CITY COUNCIL
ATLANTA, GEORGIA

AN ORDINANCE **04-O-0435**

BY COUNCILMEMBERS DERRICK BOAZMAN, NATALYN ARCHIBONG, CEASAR C. MITCHELL, H. LAMAR WILLIS, IVORY LEE YOUNG, JR., DEBI STARNES JIM MADDOX AND ANNE FAUVER

AS SUBSTITUTED (3) AND AMENDED BY CITY UTILITIES COMMITTEE

TO AMEND CERTAIN PROVISIONS OF ARTICLE II, CHAPTER 86 OF THE CODE OF ORDINANCES OF THE CITY OF ATLANTA; TO CREATE NEW SECTIONS; TO PROVIDE FOR A PROHIBITON OF SMOKING IN PUBLIC PLACES; TO RENUMBER SECTIONS WITHIN THIS ARTICLE; TO REPEAL CERTAIN PROVISIONS; AND FOR OTHER PURPOSES.

WHEREAS, a Clean Indoor Air Act Taskforce was created in February 2003 to evaluate the adequacy of the existing City of Atlanta Indoor Air Ordinance; and

WHEREAS, the Clean Indoor Air Taskforce, based upon its research, has concluded that the following information is pertinent to the passage of an adequately researched Clean Indoor Air Ordinance; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, Public Heath Services National Toxicology Program and the World Health Organizations' International Agency for Research on Cancer identify Environmental Tobacco Smoke (ETS) as a human Class A carcinogen and state that there is no safe level of exposure; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, secondhand smoke is particularly hazardous to elderly persons, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

WHEREAS, the federal Americans with Disabilities Act of 1990, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, the U.S. Centers for Disease Control and the U.S. Surgeon General have determined that a significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50 percent higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function; and

WHEREAS, smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts, and controlling for economic variables, have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety; and

WHEREAS, the City of Atlanta("City") has determined from a review of the literature and testimony from citizens at public meetings, that smoking poses a threat to the health, safety, and welfare of the citizens of the City; and

WHEREAS, the City is authorized to adopt such ordinances or regulations for the governing and policing of the City for the purpose of protecting and preserving the health, safety, and welfare, of the citizens of the City; and

WHEREAS, the Clean Indoor Air Act Taskforce determined the existing City of Atlanta Indoor Air Ordinance was inadequate to prohibit smoking in public places and places of employment in order to protect the health and welfare of its citizens; and

WHEREAS the purposes of this Ordinance are to protect the public health and welfare by prohibiting smoking in public places and places of employment;; and

WHEREAS, the City of Atlanta seeks to regulate smoking in public places and places of employment in order to protect the health and welfare of its citizens, and

WHEREAS, the City has determined that it is in the best interests of its citizens to adopt an Ordinance that will effectively protect its citizens from the harms of second-hand smoke; therefore,

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA that CHAPTER 86, ARTICLE II of the City Code of Ordinances, is hereby deleted in its entirely and replaced by the following:

Section 86-31. Definitions

1. "Auditorium" means the part of a building where an audience sits including any corridors, hallways or lobbies adjacent thereto.

2. "Bar" means, for purposes of this article, any premises licensed to sell alcoholic beverages by the city pursuant to chapter 10 of the Code as a nightclub or lounge. The terms "alcoholic beverages", "premises", "nightclub" and "lounge", as used herein, shall have the same meaning as defined in sections 10-1 of the Code.

3. "Business establishment" means any sole proprietorship, partnership, association, joint venture, corporation or other entity formed for profit-making purposes, including professional corporations and other entities where legal, medical, dental, engineering, architectural, financial, counseling, and other professional or consumer services are provided.

4."Child day care center" means (i) any public, private or parochial child care center, school-age child care program, day nursery school, kindergarten, play school, or other similar school or service, (ii) any child care arrangement licensed by the city, (iii) any facility that provides child care services and any child day care center as defined in O.C.G.A § 49-5-3 of the Children and Youth Act. Such definition applies whether or not care is given for compensation and whether or not the child day care center is located in a private residence.

5. "Employee" means any person who is employed by any employer in return for the payment of direct or indirect monetary wages or profit, or any person who volunteers his or her services to such employer for no monetary compensation.

6. "Employer" means any person, partnership, association, corporation or non-profit entity which employs one or more persons, including the legislative, executive and judicial branches and agencies of the city of Atlanta.

7. "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.

8. "Exterior Area" means any area located outside the physical boundaries of a building, is open to the elements and is not capable of being enclosed.

