

**ORDINANCE ELIMINATION SMOKING**  
**IN WORKPLACES AND PUBLIC PLACES**

**WHEREAS**, environmental tobacco is a leading public health problem in the City of Geneva and throughout the United States; and,

**WHEREAS**, the use of lighted smoking products inherently creates a health hazard of second hand smoke, which affects the public health, and the enjoyment of public places; and,

**WHEREAS**, there exists conclusive evidence that environmental tobacco smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcome, allergies and irritation of the eyes, ears, nose and throat of both smokers and non-smokers; and

**WHEREAS**, environmental tobacco smoke, which includes both exhaled and side stream smoke from burning cigarettes, causes the death of numerous Americans each year; and

**WHEREAS**, the harmful effects of environmental tobacco smoke are not confined to smokers but also cause severe discomfort and illness to non-smokers; and

**WHEREAS**, the food establishments and recreational parks have been shown to be locations of significant exposure to environmental tobacco smoke by the citizens of the City of Geneva,

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GENEVA, ALABAMA**, that the Council recognizes the rights of those who want to breathe smoke free air and establishes this regulation to protect and improve the public health and welfare by requiring each food establishment and each public recreational park to be totally Smoke Free, except as hereinafter provided.

**Section 1000. Title**

This Article shall be known as the

***Geneva Smoke Free Air Act of 2007.***

### **Section 1001. Purpose**

The Geneva City Council does hereby find that smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

Accordingly, the City of Geneva finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in all public places and places of employment; and (2) to guarantee the right of non-smokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

### **Section 1002. Definitions**

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

1. "**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.

2. "**Employee**" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

3. "**Employer**" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

4. "**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.

5. "**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, homes for the aging or 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.

6. "Place of Employment" means an area, under the control of a public or private employer, that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, or health care facility.

7. "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. 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. The organization has been granted an exemption from the payment of federal income tax as a club under 26 D.S.C. Section 501.

8. "Public Places" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, gaming facilities, health care facilities, hotels and motels, 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 club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.

9. "Restaurant" means an eating establishment, including but not limited to, coffee shops, deli's, 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.

10. "Service Line" means an indoor 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.

11. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

12. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

13. "Sports Arena" means sports pavilions, stadiums, fitness centers, 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.

### **Section 1003. Application of Article to City-Owned Facilities**

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Geneva, shall be subject to the provisions of this Article.

### **Section 1004. Prohibition of Smoking in Enclosed Public Places**

Smoking shall be prohibited in all enclosed public places within the City of Geneva including but not limited to, the following places:

1. Aquariums, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, Laundromats, professional offices, and retail service establishments.
3. Child care and adult day care facilities.
4. Convention facilities.
5. Educational facilities, both public and private.
6. Elevators.
7. Health care facilities.
8. Hotels and motels.
9. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
10. Polling places.
11. Private clubs when being used for a function to which the general public is invited.
12. Public transportation facilities, including buses and taxicabs, under the authority of the City of Geneva, and ticket, boarding, and waiting areas of public transit depots.
13. Restaurants, as defined in *Section 1002, Subsection 9*, shall have the option of being entirely smoking or non-smoking but shall not have the option of both in any part thereof, and said facility, whether the facility be smoking or non-smoking shall within 30 days from the passing of said ordinance make an election as to whether said facility shall be smoking or non-smoking and in the event that a declaration is not made by the owner or lessee thereof, the said facility shall be deemed to be non-smoking. A sign designating a smoking or non-smoking facility shall be erected at the entrance door of said facility.
14. Restrooms, lobbies, reception areas, hallways, and other common use areas.
15. Retail stores.
16. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of Geneva or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
17. Service lines.

