

Sec. 9-3017. Smoke-free air.

- (a) *Title.* This article [section] shall be known as the City of Savannah Smoke-Free Air Ordinance of 2010.
- (b) *Definitions.* The following words and phrases, whenever used in this article [section], shall be construed as defined in this subsection:
 - (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 is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
 - (2) *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; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
 - (3) *E-cigarette* means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, that provides a vapor of nicotine and/or other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, or e-pipe, or under any other product name or descriptor.
 - (4) *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 nonprofit entity.
 - (5) *Employer* means a person, business, partnership, association, corporation, including a municipal corporation, trust, or nonprofit entity that employs the services of one or more individual persons.
 - (6) *Enclosed area* means all space between a floor and ceiling that is bounded on all sides by walls, doorways or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
 - (7) *Outdoor service area* means an unenclosed area of a restaurant or bar where food or beverage is served.
 - (8) *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, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, 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.
 - (9) *Place of employment* means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
 - (10) *Playground* means the area of any park or recreational area designed to be used by children that has play or sports equipment installed, or any similar facility located on

private school grounds or on City grounds.

- (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 tax as a club under 26 U.S.C. section 501.
- (12) *Public place* means an enclosed area to which the city has jurisdiction and the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and 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.
- (13) *Restaurant* means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, 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.
- (14) *Service line* means an indoor or outdoor 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, including, but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- (15) *Shopping mall* means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (16) *Smoking* means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco product intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an e-cigarette that creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this article [section].
- (17) *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 within the city's jurisdiction
- (18) *Reasonable distance* means a minimum of ten feet or a distance that is sufficient to ensure indoor areas remain smoke-free by preventing smoke from infiltrating enclosed public places via any entrance, exit, window, vent, or air intake system of a building where smoking is prohibited, and to protect persons entering or exiting enclosed areas from involuntarily inhaling second-hand smoke.
- (19) *Outdoor common area* means outdoor areas of apartment buildings, condominiums, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (20) *Hookah lounge* means any business establishment in existence as of June 1, 2010, that

permits waterpipe smoking on the premises as of the date of the adoption of this section.

- (c) *Application of article [section] to city-owned facilities.* All enclosed facilities, including buildings and vehicles owned, leased, or operated by the city, shall be subject to the provisions of this article [section].
- (d) *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:
 - (1) Aquariums, galleries, libraries, and museums.
 - (2) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including, but not limited to, banks, laundromats, professional offices, and retail service establishments.
 - (3) Bars.
 - (4) Bingo facilities.
 - (5) Child care and adult day care facilities.
 - (6) Convention facilities.
 - (7) Educational facilities, both public and private.
 - (8) Elevators.
 - (9) Gaming facilities.
 - (10) Health care facilities.
 - (11) Hotels and motels.
 - (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) Public transportation vehicles, including buses and taxicabs, under the authority of the city, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, trolley and airport facilities.
 - (15) Restaurants.
 - (16) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
 - (17) Retail stores.
 - (18) Rooms, chambers, places of meeting or public assembly, 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.
 - (19) Service lines.
 - (20) Shopping malls.
 - (21) Sports arenas, including enclosed places in outdoor arenas.
 - (22) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.
- (e) *Prohibition of smoking in places of employment.*
 - (1) 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, vehicles, and all other enclosed facilities.
 - (2) This prohibition on smoking shall be communicated to all existing employees by the effective date of this article [section] and to all prospective employees upon their application for employment.

- (f) *Prohibition of smoking in private clubs.* Smoking shall be prohibited in all private clubs.
- (g) *Prohibition of smoking in enclosed residential facilities.* Smoking shall be prohibited in the following enclosed residential facilities:
 - (1) All private and semiprivate rooms in nursing homes.
 - (2) At least 80 percent of hotel and motel rooms that are rented to guests.
- (h) *Prohibition of smoking in outdoor areas.* Smoking shall be prohibited in the following outdoor places:
 - (1) Within ten feet or a reasonable distance outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas when the area is open for business or occupied by one or more persons.
 - a. If the location of an entrance, exit, window, vent, or air intake system of a building where smoking is prohibited or if the location of a barrier, such as a wall, property line, parking lot, or street makes the reasonable distance requirement impossible to meet, then the building owner, agent, operator, person in charge or proprietor of a public place shall determine the maximum distance between the outdoor smoking area and the entrance exit, window, or air intake system of a building where smoking is prohibited.
 - (2) In, and within ten feet or a reasonable distance of, outdoor seating or serving areas of restaurants.
 - (3) In all outdoor arenas, stadiums, and amphitheatres. Smoking shall also be prohibited in, and within ten feet or a reasonable distance of, bleachers and grandstands for use by spectators at sporting and other public events.
 - (4) In, and within ten feet or a reasonable distance of, all outdoor public transportation stations, platforms, and shelters under the authority of the city.
 - (5) In all outdoor service lines.
 - (6) In, and within ten feet or a reasonable distance of, outdoor playgrounds.
- (i) *Where smoking not regulated.* Notwithstanding any other provision of this article [section] to the contrary, the following areas shall be exempt from the provisions of subsections (e) and (f):
 - (1) Private residences, except when used as a child care, adult day care, or health care facility, and except as provided in subsection (g).
 - (2) Not more than 20 percent of hotel and motel rooms rented to guests and designated as smoking rooms.
 - (3) Outdoor areas of places of employment except those covered by the provisions of subsection (h).
 - (4) Areas within the city in which the mayor and aldermen do not have jurisdiction including, but not limited to, property belonging to the Savannah-Chatham County School Board, Chatham County Commission, other jurisdictions, the state and the federal government.
- (j) *Exemptions.* Notwithstanding any other provisions of this article [section] to the contrary, smoking may be permitted in certain establishments including:
 - (1) Waterpipe smoking of 100 percent tobacco-free shisha may be permitted in any hookah lounge.
 - a. This exemption shall automatically terminate should the establishment sell or allow waterpipe smoking of any tobacco product.
 - b. Notice shall be posted on the menu of offerings and at all public entrances to the business stating: "Only 100% tobacco-free shisha permitted pursuant to the City of Savannah Smoke-Free Air Act of 2010."