9. "Factory" means any mill or other manufacturing establishment where one or more persons are employed in manufacturing including making, altering, repairing, finishing, bottling, canning, cleaning or laundering any article or thing.

10. "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, 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.

11. "Indoor Area Open to the Public" means any indoor area or portion thereof generally accessible to the public.

12. "Limousine" means a for-hire vehicle required to be licensed by the Bureau of Taxicabs and Vehicles for Hire, designed to carry passengers, which is dispatched from a garage, and in which passengers are charged fees calculated on the basis of garage to garage service.

13. "Place of employment" means any indoor area or portion thereof under the control of an employer which employees normally frequent during the course of employment and which is not generally accessible to the public, including, but not limited to, private offices, work areas, employee lounges and restrooms,

conference and class rooms, employee cafeterias, employee gymnasiums, auditoriums, libraries, storage rooms, file rooms, mailrooms, employee medical facilities, rooms or areas containing photocopying or other office equipment used in common by employees, elevators, stairways and hallways. A private residence is not a "place of employment" within the meaning of this chapter unless it is used as a child day care center or a health care facility.

14. "Public place" means any area to which individuals other than employees are invited or permitted, including, but not limited to, banks, educational facilities, health care facilities, child day care centers, children's institutions, shopping malls, property owned, occupied or operated by the city of Atlanta or an agency thereof public transportation facilities, reception areas, restaurants, catering halls, retail stores, theaters, sports arenas and recreational areas and waiting rooms. A private residence is not a "public place" within the meaning of this chapter unless it is used as a child day care center or a health care facility.

15. "Residential health care facility" means (i) a facility providing therein nursing or other care to sick, invalid, infirm, disabled or convalescent persons in addition to lodging and board service, (ii) an inpatient psychiatric facility which provides individuals with active treatment under the direction of a physician, and (iii) a residential facility providing health related service.

16. "Restaurant" means " means, for purposes of this article, any coffee shop, cafeteria, luncheonette, sandwich stand, diner, short order cafe, fast food establishment, soda fountain, and any other eating or beverage establishment (other than a bar), including a restaurant located in a hotel or motel, or part of any organization, club, boardinghouse, or guesthouse, which gives or offers for sale food or beverages to the public, guests, members, or patrons, whether food or beverages are customarily consumed on or off the premises, but not an establishment whose sole purpose is to serve food or beverages to employees of a common employer or to students of a common educational institution. The term "restaurant", as used herein, shall also include those premises licensed by the city to sell alcoholic beverages pursuant to chapter 10 of the Code as restaurants, sidewalk cafes, open air cafes and brewpubs. The terms "alcoholic beverages", "premises", "restaurants", "sidewalk cafes", and "open air cafes", as used in the preceding sentence, shall have the same meaning as defined in sections 10-1 of the Code unless otherwise specified.

17. "Retail store" means any place which in the regular course of business sells or rents goods directly to the public.

18. "Retail tobacco store" means a retail store devoted primarily to the sale of any tobacco products, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco, and accessories and in which the sale of other products is merely incidental. The sale of such other products shall be considered incidental as such sales generate less than fifty percent of the annual gross sales.

19. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

20. "Sports Arena" means sports pavilions, stadiums, leased boxes within a 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.

21. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or any form of lighted object or device which contains tobacco.

22. "Smoking Paraphernalia" means any and all tobacco products as defined in this chapter, and any tool, method or mechanism used by which tobacco is delivered to the lungs and body, including pipes and vending machines for the sale of tobacco products, and any tool or utensil which use is for the disposal of the ash, filter, or trash remaining from the tobacco product or mechanism used for the purpose of smoking.

23. "Tobacco bar" is a bar that generates fifty percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines.

24. "Tobacco product" means any substance which contains tobacco, including, but not limited to, cigarettes, cigars, pipe tobacco and chewing tobacco.

25. "Volunteer" means a person who is unpaid for their services.

26. "Youth Centers" means (i) any public, private or parochial congregate institution, group residence, group home or other place where, for compensation or otherwise, seven or more children under twenty-one years of age are received for day and night care apart from their parents or guardians, (ii) youth centers or facilities for detention, (iii) group homes for children, (iv) public institutions for children, and (v) residential treatment facilities for children and youth.

27. "Zoo" means any indoor area open to the public for the purpose of viewing animals. An aquarium is a "zoo" within the meaning of this chapter.

86-32. Prohibition of smoking.

