

AN ORDINANCE AMEND ARTICLE IV, SECTION 42-116 ET. SEQ. OF THE PEACHTREE CITY CODE OF ORDINANCES SO AS TO AMEND THE REGULATIONS REGARDING SMOKING IN PUBLIC PLACES AND IN OTHER AREAS WITHIN THE CITY; TO AMEND THE CITY'S EXISTING REGULATIONS SO AS TO PROVIDE CONSISTENCY WITH STATE LAW; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; AND FOR OTHER PURPOSES

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PEACHTREE CITY, and it is hereby ordained by authority of same:

Section 1. That Article IV, Sections 42-116 through 42-129, of the Peachtree City Code of Ordinances be amended to read and to be codified as follows:

Sec. 42-116. Title

This Article shall be known as the Peachtree City Smokefree Air Act of 2004. This act replaces in total Sec. 42, Art. IV, of the City Code of Ordinances.

Sec. 42-117. Definitions

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

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 constitutes less than 60% of total revenue, and is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets, and where absolutely no persons are permitted on the premises under the age of 18.

Business means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

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.

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.

Enclosed Area means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways) that extend from the floor to the ceiling.

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.

Infiltrate means to permeate an enclosed area by passing through its walls, ceilings, floors, windows, or ventilation systems to the extent that an individual can smell secondhand smoke.

Outdoor Public Facility means any sports arenas, ball fields, parks, amphitheaters, tennis centers, tennis courts and other outdoor recreation area owned by the City of Peachtree City.

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, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways. . A private residence is not a place of employment unless it is used as a child care, adult day care, or health care facility. This term shall not include vehicles used in the course of employment.

Private Club Facilities means a building or leased space where the persons present are solely members of a club such as the Elks Club or the Veterans of Foreign Wars that is for the members' exclusive use only

Public Place means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, 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 residence is not a public place unless it is used as a child care, adult day care, or health care facility.

Restaurant means an eating establishment where the sale of food is 60% or more of total revenue, 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.

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.

Secondhand smoke means smoke emitted from lighted, smoldering, or burning tobacco when the person smoking is not inhaling, smoke emitted from the mouthpiece during puff drawing, and smoke exhaled by the person smoking.

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.

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

Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, or plant.

Smoking area means a separately designated enclosed room which need not be entered by an employee in order to conduct business that is designated as a smoking area and, when so designated as a smoking area, shall not be construed as to deprive employees of a nonsmoking lounge, waiting area, or break room.

Sports Arena means sports pavilions, stadiums, 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.

Private Club Facilities means a building or leased space where the persons present are solely members of a club such as the Elks Club or the Veterans of Foreign Wars that is for the members' exclusive use only.

Sec. 42-118. Application of Article to Peachtree City Facilities

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

Sec. 42-119. Prohibition of Smoking in Public Places

Except as otherwise specifically authorized, smoking shall be prohibited in all enclosed public places, per O.C.G.A. 31-12A-4.

Sec. 42-119 (a). Prohibition of Smoking at City Outdoor Public Facilities

- A. Smoking shall not be permitted within twenty-five (25) feet of bleachers, dugouts, pools, restrooms, playgrounds or sports field sidelines where people may be sitting.
- B. If designated smoking areas are provided at any facility, then smoking is only permitted within that designated area.

Sec. 42-120. Prohibition of Smoking in Places of Employment

- A. Smoking shall be prohibited in all enclosed facilities within places of employment, except for approved smoking rooms. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices (excluding home offices), elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, outdoor restaurant patios, and all other enclosed facilities.
- B. 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.
- C. Smoking rooms shall comply with requirements for a Smoking Lounge in the latest State approved edition of the International Mechanical Code and shall meet the following requirements:
 - (1) The smoking area shall be located in a nonwork area where no employee, as part of his or her work responsibilities, shall be required to enter, except such work responsibilities shall not include custodial or maintenance work carried out in the smoking area when it is unoccupied.
 - (2) The smoking area shall be for the use of employees only.
 - (3) All air from the room shall be exhausted directly to the outside allowing for no re-circulation.

