

STATE OF GEORGIA
COUNTY OF FULTON
CITY OF SOUTH FULTON

AN ORDINANCE ENHANCING PUBLIC SAFETY; AMENDING TITLE 15, CRIMINAL OFFENSES, AND TITLE 6, HEALTH AND SANITATION, OF THE CITY CODE OF ORDINANCES; UPDATING SMOKE-FREE AIR REGULATIONS WITHIN THE CITY AND FOR OTHER LAWFUL PURPOSES

(Sponsored by Councilpersons Rowell, Gumbs, Reeves & Baker)

WHEREAS, the City of South Fulton ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia;

WHEREAS, the duly elected governing authority of the City, is the Mayor and Council thereof ("City Council");

WHEREAS, the Georgia Smoke-free Air Act (O.C.G.A. § 31-12A-1, et seq.) prohibits smoking inside most public areas and sets forth specific regulations governing smoking in Georgia;

WHEREAS, Georgia Smoke-free Air Act authorizes local governments to enact rules and regulations which further regulate smoking within their respective jurisdictions;

WHEREAS, the City Council desires through this Ordinance to amend smoking regulations within the City in protections of City residents, visitors, employees and businesses; and

WHEREAS, this Ordinance is in the best interests of the health and general welfare of the City, its residents and general public.

THE COUNCIL OF THE CITY OF SOUTH FULTON HEREBY ORDAINS as follows:

Section 1. The City of South Fulton Code of Ordinances, Title 6, Health and Sanitation, Chapter 1, Smoke-free Air, is hereby amended by replacing said chapter with a new Chapter 1, Smoke-free Air, which shall read as follows:

TITLE 6 - HEALTH AND SANITATION

CHAPTER 1. - SMOKE-FREE AIR

Sec. 6-1001. - Short title.

This chapter shall be known as the City of South Fulton Smoke-free Air Ordinance.

Sec. 6-1002. - Code adopted.

The Georgia Smoke-free Air Act of 2005, O.C.G.A. § 31-12A-1, et seq. and its implementing regulations of the Georgia Department of Community Affairs are adopted by reference as though fully set forth herein.

Sec. 6-1003. - Definitions.

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

(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 constitutes less than 60 percent 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.

(2) "*Business*" means any corporation, sole proprietorship, partnership, limited partnership, limited liability corporation, limited liability partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether for profit or nonprofit, including retail establishments where goods or services are sold and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

(3) "*Electronic smoking device*" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(4) "*Employer*" means an individual or a business that employs one or more individuals.

(5) "*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.

(6) "*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, homes for the 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. This definition shall not include long-term care facilities as defined in paragraph (3) of Code Section 31-8-81.

(7) "*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.

(8) "*Outdoor public facility*" means any sports arenas, ball fields, parks, amphitheatres, tennis centers, tennis courts and other outdoor recreation area owned by the city.

(9) "*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.

(10) "*Place of employment*" means an enclosed area under the control of a public or private employer that employees utilize during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. A private residence is not a place of employment unless it is used as a licensed child care, adult day-care, or health care facility. This term shall not include vehicles used in the course of employment.

(11) "*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 licensed child care, adult day-care, or health care facility.

(12) "*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 shall include a bar area within any restaurant.

(13) "*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.

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

(15) "*Service line*" means an indoor 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.

(16) "*Shopping mall*" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(17) "*Smoking*" means inhaling, exhaling, burning, or carrying any lighted tobacco product, whether natural or synthetic, including cigarettes, cigars, and pipe tobacco and electronic smoking devices.

(18) "*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.

(19) "*Sports arena*" means enclosed stadiums and enclosed sports pavilions, 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.

Sec. 6-1004. - Application of chapter to city property.

No person shall smoke on and/or in any property owned by the City.

Sec. 6-1005. - 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. 6-1006. - Prohibition of smoking at outdoor public facilities.

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

Sec. 6-1007. - Prohibition of smoking in places of employment.

- A. Smoking shall be prohibited in all enclosed areas of places of employment. This includes, without limitation, 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.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this chapter and to all prospective employees upon their application for employment.

Sec. 6-1008. - Prohibition of smoking in enclosed public places.

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

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to 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.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gambling facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Parking structures.
- N. Polling places.
- O. Public transportation vehicles, including buses and taxicabs, under the authority of the City of South Fulton, and public transportation facilities, including bus, train, and airport facilities.
- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores.
- S. 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 or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- T. Service lines.
- U. Shopping malls.
- V. Sports arenas, including enclosed places in outdoor arenas.
- W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 6-1009. - Prohibition of Smoking in Private Clubs

Smoking shall be prohibited in all private clubs.