(a) Smoking is prohibited in all enclosed areas within public places except as otherwise restricted in accordance with the provisions below. Such public places include, but are not limited to, the following:

1. Aquariums, galleries, libraries, and museums.

2. Auditoriums.

3. Business establishments including, but not limited to, banks and other financial institutions, catering halls, offices where trade or vocational activity occurs or professional or consumer services are rendered and non-profit entities, including religious institutions; provided however, that this paragraph shall not apply to membership associations.

4. Catering Halls.

5. Convention facilities.

6. Hotel and motel rooms.—No more than 25% of the rooms for sleeping area/quarters shall be provided or designated for smoking patrons.

7. Elevators.

8. Enclosed indoor areas open to the public containing a swimming pool.

9. Health care facilities including, but not limited to, hospitals, clinics, psychiatric facilities, residential health care facilities, physical therapy facilities, convalescent homes, and homes for the aged; provided, however, that this paragraph shall not prohibit smoking by patients in separate enclosed rooms of residential health care facilities or facilities where day treatment programs are provided, which are designated as smoking lounges for patients of such facilities or programs.

10. Libraries, museums and galleries.

11. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities and other multiple-unit residential facilities.

12. Motion picture theaters, concert halls, buildings or areas or rooms in buildings primarily used for or designed for the primary purpose of exhibiting movies or presenting performances, including, but not limited to, stage, musical recital, dance, lecture or other similar performances, except that smoking may be part of a theatrical production.

13. Places of meeting or public assembly during such time as a meeting open to the public is being conducted for educational, religious, recreational, or political purposes, but not including meetings conducted in private residences, unless such meetings are conducted in an area in a private residence where a child day care center or health care facility is operated during the times of operation or in an area which constitutes a common area of a multiple dwelling containing ten or more dwelling units.

14. Polling places.

15. Pool Halls.

16. Public areas where bingo is played.

17. Public transportation facilities, including buses, taxicabs, and vans under the authority of the City of Atlanta, and ticket, boarding, and waiting areas of public transit depots.

18. Restaurants

19. Restrooms, lobbies, reception areas, hallways, and other common-use areas.

20. Retail stores.

21. 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 chapter of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City.

22. Schools, public and private pre-primary, primary, and secondary schools providing instruction for students at or below the twelfth-grade level, and including, but not limited to, community colleges, technical training establishments, specialty schools, colleges and universities.

23. Smoking is prohibited on any service line, waiting area, or portion thereof, whether located indoor or outdoor during the times in which the public is invited or permitted, notwithstanding the fact that the service line, waiting area, or portion thereof, is in an area otherwise designated for smoking

24. Shopping malls.

25. Sports arenas, including enclosed places in outdoor arenas, and recreational areas.

26. Youth and Children's institutions.

27. Zoos

(b) Smoking is prohibited in the following outdoor areas of public places, except as otherwise restricted in accordance with the provisions below:

1. Outdoor dining areas of restaurants with no roof or other ceiling enclosure; provided, however, that smoking may be permitted in a contiguous outdoor area designated for smoking so long as such area: (i) constitutes no more than twenty-five percent of the outdoor seating capacity of such restaurant; (ii) is at least three feet away from the outdoor area of such restaurant not designated for smoking; and (iii) is clearly designated with written signage as a smoking area.

2. Outdoor seating or viewing areas of open-air motion picture presentations or open-air concert, stage, dance, lecture or recital presentations or performances or other similar open-air presentations or performances, when seating or standing room is assigned by issuance of tickets.

3. Outdoor seating or viewing areas of sports arenas and recreational areas, when seating or standing room is assigned by issuance of tickets.

4. Outdoor areas of all children's institutions.

5. Playgrounds.

(c) Smoking is prohibited in all indoor and outdoor areas of the following public places at all times:

1. All public and private pre-primary, primary, and secondary schools providing instruction for students at or below the twelfth-grade level, and any vehicles owned, operated or leased by such schools which are used to transport such students or the personnel of such schools.

2. All child day care centers; provided, however, that with respect to child day care centers operated in private residences, this paragraph shall apply only to those areas of such private residences where the child day care centers are operated during the times of operation or during the time employees are working in such child day care centers.

(d) Places of Employment: Except as otherwise provided in this article,

1. Smoking shall be prohibited in all enclosed facilities within places of employment. This includes factories, 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 and to all prospective employees upon their application for employment.

3. Employers shall supply a written copy of the smoking policy upon request to any employee or prospective employee.

(e) Reasonable Distance: Smoking is prohibited within 25 feet outside of 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.

Section 86-33.Exceptions.

