

ORDINANCE NO. _____

ORDINANCE REGULATING SMOKING IN ENCLOSED PUBLIC PLACES, PLACES OF EMPLOYMENT, AND EDUCATIONAL AND HEALTH FACILITIES; REQUIRING RESTAURANTS TO ESTABLISH NON-SMOKING SECTIONS; PROHIBITING EMPLOYMENT DISCRIMINATION BASED ON EXERCISE OF RIGHTS PROVIDED BY THIS ORDINANCE; REQUIRING POSTING OF SIGNS DESIGNATING AREAS WHERE SMOKING IS PROHIBITED; REPEALING DUPLICATIVE SECTIONS 14-8, 26A-8, 9 AND 10 OF THE CODE; PROVIDING COUNTYWIDE APPLICABILITY IN THE UNINCORPORATED AND INCORPORATED AREAS OF THE COUNTY; PROVIDING PENALTIES FOR VIOLATIONS; PROTECTING CHILDREN FROM SMOKE ABUSE; PROVIDING SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE.

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 "Dade County Clean Indoor Air Ordinance."

Section 2. Legislative Findings and Intent.

(a) The Board of County Commissioners of Dade County, Florida, hereby find and determine that tobacco smoke is hazardous and harmful to the health and welfare 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 respiratory disease; that non-smokers have no adequate means to protect themselves 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 public indoor places is necessary to protect the health, welfare, comfort and environment of non-smokers; [also to protect the public from fire hazards that may be caused by careless smokers.]

(b) It is not the intent of this Ordinance to deny persons the free choice 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. [This Ordinance is not intended to be anti-smoking or anti-smoker, and does not require that separate smoking areas be established by additional construction or additional ventilation equipment.]

[(c) The management of any facility where smoking is permitted or regulated by this Ordinance may voluntarily elect to prohibit smoking on its premises.]

Section 3. Unlawful Smoking.

Definition of Smoking: 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.

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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, enclosed being defined as closed in by a ceiling or roof and by walls on at least three sides.

Smoking shall be prohibited in the following areas, with exceptions as designated:

(A) EDUCATIONAL FACILITIES

Definition of Educational Facilities: Any building of a public or private school, college or university, including restrooms and cafeterias.

Exceptions:

(1) designated student smoking lounges in educational facilities above 12th grade level, provided, however, that such smoking areas shall be contiguous and shall not comprise more than 50% of the entire lounge area in said facility. Restrooms shall be non-smoking.

(2) fully enclosed faculty smoking lounges (fully enclosed being defined as closed in by a ceiling or roof and by walls on all sides), provided, however, that it shall not comprise more than 50% of the entire lounge area in said facility. Restrooms shall be non-smoking.

(B) HEALTH FACILITIES

Definition of Health Facilities: Any place where the healing arts are practiced.

Exceptions:

(1) a separate, fully enclosed smoking lounge or lounges for use by ambulatory patients, visitors and staff of the health facility. All waiting areas used by the public shall be non-smoking.

(C) PUBLIC PLACES

Definition of Public Place: Any area to which the public is invited or in which the public is permitted. A private residence is not a "Public Place". Without limiting the generality of the foregoing, "Public Place" includes:

(1) arenas, auditoriums, galleries, libraries, museums, theaters, exhibition halls, exposition halls

(2) business establishments dealing in wholesale and retail goods and general and personal services, including open lunch counters in said establishments

(3) instrumentalities of public transportation, including but not limited to taxicabs, jitneys, limousines, while operating within the boundaries of Dade County.

(4) airport, bus and train terminals and stations, including departure and arrival areas, ticket counters and baggage handling areas.

(5) elevators in commercial, governmental, office, residential and educational buildings

(6) public restrooms and public hallways.

(7) jury rooms and juror waiting rooms.

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- (8) government buildings and polling places.
- (9) Laundromats, bowling alleys, gamerooms
- (10) child care establishments
- (11) homes for the aged and nursing homes and sanatoria.

(12) courtesy vehicles (defined as any vehicle used by a business enterprise or a public entity to transport persons without charge.)

- (13) veterinary establishments.
- (14) enclosed animal boarding kennels and stables.
- (15) business and governmental lobbies and waiting areas.

Exceptions:

(a) *fully enclosed* Any private office or room in which the public is not invited or included at the time of use by smokers.

(b) retail tobacco stores (defined as 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.)

(c) bars (defined as an establishment or an area used primarily for the sale of alcoholic beverages for consumption by persons 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.)

(d) pool halls

(e) gambling halls

N.B. Casinos excluded.

(f) pari-mutuel establishments

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

(h) those rooms in hotels and motels rented to guests (and designated smoking areas generally used by guests, provided, however, that a contiguous non-smoking section shall be established in lobbies having ten (10) or more seats, the size and location of which may be determined by the owner or manager.)

(i) any entire room or hall when used for a private function, to which the public is not invited, including, but not limited to conventions, wedding receptions, union and organization meetings.