- c. This exemption shall be nontransferrable and shall expire should the establishment cease operations, change ownership or cease to allow waterpipe smoking on the premises.
- (2) Restaurant and bars where their outdoor service area is at least 50 percent of the size of their indoor area may designate 20 percent of the outdoor area as a smoking section.
- (k) *Declaration of establishment as nonsmoking.* Notwithstanding any other provision of this article [section], 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 (l)(1) is posted.
- (l) *Posting of signs.*
 - (1) A minimum of one "No Smoking" sign 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 this article [section], by the owner, operator, manager, or other person in control of that place.
 - (2) Every public place and place of employment where smoking is prohibited by this article [section] shall have posted at the primary entrance a conspicuous sign clearly stating that smoking is prohibited. Every vehicle that constitutes a place of employment under this article [section] shall have at least a minimum of one conspicuous sign, visible from the exterior of the vehicle, clearly stating that smoking is prohibited.
 - (3) All ashtrays 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.
- (m) *Nonretaliation; nonwaiver of rights.*
 - (1) 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. Notwithstanding subsection (o), violation of this subsection shall be an offense, punishable by a fine not to exceed \$1,000.00 for each violation.
 - (2) 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.
- (n) *Enforcement.*
 - (1) This article [section] shall be enforced by the city manager or an authorized designee.
 - (2) Notice of the provisions of this article [section] shall be given to all applicants for a business license in the city.
 - (3) Any citizen who desires to register a complaint under this article [section] may initiate enforcement with the city manager.
 - (4) The health department, fire department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this article [section].
 - (5) An owner, manager, operator, or employee of an establishment regulated by this article [section] shall direct a person who is smoking in violation of this article [section] to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.

Any business that complies with the notification requirements of this article [section] shall not be cited for violation.

- (6) Notwithstanding any other provision of this article [section], an employee or private citizen may bring legal action to enforce this article [section].
 - (7) In addition to the remedies provided by the provisions of this subsection, 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 [section] may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
- (o) *Violations and penalties.*
- (1) A person who smokes in an area where smoking is prohibited by the provisions of this article [section] shall be guilty of a City ordinance violation, punishable by a fine and court fees not to exceed \$100.00.
 - (2) Except as otherwise provided in subsection (m)(1), 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 [section] shall be guilty of a City ordinance violation punishable by:
 - a. A fine not exceeding \$100.00 for a first violation.
 - b. A fine not exceeding \$200.00 for a second violation within one year.
 - c. A fine not exceeding \$500.00 for each additional violation within one year.
 - (3) In addition to the fines established by this subsection, violation of this article [section] 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.
 - (4) Violation of this article [section] is hereby declared to be a public nuisance, which may be abated by the city manager by restraining order, preliminary and permanent injunction, or other means provided for by law, and the city may take action to recover the costs of the nuisance abatement.
 - (5) Each day on which a violation of this article [section] occurs shall be considered a separate and distinct violation.
- (p) *Public education.* The city manager shall engage in a continuing program to explain and clarify the purposes and requirements of this article [section] 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 section
- (q) *Other applicable laws.* This article [section] shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
- (r) *Liberal construction.* This article [section] shall be liberally construed so as to further its purposes.
- (s) *Severability.* If any provision, clause, sentence, or paragraph of this article [section] or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this article [section] which can be given effect without the invalid provision or application, and to this end the provisions of this article [section] are declared to be severable.
- (t) *Effective date.* This article [section] shall be effective January 1, 2011.

(Ord. of 12-22-1994, §§ 1—7; Ord. of 8-26-2010, §§ 1000—1019)