

*amended*

ORDINANCE NO.

*11:02:00*  
ORDINANCE ~~REGULATING SMOKING WITH SPECIFIED EXCEPTIONS,~~  
~~PROHIBITS SMOKING IN ENCLOSED PUBLIC PLACES, PLACES OF~~  
EMPLOYMENT, AND EDUCATIONAL AND HEALTH FACILITIES, *WITH SPECIFIED*  
REQUIRE RESTAURANTS TO ESTABLISH NON-SMOKING SECTIONS, ~~IN~~ *EXCEPTIONS*  
~~DINING AREAS.~~ PROHIBITS EMPLOYMENT DISCRIMINATION BASED  
ON EXERCISE OF RIGHTS PROVIDED BY THIS ORDINANCE; REQUIRES  
POSTING OF SIGNS DESIGNATING AREAS WHERE SMOKING IS  
PROHIBITED; REPEALING DUPLICATIVE SECTIONS 26A-8, 9 AND  
10 OF THE CODE; PROVIDING COUNTYWIDE APPLICABILITY IN THE  
UNINCORPORATED AND INCORPORATED AREAS OF THE COUNTY; PRO-  
VIDES PENALTIES FOR VIOLATIONS; PROVIDING SEVERABILITY,  
INCLUSION IN THE CODE AND AN EFFECTIVE DATE *Following Referendum*

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY,  
FLORIDA:

Section 1. Name. This Ordinance shall be known and may be cited  
as the "Clean Indoor Air" Ordinance.

Section 2. Legislative Findings and Intent.

(a) The Board of County Commissioners hereby finds and determines  
that tobacco smoke is hazardous and harmful to the health of non-smokers  
as well as smokers, causes severe discomfort, shortness of breath,  
inability to work, physical irritation and respiratory illness for those  
non-smokers allergic or otherwise sensitive to the fumes of burning  
tobacco in enclosed areas; that smoking in enclosed areas is particularly  
harmful to non-smokers with allergies or with cardiovascular or respira-  
tory disease; that non-smokers have no adequate means to protect them-  
selves from the damages inflicted upon them when they involuntarily  
inhale smoke emitted from cigarettes, cigars, pipes, and other smoking  
equipment; and that regulation of smoking in indoor public places is  
necessary to protect the health, welfare, comfort and environment of  
non-smokers.

(b) It is not the intent of this Ordinance to deny persons the  
right to smoke or prohibit the sale of tobacco products, but rather to  
recognize that the right of non-smokers to breathe clean air supersedes  
the right to smoke where the two rights conflict.

Section 3. Unlawful Smoking. Subject to the exceptions set forth  
in Section 4, smoking is unlawful in any enclosed public place, in any  
enclosed place of employment, in any enclosed educational facility, *and* in  
any enclosed health facility. No person shall smoke in any area where  
smoking is unlawful.

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Section 4. Exceptions. Unless such an area is designated by a sign or signs as a non-smoking area under the authority of the owner or manager thereof, smoking is permitted in any of the following areas:

- (a) bars;
- (b) retail tobacco stores;
- (c) those rooms in hotels and motels rented to guests;
- (d) any entire room or hall used for a private social function which function is under the control of the sponsor of the function and not under the control of the owner or manager of the room or hall, but only while any such room or hall is used for a private social function. That the owner or manager of any such room or hall provides food or entertainment to the participants of a private social function does not mean said owner or manager has control of the function;
- (e) any lobby area or waiting area in a facility designated by the owner or manager of said facility as a smoking area; provided, however, that any such designated smoking area shall be contiguous and shall not comprise more than 50 per cent of the entire lobby area or waiting area in said facility; and provided further, that except in hotels, motels, arenas, auditoriums, and theaters, any such designated smoking area shall be physically separated by walls or partitions from the remainder of the facility so that smoke does not permeate areas where smoking is unlawful;
- (f) that portion of an educational facility designated by the authority having control of said facility as a student smoking lounge; provided, however, that any such smoking lounge shall not comprise more than 50 per cent of the entire student lounge area in said facility; provided further, that such entire lounge area shall not include restrooms; and provided further that, where reasonably practicable, presently existing walls, partitions, and other physical barriers shall be used to prevent the permeation of smoke from any student smoking lounge into any area where smoking is unlawful;
- (g) that fully enclosed portion of an employer's facility designated by the employer as an employee smoking lounge; provided, however, that any such smoking lounge shall not comprise more than 50 per cent of the entire employee lounge area in said facility; provided further, that such entire lounge area shall not include restrooms; and provided further that, where reasonably practicable, presently existing walls, partitions, and other physical barriers shall be used to prevent the permeation of smoke from any employee smoking lounge into any area where smoking is unlawful;
- (h) any fully enclosed office or room occupied exclusively by smokers who generally do not meet with members of the public in such office or room;
- (i) manufacturing or production areas of factories where the distance between workers and the adequacy of ventilation is not detrimental to the health, comfort, and environment of non-smoking employees in such areas;
- (j) any private hospital room;

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(k) any semi-private hospital room if both patients in such room have requested in writing to be placed in a room where smoking is permitted;

(l) any part of a restaurant which is not designated as a non-smoking section;

(m) that portion of the dining area in an employee cafeteria designated by the employer as a smoking section; provided, however, that any such smoking section shall be contiguous and shall not contain more than 50 per cent of the available seats in said dining area; and provided further, that smoking is not permitted in any food-service line;

(n) an arena or auditorium when used for a professional wrestling exhibition or a professional boxing contest;

(o) pool halls;

(p) gambling halls or casinos;

(q) outdoor areas not within the interiors of buildings.

