

**ORDINANCE NO. 07-3906**

**BE IT ORDAINED** by the City Council of the City of Decatur, Alabama as follows:

Section I. That Chapter 18.5 of the Code of Decatur, Alabama is hereby amended to read as follows:

“Sec. 18.5-1. Definitions.

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

1. “Attached Bar” means a bar area of a restaurant.
2. “Bar” means an establishment that is devoted primarily to the serving of alcoholic

beverages for consumption by guests on the premises and where food sales represent twenty-five (25) percent or less of the bar’s gross annual receipts. This

definition includes, but is not limited to taverns, nightclubs, cocktail lounges, and cabarets.

3. “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 as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
4. “City” means City of Decatur.
5. “City Council” means City Council of the City of Decatur.
6. “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.
7. “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.
8. “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.
9. “Health Care Facility” means an office or institution providing care or treatment

9. "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.
10. "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, and 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.
11. "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, and which only sells alcoholic beverages incidental to its operation. 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 taxes as a club under 26 U.S.C. Section 501.
12. "Private Function" means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining, where membership or specific invitation is a prerequisite to entry and where the event is not intended to be open to the public.
13. "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, hotel and motel lobbies, 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" unless it is used as a child care, adult day care, or health care facility.
14. "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 "restaurant" shall include an attached bar.
15. "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.

16. "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.
17. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
18. "Smoking" means inhaling, exhaling, burning, or carrying a lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.
19. "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.

**Sec. 18.5-2. Application of Ordinance to City of Decatur Facilities and Vehicles**

All enclosed facilities, including buildings, leased, or owned by the City of Decatur, shall be subject to the provisions of this Chapter. In addition no smoking shall be allowed in any vehicle owned, leased or operated by the City of Decatur.

**Sec. 18.5-3. Prohibition of Smoking in Public Places**

Smoking shall be prohibited in all enclosed areas of public places within the City of Decatur, 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, professional offices, banks, laundromats, hotels, and motels.
3. Bingo facilities when a bingo game is in progress.
4. Bars.
5. Convention facilities.
6. Educational facilities, both public and private.
7. Elevators.
8. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
9. Health care facilities.

10. Hotel and motel lobbies.
11. Licensed child care and adult care facilities.
12. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
13. Polling places.
14. Private clubs when being used for a function to which the general public is invited.
15. Public transportation facilities, including buses and taxicabs, under the authority of the City of Decatur, and ticket, boarding, and waiting areas of public transit depots.
16. Restaurants, including attached bars.
17. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
18. Retail Stores.
19. Rooms, chambers, places of meeting or public assembly, including school buildings, under control of an agency, board, commission, committee or council of the City of Decatur or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the city.
20. Service lines.
21. Shopping malls.
22. Sports arenas, including enclosed places in outdoor arenas.

Sec. 18.5-4. **Prohibition of Smoking in Places of Employment**

- A. Smoking shall be prohibited in all enclosed areas 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, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and all prospective employees upon their application for employment.

Sec. 18.5-5. **Prohibition of Smoking in Outdoor Arenas or Stadiums**

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

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Sec. 18.5-6. **Reasonable Distance**

- A. Smoking is prohibited within a reasonable distance of ten (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.
- B. The owner, operator, manager or other persons in control of an establishment may declare that smoking is prohibited within a greater distance outside an enclosed area where smoking is prohibited. If smoking is prohibited outside the building within a greater distance than ten (10) feet, a conspicuous sign shall be posted at every entrance stating that smoking is prohibited within a specific distance (in feet) from the building. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this section is posted.

Sec. 18.5-7. **Where Smoking Not Regulated**

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the above provisions of Section 18.5-3 and Section 18.5-4:

- 1. Private residences, except when used as a licensed child care, adult day care, 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-five (25) percent 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 Ordinance. The status of rooms as smoking or nonsmoking may not be changed except to add additional nonsmoking rooms
- 3. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. Smoking is prohibited in the service line and cashier area of any retail tobacco store.
- 4. Restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms when these places are being used for private functions; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter.
- 5. 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 provisions of this Chapter.
- 6. Private clubs that have no employees, except when being used for a function to which the general public is invited.

7. Outdoor areas of places of employment except those covered by the above provisions of Sec.18.5-6.

Sec 18.5-8. **Declaration of Establishment as Nonsmoking**

Notwithstanding any other provision of this Ordinance, 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 paragraph (A) of Section 18.5-9 below is posted.

Sec.18.5-9. **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) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by the Ordinance, by the owner, operator, manager, or other person in control of that place.
- B. Every public place and place of employment where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by the Ordinance by the owner, operator, manager, or other person having control of the area.
- D. The owner, operator, manager or other person having control of any area where smoking is prohibited by this Ordinance shall request any person smoking in violation of this Ordinance to stop.

Sec. 18.5-10. **Non retaliation: Non waiver of Rights**

- A. 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 Ordinance or reports or attempts to prosecute a violation of this Ordinance.
- B. 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.

Sec. 18.5-11 **Enforcement**

- A. This Chapter is enforceable by any duly sworn police officer employed by the city, the county health officer or a duly authorized representative thereof, or as otherwise allowed by law for prosecution of offenses. Provisions of this Chapter relating to structures and signage shall be enforced by the Building and Inspection Department of the City.
- B. Notice of the provisions of this Chapter shall be given to all applicants for a business license in the City of Decatur.

- C. An owner, manager, operator, or employee of an establishment regulated by this Chapter shall inform persons violating this Chapter as to the appropriate provisions thereof.
- D. Notwithstanding any other provision of this Chapter, an employee or private citizen may bring legal action to enforce this Chapter.
- E. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the City of Decatur Police or Fire Chief.
- F. The City of Decatur's Fire Department, or its designee, the Tri-County Health Department, or its designee shall while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.
- G. In addition to the remedies provided by the provisions of this Section, the Police Chief, Fire Chief 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.
- H. Any fines or fees collected under this Chapter by the city shall be used for the enforcement of these regulations or in any other manner deemed appropriate by the City Council

Sec 18.5-12. **Violations and Penalties**

A. It shall be the responsibility of the owner, operator, manager, or other person in control of an establishment, facility, or outdoor area to ensure compliance with all sections of this Chapter pertaining to his/her place of business. A violator of this Chapter upon conviction shall be punished as provided in Section 1-8 of this Code.

B. If the owner, operator, manager, or other person in control of an establishment, facility, or outdoor area attempts to enforce this Chapter and a patron violates provisions of this Chapter, then the owner, operator, manager, or other person in control shall not be deemed to be in violation of this Chapter and the patron shall be subject upon conviction to be punished as provided in Section 1-8 of this Code.

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

D. In addition to the fines established by this Section 1-8 of this Code, 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.

Sec 18.5-13. **Public Education**

The Mayor or his designees shall 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, managers, and operators 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. 18.5-14. **Other Applicable Laws**

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws, including but not limited to the provisions of Chapter 15A of Title 22 of the Code of Alabama 1975, as last amended, cited as the "Alabama Clean Indoor Air Act".

Sec. 18.5-15. **Severability**

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

Section 2. **Effective Date**

This Ordinance shall become effective on October 1, 2007, after adoption, approval and publication as required by law.

Adopted this the 6<sup>th</sup> day of August, 2007.

Approved this 16<sup>th</sup> day of August, 2007

/s/ Don Kyle

Mayor

ATTEST:

/s/ Betty Marshall

City Clerk

