

**ORDINANCE NO. 1313-05-2013**

**AN ORDINANCE OF THE CITY OF GAINESVILLE, TEXAS AMENDING CHAPTER 8 OF THE CODE OF ORDINANCES, ESTABLISHING ARTICLE IV SMOKING REGULATIONS; PROVIDING FOR CONTROL AND REGULATION OF SMOKING IN PUBLIC PLACES; PROVIDING FOR PENALTY NOT TO EXCEED \$500 FOR EACH OFFENSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR PUBLICATION AND AN EFFECTIVE DATE; AND PROVIDING AN OPEN MEETINGS FINDING**

**WHEREAS**, cumulative scientific data indicates that exposure to second-hand smoke is dangerous to human health; and

**WHEREAS**, the City Council finds and determines that increasing the number of smoke-free areas is necessary to protect the public health and welfare:

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE, TEXAS:**

**SECTION 1. Amend Chapter 8 of the Code of Ordinances Article IV.**

Chapter 8 Article IV shall be titled Smoking Regulation and shall read as follows:

**Section 8-300. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. Bar means an establishment which has more than seventy (70) percent of its annual gross sales in alcoholic beverages and which 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 such beverages and where minors are not allowed admittance unless accompanied by a parent or legal guardian. Food establishments that contain a bar are not considered a "bar."
2. Business means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making or non-profit purposes, 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.
3. Designated Smoking Area means a designated area, which shall be a physically enclosed area and "separate ventilation" system as "enclosed" and "separate ventilation" are defined under Section 8-300.
4. Employee means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
5. Employer means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
6. Enclosed means all space between a floor and ceiling, which is closed on all sides by solid walls or windows with appropriate openings for ingress or egress.

7. Food Establishment means any operation engaged in the preparation of food, which gives food or offers food for sale to the public, guests or employees. A “**food establishment**” for purposes of this definition does not include a “**bar**” as defined under Section 8-300.
8. Place of Employment means 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 and restrooms, conference and class rooms, employee cafeterias, hallways and vehicles. A private residence is not a “place of employment” unless it is used as a childcare, adult day care or health care facility.
9. Public Place means any enclosed area to which the public is invited or in which the public is permitted or is a place of employment and includes but is not limited to: retail stores; grocery stores; offices; professional, commercial or financial establishments; public and private institutions of education; food establishments; health care facilities; nursing and convalescent homes; residential treatment facilities; child care facilities; laundromats, buildings owned or occupied by political subdivisions; public transportation facilities and vehicles; reception areas; theaters and waiting rooms. For the purpose of this section, a “**public place**” does not include a private residence.
10. Retail Tobacco Store means any commercial establishment that derives at least fifty-one (51) percent of its annual gross receipts from the sale of tobacco and tobacco accessories.
11. Separate Ventilation means a separate heating, ventilation, and air conditioning (HVAC) system such that air from the smoking area is exhausting directly to the outside and not circulated within the building or mixed with the general dilution ventilation for the building and that creates a negative pressure away from the door into the room sufficient to prevent any flow of smoke from the smoking area to the non-smoking area. Such system shall supply a minimum of thirty cubic feet per minute (30 CFM) outdoor air exchange per person and be under negative pressure. An HVAC system must be designed by a licensed professional engineer to meet the requirements of the city mechanical code.
13. Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, or plant.
14. Tobacco Bar means a bar in which the onsite sales or rentals of tobacco products and smoking accessories for consumption or use on the premises exceeds 20% of gross revenues and into which entry is restricted to individuals 18 years of age and above.

**Section 8-301. Non-Smoking Areas in Public Places.**

1. Smoking is hereby prohibited in all enclosed public places within the city limits of the City of Gainesville, Texas.
2. All enclosed facilities including buildings and vehicles owned or occupied by the City of Gainesville, Texas will be subject to the provisions of this article.
3. All City Parks and recreational areas including but not limited to Leonard Park, Edison Park, BP Douglas Park, Georgia Davis Bass Park, Heritage Park North, Heritage Park South, Jaycee Park, Keneteso Park, Moffett Park, Pecan Creek Park, Booker T. Washington Park, Forsythe Skate Park, Youth Center Football Field, and Home Grown Hero Walking Trail. Smoking is permitted in the parking lot of the Civic Center but not within twenty (20) feet of any entrance or exit of the building.
4. All outdoor sporting arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

5. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment, facility or business may declare that entire establishment, facility or business as nonsmoking.

**Section 8-30 2. Reasonable Distance.**

Smoking shall occur at a reasonable distance of twenty (20) feet or more outside any entrances, operable windows, ventilation systems or any other openings of an enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the area.