(j) any waiting area in an airport, train or bus terminal, station, or shopping mall, provided, however, that such designated smoking area will not be greater in size than the non-smoking area, and shall be contiguous. Additional smoking and non-smoking areas may be established in any of the above facilities where space permits.)

(D) PLACES OF EMPLOYMENT

Definition of a Place of Employment: Any area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, restrooms, meeting rooms and employee cafeterias. A private residence is not a "Place of Employment."

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Exceptions:

- (1) any fully enclosed private office or room occupied exclusively by smokers (when members of the public are not present in such office or room.)
- (2) that fully enclosed portion of an employer's facility designated as a smoking lounge, provided, however, that the smoking permitted area shall be in a separate room or office, and shall not include restrooms.

(E) RESTAURANTS AND CAFETERIAS

Definition: A restaurant (or cafeteria) is a public eating place licensed by a governmental entity.

Exceptions:

(1) Every restaurant and cafeteria shall establish a non-smoking area with a minimum of twenty-five percent (25%) of the available seating, subject to change if the needs of the owner or manager so require due to an overflow of diners in either section; but each area shall be contiguous. Any other provisions of this Ordinance notwithstanding, smoking is prohibited in any food service line, waiting area or check-out area or line in a restaurant or cafeteria, and any restaurant or cafeteria may be designated as a 100% Clean Indoor Air non-smoking restaurant or cafeteria by the owner or manager (See Section 2c above).

(2) In an employee cafeteria or restaurant, the employer may designate a smoking permitted section in the dining area, provided, however, that any such smoking section shall be contiguous and shall not contain more than 50% of the available seats in said dining area.

(3) In educational facilities, faculty cafeterias may have designated smoking permitted and non-smoking areas, of 50% each, subject to change due to an overflow of diners, from either area, but each area shall be contiguous.

Section 4. Required Signs.

(a) Every person or corporation, or agent of such person or corporation, having control of premises in which smoking is prohibited, shall post conspicuously within such premises, one or more signs reading "SMOKING PROHIBITED BY LAW". Similar signs shall be posted at each entrance affording public access into the premises. The signs posted may also include the Internationally-accepted symbol for prohibited smoking.

(b) In restaurants and cafeterias, individual signs or placards stating in lettering not less than one-half inch (1/2") in height "SMOKING PROHIBITED BY LAW" shall be placed on every table and counter in the non-smoking area of the dining area; such signs and placards shall be in English, and where appropriate, may also be in another language.

(c) In restaurants and cafeterias where smoking is permitted, signs reading "NON-SMOKING SECTION AVAILABLE" shall be posted conspicuously at each entrance affording public access, with lettering not less than two inches (2") in height.

(d) Supplementing the required legal notice of state or municipal entities prohibiting smoking in elevators, the outside of every elevator door providing public access shall have a sign posted conspicuously with lettering not less than two inches (2") in height reading "SMOKING IN ELEVATORS PROHIBITED BY LAW" and may include the Internationally-accepted symbol for prohibited smoking.

(e) No person shall remove or cause to be removed or deface any sign required to be posted under the authority of this Ordinance without punishment as provided by law.

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Section 5. Applicability. This Ordinance shall be applicable in all the incorporated and unincorporated areas of Dade County, Florida.

Section 6. Sections 14-8, 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. Penalties. Any person who willfully violates the provisions of this Ordinance shall be punished by a fine not exceeding \$200.00 upon conviction thereof. Verbal requests by management and/or employees to cease smoking violations are encouraged.)

Section 8. Smoking Abuse of Children. The Surgeon General of the United States has determined that smoking is dangerous to health, therefore, it is the specific intent of the Board of County Commissioners of Dade County, Florida, to protect children from the hazards of involuntary inhalation of tobacco smoke, and encourage owners and managers of establishments with separate smoking and non-smoking sections to offer parents, guardians and other adults in charge of children, seating in the non-smoking area.)

Section 9. Discrimination Against Employees or Applicants. No person shall discharge, refuse to hire, intimidate, threaten, harass, or in any manner discriminate against any employee or applicant for employment because such employee or applicant exercises on behalf of himself, or herself, or others, any rights afforded him or her by this Ordinance.

Section 10. No Preemption. It is the intent of the Board of County Commissioners of Dade County, Florida, not to preempt the field of regulation of smoking. A local governing body may make smoking unlawful in areas where smoking is permitted 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 11. Severability Clause. If any section, subsection, sentence, clause, phrase, words or provision of this Ordinance is held invalid or unconstitutional by any Court of competent jurisdiction, the remainder of this Ordinance shall not be affected by said holding.

Section 12. Inclusion in the Code. It is the intention of the Board of County Commissioners of Dade County, Florida, and it is hereby ordained, that the provisions of this Ordinance shall become and be made a part of the Code of Metropolitan Dade County, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "Ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

Section 13. Effective Date. The provisions of this Ordinance shall become effective thirty (30) days from enactment of this Ordinance, or as otherwise provided by law.)

PASSED AND ADOPTED:

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Approved by County Attorney

as to form and legal sufficiency RAG

Prepared by: GASP