Section 5. Restaurants and Cafeterias.

(a) Every restaurant and cafeteria shall establish a non-smoking section in its dining area in which signs or placards referred to in Section 7 (b) shall be posted or placed in at least 50 per cent of its available seating, subject to change if the needs of the owner or manager so require. Any such section shall be one contiguous area. Any other provisions of the Ordinance notwithstanding, smoking is unlawful in any food service line in a cafeteria.

(b) A conspicuous and clearly legible sign shall be posted at every public entrance to a restaurant or cafeteria indicating the non-smoking section of the dining area.

(c) It is the intent of the Board of County Commissioners for restaurant and cafeteria owners and managers to provide seating in a non-smoking section for any patron who desires such seating and to encourage restaurant and cafeteria owners and managers to use presently existing physical barriers and ventilation systems to minimize the permeation of smoke from adjacent smoking sections into non-smoking sections.

Section 6. Sections 26A-8, 9 and 10 of the Code of Dade County, Florida, are hereby repealed in their entirety because they duplicate portions of this ordinance.

Section 7. Required Signs.

(a) Every person or corporation, or agent of such person or corporation, having control of premises in which smoking, carrying or holding of lighted tobacco products is prohibited shall post conspicuously within such premises one or more signs reading "SMOKING PROHIBITED BY LAW". A similar sign shall also be posted at each entrance affording public access into the premises. ✓

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(b) In restaurants and Cafeterias, individual signs or placards stating in lettering not less than three-eighths (3/8) of an inch in height that smoking is prohibited by law may be placed on every table and counter in the non-smoking section of the dining area instead of or in addition to the signs otherwise required. Such signs and placards shall be in English and, where appropriate, may also be in ~~any other~~ <sup>Spanish</sup> language.

Section 8. Applicability. This Ordinance shall be applicable in all the unincorporated and incorporated areas of Dade County, Florida.

Section 9. Penalties. Any person who fails to comply with the provisions of this Ordinance shall be guilty of a violation of this Ordinance and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars (\$500.00).

Section 10. Discrimination Against Employees or Applicants.

No person shall discharge, refuse to hire, or in any manner discriminate against any employee or applicant for employment because such employee or applicant exercises on behalf of himself, herself, or others, any rights afforded him or her by this Ordinance.

Section 11. No Preemption. It is the intent of the Board of County Commissioners not to preempt the field of regulation of smoking. A local governing body may make smoking unlawful in areas ~~not regulated~~ <sup>where smoking is permitted</sup> by this Ordinance or regulate smoking in any manner not inconsistent with this Ordinance or any other provision of law. This Ordinance does not permit smoking where otherwise restricted by law.

Section 12. Definitions. The definitions set forth in this section shall govern the construction and interpretation of this Ordinance.

(a) "Bar" means an area used primarily for the sale of alcoholic beverages for consumption by ~~guests~~ <sup>patrons</sup> on the premises and in which the sale of food or the presentation of entertainment is incidental to the sale of alcoholic beverages. Although a restaurant may contain a bar, the term "Bar" does not include a restaurant.

(b) "Courtesy Vehicle" means any vehicle used by a business enterprise or a public entity in the course of its operations to transport persons without charge.

(c) "Educational Facility" means any building of a public or private school, college or university.

(d) "Enclosed" means closed in by a ceiling or roof and by walls on at least three sides.

(e) "Factory" means any manufacturing establishment where five or more persons are employed.

(f) "Fully Enclosed" means closed in by a ceiling or roof and by walls on all sides.

(g) "Health Facility" is any place where the healing arts are practiced.

(h) "Place of Employment" means any area under the control of a public or private employer which employees normally frequent during the

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urse of employment, but to which members of the public are not normally invited, including, but not limited to work areas, employee lounges, restrooms, meeting rooms, and employee cafeterias. A private residence is not a "Place of Employment".

(i) "Polling Place" means the entire room or other facility in which persons cast ballots in an election, but only during such time as election business is being conducted.

*relate to* (j) "Private Hospital Room" means a room in a health facility containing one bed for patients of such facility.

(k) "Public Place" means any area to which the public is invited or in which the public is permitted or which serves as a place of volunteer service. A private residence is not a "Public Place". Without limiting the generality of the foregoing, "Public Place" includes:

- (i) arenas, auditoriums, galleries, museums and theaters;
- (ii) business establishments dealing in goods or services to which the public is invited or in which the public is permitted;
- (iii) instrumentalities of public transportation while operating within the boundaries of Dade County;
- (iv) facilities or offices of persons licensed to practice any of the healing arts;
- (v) elevators in commercial, governmental, office and residential buildings;
- (vi) public restrooms;
- (vii) jury rooms and juror waiting rooms;
- (viii) polling places;
- (ix) courtesy vehicles;

(l) "Restaurant" is a public eating place licensed by ~~the County~~ <sup>the Government</sup>.

(m) "Retail Tobacco Store" means a retail store used primarily for the sale of smoking products and smoking accessories and in which the sale of other products is incidental. "Retail tobacco store" does not include a tobacco department of a retail store commonly known as a department store;

(n) "Semi-Private Hospital Room" means a room in a health facility containing two beds for patients of such facility.

(o) "Smoking" means and includes the carrying or holding of a lighted cigarette, cigar, pipe, or any other lighted smoking equipment used for the practice commonly known as smoking, or the intentional inhalation or exhalation of smoke from any such lighted smoking equipment.

Section 13. Severability Clause. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 14. Inclusion in the Code. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Metropolitan

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