**Section 8-30 3. Where Smoking is Not Regulated.**

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from Section 8-301:

1. Private residences, except for residences used as a day care, adult day or health care facility.
2. Bars, which meet the definition of "bar" under Section 8-300 of this article. This exemption shall not apply to an establishment that shares a common heating, ventilation and air conditioning (HVAC) system with any other tenants in the same building, to include shopping malls or strip shopping malls, in which the bar is located.
3. Retail Tobacco Stores, which meet the definition of "retail tobacco store" under Section 8-300 of this article. This exemption shall not apply to an establishment that shares a common heating, ventilation and air conditioning (HVAC) system with any other tenants in the same building, to include shopping malls or strip shopping malls, in which the retail store that primarily provides tobacco products is located.
4. Tobacco Bar, which meet the definition of "tobacco bar" under Section 8-300 of this article and were in operation on or before June 6, 2013. This exemption shall not apply to an establishment that shares a common heating, ventilation and air conditioning (HVAC) system with any other tenants in the same building, to include shopping malls or strip shopping malls, in which the tobacco bar is located.
5. Outdoor areas of places of employment except those covered in Section 8-303 of this article.
6. No more than twenty-five percent (25%) of hotel and motel rooms rented to guests may be designated for smoking. All smoking rooms on the same floor must be contiguous, and these rooms must not share a common heating, ventilation and air conditioning (HVAC) system with any area that smoking is prohibited. Rooms for smoking must be clearly designated as such.
7. Private and Semi private rooms in nursing homes and long-term care facilities that are occupied by one 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 these rooms must not share a common heating, ventilation and air conditioning (HVAC) system with any area where smoking is prohibited.
8. Stage areas of enclosed theaters, if smoking is an integral part of a theatrical performance.
9. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or business described in this section may declare that entire establishment as nonsmoking.

**Section 8-30 4. Posting of Signs.**

1. "No Smoking" signs in English and Spanish 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 at every entrance to every building or other area where smoking is prohibited by this

article, by the owner, operator, manager or other person who has control of such building or other area.

2. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager or other person who has control of such area. Private offices and display cases or shelves are exempt from this subsection [Section 8-304.2].
3. City shall install at least one no smoking sign as described in Section 8-305 in each park in which smoking is prohibited in order to meet the requirement of this section.

**Section 8-30 5. Enforcement.**

1. The City of Gainesville Community Services Director or the director's designated representative is responsible for the enforcement of this article.
2. Complaints against persons violating this article shall be made to the Community Services Director or the director's representative for investigation and, if warranted, to the office of the city attorney for prosecution.
3. The City of Gainesville Community Services Department, Gainesville Police Department, Gainesville Code Enforcement Officers, or the Gainesville Fire Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance of this article.
4. Any owner, manager, operator or employee of any establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.

**Section 8-30 6. Violations and Penalties.**

1. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions.
2. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.
3. Any person who violates any provision of this article shall be subject to a penalty, which shall be a minimum fine of not less than \$50.00 nor more than a maximum fine of \$500.00 as follows:
  - a. A fine not to exceed fifty dollars (\$50.00) for a first violation.
  - b. A fine not to exceed two hundred dollars (\$200.00) for a second violation of this article within one (1) year.
  - c. A fine not to exceed five hundred dollars (\$500.00) for each additional violation of this article within one (1) year.

**Section 8-30 7. No Duty of Obligation.**

In undertaking the enforcement of this article, the city is assuming an undertaking only to promote the general health, safety, and welfare of its citizens. The city is not assuming any duty or obligation, nor is it imposing any duty and/or obligation on its offices and/or employees, nor is it liable in money damages or otherwise to any person who claims that the city and/or one of its officers and/or employees breached any such obligation and the breach proximately caused injury.

**Section 8-30 8. Other Applicable Laws.**

Nothing in this article excuses noncompliance with any federal or state law, city ordinance or any rule or regulation adopted pursuant thereto that prohibits smoking.

**Section 8-30 9. Providing for Severability.**

If any provision, section, subsection, sentence, clause, or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion hereof or provisions or regulation contained therein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this ordinance to be severable for that purpose.

**Section 8-31 0. Conflict with Other Ordinances.**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 2. Publication and Effective Date.**

Publication of this Ordinance shall be made in the official newspaper of the City of Gainesville, Texas, after final passage, which publication shall contain the caption stating in substance the purpose of the Ordinance and the penalty for violation thereof. This article shall be effective thirty (30) days from and after the date of adoption.

**SECTION 3. Open Meetings Finding.**

It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law, and that public notice of the time, place and purpose of said meeting was given as required.

**INTRODUCTION, FIRST READING**

INTRODUCED AND READ FOR THE FIRST TIME BEFORE THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 2<sup>nd</sup> DAY OF APRIL 2013.

7  AYES  0  NAYS  0  ABSENCES  0  ABSTENTIONS.

/S/ \_\_\_\_\_  
JIM GOLDSWORTHY, MAYOR

ATTEST:

/S/ \_\_\_\_\_  
KAY LUNNON, CITY SECRETARY

**SECOND READING**

READ FOR THE SECOND TIME BEFORE THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 16<sup>TH</sup> DAY OF APRIL 2013.

7  AYES  0  NAYS  0  ABSENCES  0  ABSTENTIONS.

/S/ \_\_\_\_\_  
JIM GOLDSWORTHY, MAYOR

ATTEST:

/S/ \_\_\_\_\_  
KAY LUNNON, CITY SECRETARY

**THIRD READING & ADOPTION**

READ FOR THE THIRD TIME AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GAINESVILLE ON THE 7<sup>th</sup> DAY OF MAY 2013.

7  AYES  0  NAYS  0  ABSENCES  0  ABSTENTIONS.

/S/ \_\_\_\_\_  
JIM GOLDSWORTHY, MAYOR

ATTEST:

/S/ \_\_\_\_\_  
KAY LUNNON, CITY SECRETARY