- (4) The room shall be constructed with permanent walls on all four sides that completely enclose the room. Any doors into the smoking room shall have automatic closures.
- (5) Be constructed such that a negative pressure exists between the smoking room and all adjoining spaces. The exhaust system shall operate at all times except for scheduled maintenance and repair.
- (6) All switches or disconnects for any exhaust system supporting the smoking room shall not be located inside the smoking room.

D. Before using a smoking room, the employer must:

- (1) Submit a certified Test and Balance Report for the space to the City Building Official.
- (2) Post the room occupancy on the outside of the room based on the International Mechanical Code.
- (3) Have the space inspected by the City's Building Official.
- (4) Post the approval letter from the City Building Official in a frame on the outside of the smoking room.

Sec. 42-121. Reasonable Distance

Smoking is prohibited within a reasonable distance of 10 feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

Sec. 42-122. 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 42-119 and 42-120:

1. Private residences, except when used as a licensed childcare, adult day care, or health care facility.
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms that have separate ventilation; provided, however, that no more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated.
3. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
4. 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 and separately ventilated.
5. Outdoor areas except those covered by the provisions of Section 42-121.
6. All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, all tobacco storage facilities, and any other entity set forth in O.C.G.A. 10-13A-2.7.
7. Facilities owned by private clubs where only members are present, and no persons under the age of 18 are permitted on premises.
8. Bars- As defined in Section 42-117.

Sec. 42-123. Declaration of Establishment as Nonsmoking

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 nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 42-124 (A) is posted.

Sec. 42-124. Advertisements & Posting of Signs

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 may be clearly and conspicuously posted by the owner, operator, manager, or other person in control in every public place and place of employment where smoking is prohibited by this article.

B. All ashtrays and other smoking paraphernalia 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. This does not prohibit these items for resale purposes.

C. Unregulated establishments that allow smoking under Sec. 42-122, except for subsection (1) Private Residences, shall post conspicuously at every entrance a sign indicating that smoking is permitted.

D. Any bar or facility owned by private clubs that intend to permit smoking, shall include in their advertisements and promotions a statement that contains the language, “No person under the age 18 will be permitted.”

Sec. 42-125. Nonretaliation

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.

Sec. 42-126. Enforcement

A. This Article shall be enforced by an authorized designee of the city of Peachtree City.

B. Notice of the provisions of this Article shall be given to all applicants for a business license in the city of Peachtree City.

C. Any citizen who desires to register a complaint under this Article may initiate enforcement with Police and Code Enforcement.

D. Fire Marshall or designee shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

E. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.

F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.

G. In addition to the remedies provided by the provisions of this Section, the City Manager 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 Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 42-127. Violations and Penalties

A person smoking tobacco in violation of this ordinance shall be guilty of a misdemeanor and, if convicted, shall be punished by a fine of not less than \$100.00 nor more than \$500.00, in accordance with O.C.G.A. 16-12-2.

B. 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 Article shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.
2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

C. 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.

D. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 42-128. Public Education

The City may 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.

Sec. 42-129. Governmental Agency Cooperation

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

Sec. 42-130. Other Applicable Laws

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

Sec. 42-131. Liberal Construction

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

Sec. 42-132. 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.

Sec. 42-133. Effective Date

This Article shall be effective upon the date of its adoption.

Section 2. All ordinances or parts of ordinances in conflict with this ordinance are, to the extent of such conflict, hereby repealed.

Section 3. Should any provision of this ordinance be declared invalid by a Court of competent jurisdiction, such decision shall not affect the validity of this ordinance as a whole or any provision thereof other than the provisions specifically declared to be invalid. The City Council declares that it would have passed this ordinance and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses or phrases may be declared invalid.

Done, Ratified, and passed this 18th day of August 2005.

Mayor

City Clerk

City Council