18. Shopping malls.
19. Sports arenas, including enclosed places and outdoor arenas.
20. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

#### **Section 1005. Prohibition of Smoking in Places of Employment**

1. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

2. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

#### **Section 1006. Prohibition of Smoking in Seating Areas at Outdoor Events**

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

#### **Section 1007. Reasonable Distance**

Smoking is prohibited within a reasonable distance of 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

#### **Section 1008. Tobacco Products in Vending Machines**

It shall be unlawful and an offense against the City of Geneva for any business owner or manager of any retail establishment within the jurisdiction of the City to allow the existence of a vending machine containing tobacco products in any area where minors are allowed. Nothing in this provision shall in any way prohibit or restrain tobacco product vending machines in adult entertainment establishments.

#### **Section 1009. Limitation of Minor's Access to Tobacco Products**

Retail establishments shall only place tobacco products for sale behind the sales counter accessible only to employees and away from easy access by minors.

#### **Section 1010. Tobacco Sampling**

No free sample of any tobacco product may be given away on public property.

### **Section 1011. Where smoking is Not Regulated**

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 1004 and 1005:

1. Private residences, except when used as a childcare, adult daycare, 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 twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. 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 Article. The status of rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms.

3. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provision of this Article.

4. Private clubs that have no employees, except when being used for a function to which the general public is invited. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Article.

5. Outdoor areas of places of employment except those covered by the provisions of Sections 1006 and 1007.

### **Section 1012. Declaration of Establishment as Non-smoking**

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 entire establishment, facility, or outdoor area as a non-smoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1013(1) is posted.

### **Section 1013. Posting of Signs**

1. "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 public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.

2. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

3. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

#### **Section 1014. Non-retaliation; Non-waiver of Rights**

1. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.

2. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

#### **Section 1015. Enforcement**

1. This Article is enforceable by any duly sworn police officer employed by the City of Geneva, the county health officer or a duly authorized representative thereof, or as otherwise allowed by law for prosecution of offenses.

2. Any citizen who desires to register a complaint under this article may initiate enforcement with the Department of Health.

3. The Fire Department or the Health Department shall require, while an establishment is undergoing otherwise mandated inspections, a self-certification from the owner, manager, operator or other person having control of such establishment that all requirements of this Article have been complied with.

4. Any owner, manager, operator or employee of any establishment regulated by this Article may inform any person violating this Article of the appropriate provisions of this Article.

5. Notwithstanding any other provision of this Article, a private citizen may bring legal action to enforce this Article.

#### **Section 1016. Violations and Penalties**

1. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Article to fail to comply with any of the provisions of this Article.

2. It shall be unlawful for any person to smoke in any area where smoking is prohibited by this Article.

3. Any person who violates this Article is subject to summons by the Department of Health or a Police Officer to appear in Municipal Court to answer the charges punishable by:

- A fine not exceeding \$100.00 for the first violation.
- A fine not exceeding \$200.00 or 80 hours of community service with a charitable organization, designated by the court, or both the fine and community service for a second violation of this Article within one year.
- In addition to the fines established by this Section, violation of this Article 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.
- Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

#### **Section 1017. Public Education**

The Department of Health shall 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 ordinance.

#### **Section 1018. Governmental Agency Cooperation**

The City Council shall annually request other governmental and educational agencies having facilities within the City of Geneva to establish local operating procedures in cooperation and compliance with the Article. This includes urging all Federal, State, City, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding second-hand smoke.

#### **Section 1019. Other Applicable Laws**

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

#### **Section 1020. Liberal Construction**

This Article shall be liberally construed so as to further its purposes.



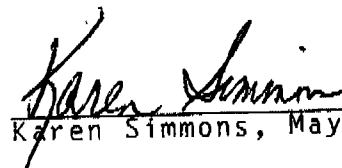
**Section 1021. Severability**

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

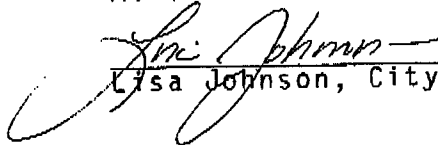
**Section 1022. Effective Date**

This Article shall be effective thirty (30) days from and after the date of its adoption.

Adopted this 4th day of June 2007.

  
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Karen Simmons, Mayor

Attest:

  
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Lisa Johnson, City Clerk