established by this Section, violation of this Section by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- (4) Violation of this Section is hereby declared to be a public nuisance, which may be abated by the City of Gadsden by restraining order, preliminary and permanent injunction, or other means provided for by law, and the entity or person seeking abatement may take action to recover the costs of the nuisance abatement.
- (5) Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.

**(k) *Other applicable laws.*** This Section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Section 4. Public Education.** The City of Gadsden may publish a brochure for affected

businesses and individuals explaining the provisions of this Ordinance.

**Section 5. Severability.** If any word, provision, clause, sentence, paragraph, or subsection of this Ordinance or the application thereof to any person or circumstances shall be held invalid by a court of competent jurisdiction then the remaining provisions of this Ordinance shall be in full force and effect.

**Section 6. Effective Date.** This Ordinance shall be effective after approval by the Council of the City of Gadsden and Mayor and publication as required by law, provided that the effective date shall be January 1, 2015.

**Section 7.** The section, subsections, paragraphs, sentences, clauses and phrases of this ordinance are severable. If any section, subsection, paragraph, sentence, clause and phrase of this ordinance is declared unconstitutional or invalid by a valid judgment of a court of competent jurisdiction, such judgment shall not affect the validity of any other section, subsection, paragraph, sentence, clause and phrase of this ordinance. The city council declares that it is its intent that it would have enacted this ordinance without such invalid or unconstitutional provisions.

**Section 8.** The provisions of this ordinance repeal any prior ordinance or provision of the Gadsden City Code to the extent of any conflict.

I hereby certify that this ordinance was duly adopted by the City Council of Gadsden, Alabama, at a public meeting held on June 10, 2014.

Iva Nelson  
Iva Nelson, City Clerk

APPROVED on June 16, 2014

Sherman Guyton  
Sherman Guyton, Mayor