The regulations of smoking pursuant to this article shall not apply in the following areas:
(1) Private homes, private residences, and private automobiles;
(2) Bars;
(3) Tobacco Bars;
(4) Outdoor areas of places of employment;
(5) Officially designated smoking areas in airports. However, no person under the age of eighteen (18) years shall be allowed to enter such designated smoking areas. In addition, there shall be displayed directional signage informing the public of the location of the designated smoking areas;
(6) Any property owned or leased by the State of Georgia, federal government, or other municipalities.
(7) Retail tobacco Stores provided the establishment is within an enclosed space, and does not admit persons under the age of eighteen (18).

Section 86-34. Declaration of a Smoke Free Environment.

Notwithstanding any other provision of this Article, 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 Section 86-35 is posted.

Section 86-35. 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 this Article, by the owner, operator, manager, or other person in control of that place.

(b)Every food service establishment shall have posted at each entrance a conspicuous sign clearly stating that a non-smoking area is available, and that smoking is allowed only in the designated areas.

(c)Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

Section 86-36. Enforcement.

(a) The City of Atlanta Police Department or an authorized designee shall enforce this Article.

(b) The City solicitor may initiate any action seeking enforcement of this article on the solicitor's own motion or upon information provided by any citizen. Any officer of the City Police Department also may initiate an action for violation of this article if a violation occurs in such officer's presence. Any other police officer whose jurisdiction is located within the city may initiate an action for violation of this article if a violation occurs in such officer's presence provided that the violation occurs within the officer's jurisdiction.

(c) Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Atlanta.

(d) Any citizen who desires to register a complaint under this Article may initiate enforcement with the City of Atlanta Police Department.

(e) The Police Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

(f) An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.

Section 86-37. Violations and Penalties.

(a) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine of up to two hundred dollars ($200.00) for each violation of this Article.

(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 Article shall be guilty of an infraction, punishable by:

i. A fine not to exceed two hundred dollars ($200.00) for a first violation.

ii. A fine not to exceed four hundred dollars ($400.00) for a second violation within one (1) year.

iii. A fine not to exceed one thousand dollars ($1000.00) for each additional violation within one (1) year.

(c) In addition to the fines established by this Section, violation of this Article 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 Article occurs shall be considered a separate and distinct violation.

Section 86-38. -No Retaliation.

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.

Section 86-39. Severability

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

Section 86-40. Effective Date

This Ordinance shall become effective January 1, 2005 with the exception of restaurants as defined in Section 86-31 above, this ordinance shall not become effective until the earlier of forty-five (45) days after the close of the 2005 Session of the Georgia General Assembly, or July 1, 2005.

RCS# 6683
5/16/05
2:38 PM

Atlanta City Council

Regular Session

MULTIPLE 03-O-2107 04-O-0329 04-O-0435 04-O-1353
05-O-0269 05-R-0223 04-R-1288
FILE

YEAS:	12
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	2
EXCUSED:	1
ABSENT	1

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	B Fauver	Y Martin	NV Norwood
E Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Sheperd	NV Borders

MULTIPLE

#23

04- O -0435

(Do Not Write Above This Line)

AN ORDINANCE

Councilmember Derrick Boazman

An Ordinance to amend certain provisions of Article III, Chapter 86 of the Code of Ordinances of the City of Atlanta, Georgia by Amending Sections 86-31 through 86-38 to Provide for a smoking ban in public places; and for other purposes

FILED BY CITY COUNCIL

MAY 1 6 2005

SUBSTITUTE AS AMENDED

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☑ PERSONAL PAPER REFER

Date Referred	03/01/04
Referred To:	Public Safety & Legal Adm
Date Referred	09/7/04
Refferred To:	Public Safety + Legal Adm
Date Referred	09/07/04
Referred To:	City Utilities

Referred 9/20/04 to City Utilities

First Reading

Committee
Date
Chair
Referred To

Committee	Committee
City Utilities	City Utilities
Date March 9, 2004	Date August 31, 2004
Chair	Chair Abs
Action: Fav, Adv, Hold (see rev. side) Other	Action: Fav, Adv, Hold (see rev. side) Other On Substitute as Amended
Members	Members
Refer To	Refer To

Committee	Committee
City Utilities	City Utilities
Date April 27, 2004	Date Sept. 14, 2004
Chair	Chair
Action: Fav, Adv, Hold (see rev. side) Other Substituted	Action: Fav, Adv, Hold (see rev. side) Other
Members	Members Abs
Substituted 7/13/04	
Refer To	Refer To

FINAL COUNCIL ACTION

☑ 2nd ☐ 1st & 2nd Readings ☐ 3rd

☐ Consent ☐ V Vote ☑ RC Vote

CERTIFIED

MAY 1 6 2005

CERTIFIED

MAYOR'S ACTION