Sec. 6-10010. - Prohibition of Smoking in Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. All hotel and motel guest rooms.

Sec. 6-10011. - Reasonable distance.

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

Sec. 6-10012. - Where smoking is not regulated.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of sections 6-1005 through 6-1007:

- A. Private residences, except when used as a licensed childcare, adult day care, or health care facility.
- B. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this chapter.
- C. Outdoor areas except those covered by the provisions of section 6-10012.
- D. 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.
- E. Restaurant patios.
- F. Bars, as defined in this chapter

Sec. 6-10013. - Declaration of establishment as nonsmoking.

Notwithstanding any other provision of this chapter, 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 subsection 6-10014(a) is posted.

Sec. 6-10014. - Advertisements and 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 chapter.

- B. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this chapter 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 section 6-10012, except for subsection (A), shall post conspicuously at every entrance a sign indicating that smoking is permitted.

Sec. 6-10015 – 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 chapter or reports or attempts to prosecute a violation of this chapter.

Sec. 6-10016. - Enforcement.

- A. This chapter shall be enforced by an authorized designee of the city.
- B. Notice of the provisions of this chapter shall be given to all applicants for a business license in the city.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with police and code enforcement.
- D. Fire marshal or designee shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.
- E. An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this chapter, an employee or private citizen may bring legal action to enforce this chapter.
- 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 chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 6-10017. - Violations and penalties.

- A. 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 chapter shall be guilty of an infraction, punishable by:

(1) A fine not exceeding \$100.00 for a first violation.

(2) A fine not exceeding \$200.00 for a second violation within one year.

(3) A fine not exceeding \$500.00 for each additional violation within one year.

C. In addition to the fines established by this section, violation of this chapter 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 chapter occurs shall be considered a separate and distinct violation.

Sec. 6-10018. - Public education.

The city may engage in a continuing program to explain and clarify the purposes and requirements of this chapter 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 chapter.

Sec. 6-10019. - Governmental agency cooperation.

The city manager shall annually request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this chapter. 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. 6-10020. - Other applicable laws.

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

Sec. 6-10021. - Liberal construction.

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

Section 2. It is hereby declared to be the intention of the City Council that: (a) All sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the City Council to be fully valid, enforceable and constitutional.

64 (b) To the greatest extent allowed by law, each and every section, paragraph,
65 sentence, clause or phrase of this Ordinance is severable from every other section,
66 paragraph, sentence, clause or phrase of this Ordinance. No section, paragraph,
67 sentence, clause or phrase of this Ordinance is mutually dependent upon any other
68 section, paragraph, sentence, clause or phrase of this Resolution.

69 (c) In the event that any phrase, clause, sentence, paragraph or section of this
70 Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or
71 otherwise unenforceable by the valid judgment or decree of any court of competent
72 jurisdiction, it is the express intent of the City Council that such invalidity,
73 unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not
74 render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases,
75 clauses, sentences, paragraphs or sections of the Ordinance.

76 **Section 3.** All Ordinance and Resolutions in conflict herewith are hereby expressly
77 repealed.

78 **Section 4.** The City Attorney, City Clerk and contracted City Codifier are authorized
79 to make non-substantive formatting and renumbering edits to this ordinance for proofing,
80 codification, and supplementation purposes. The final version of all ordinances shall be
81 filed with the City Clerk.

82 **Section 5.** The City Police Chief, and/or his designee, in conjunction with the City
83 Attorney, shall be authorized to make forms for applications and the issuance of permits
84 consistent with the terms of this Ordinance and as permitted by State law.

85 **Section 6.** The effective date of this Ordinance shall be on the date as set forth under
86 Sec. 3.21 of the City Charter unless provided otherwise by applicable local, state and/or
87 federal law.
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The foregoing Ordinance No. 2020-xxx was moved for approval by Councilmember _____ . The motion was seconded by Councilmember _____ , and being put to a vote, the result was as follows:

	AYE	NAY
William "Bill" Edwards, Mayor	_____	_____
Carmalitha Gumbs, Mayor Pro Tem	_____	_____
Catherine Foster Rowell	_____	_____
Helen Zenobia Willis	_____	_____
Gertrude Naeema Gilyard	_____	_____
Corey Reeves	_____	_____
khalid kamau	_____	_____
Mark Baker	_____	_____

THIS ORDINANCE so adopted this _____ day of _____ 2020. **CITY OF SOUTH FULTON, GEORGIA.**

WILLIAM "BILL" EDWARDS, MAYOR

ATTEST:

CORY E. ADAMS, INTERIM CITY CLERK

APPROVED AS TO FORM:

EMILIA C. WALKER, CITY ATTORNEY