

ORDINANCE NO. 946

AN ORDINANCE TO IMPLEMENT RESTRICTIONS ON  
SMOKING IN PUBLIC PLACES; AND ESTABLISHMENT OF  
PENALTIES THEREFORE.

BE IT ORDAINED BY THE COUNCIL OF CITY OF CLINTON, OKLAHOMA, §6.6.1 through 6.6.11. of the Clinton City Code are hereby established to read as follows:

**6.6.1. Title.**

This chapter shall be known as the City of Clinton Indoor Air Ordinance of 2013.

**6.6.2. Definitions.**

In this chapter:

- (A) “Bar” means an establishment which has as its primary business the serving of alcoholic beverages for consumption by guests on the premises. “Bar” includes, but is not limited to, taverns, nightclubs, cocktail lounges, adult entertainment facilities, and cabarets.
- (B) “Health Officer” means the individual appointed by the City Manager to fill the office of Health Officer as identified in the Charter.
- (C) “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profits or a person who volunteers his or her services for a nonprofit entity.
- (D) “Employer” means a person, business, partnership, association, or corporation, including a municipal corporation, trust, or nonprofit entity, that employs the services of one or more individual persons.
- (E) “Enclosed area” means all space between a floor and a ceiling that is enclosed or partially enclosed with (i) solid walls or windows, exclusive of doorways, or (ii) solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors.
- (F) “Enclosed or partially enclosed sports arena” means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller rink, ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise or participate in athletic competitions or recreational activities or to witness sports, cultural, recreational, or other events.
- (G) “Healthcare 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, assisted living establishments, long-term care facilities, adult family care homes, hospitals, rehabilitation hospitals, 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. "Healthcare facility" includes all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within healthcare facilities.

(H) "Place of employment" means any area under the control of a public or private employer that employees are required to enter, leave, or pass through during the course of employment, including, but not limited to entrances and exits to places of employment, including a minimum distance of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; offices and work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a "place of employment."

(I) "Private club" means a not-for-profit association that (1) has been in active and continuous existence for at least three (3) years prior to January 1, 2013, whether incorporated or not, (2) is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, (3) is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and (4) only sells alcoholic beverages incidental to its operation. For purposes of this definition, "private club" means an organization that is managed by a board of directors, executive committee, or similar body chosen by the members at an annual meeting, has established bylaws, a constitution, or both to govern its activities, and has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. § 501.

(J) "Private residence" means the part of a structure used as a dwelling, including, without limitation: a private home, townhouse, condominium, apartment, mobile home, vacation home, cabin, or cottage. For the purposes of this definition, a hotel, motel, inn, resort, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home, or assisted living facility shall not be considered a private residence.

(K) "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the City of Clinton, or any other public entity and regardless of whether a fee is charged for admission, including a minimum distance of 15 feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A "public place" does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises. A "public place" includes, but is not limited to, hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, libraries, museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, enclosed or partially enclosed sports arenas, meeting rooms, schools, exhibition halls, convention facilities, polling places, private clubs, gaming facilities, all government owned vehicles and facilities, including

buildings and vehicles owned, leased, or operated by the City of Clinton or City subcontract, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, ticket areas, public hearing facilities, public restrooms, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, reception areas, and no less than 75% of the sleeping quarters within a hotel, motel, resort, inn, lodge, bed and breakfast, or other similar public accommodation that are rented to guests, but excludes private residences.

(L) “Restaurant” means (i) an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, that gives or offers for sale food to the public, guests, or employees, and (ii) a kitchen or catering facility in which food is prepared on the premises for serving elsewhere. “Restaurant” includes a bar area within the restaurant.

(M) “Retail tobacco store” means a retail establishment that derives more than 80% of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. “Retail tobacco store” does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.

(N) “Smoke” or “smoking” means the carrying, smoking, burning, inhaling, or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted smoking equipment.

### **6.6.3. Smoking in public places, places of employment and governmental vehicles prohibited.**

Unless an exemption contained in this chapter specifically applies, no person shall smoke in a public place or in any place of employment. No person may smoke in any vehicle owned, leased, or operated by the City of Clinton.

### **6.6.4. Posting of signs; removal of ashtrays.**

All ashtrays 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.

### **6.6.5. Designation of other nonsmoking areas.**

Notwithstanding any other provision of this chapter, any employer, owner, occupant, lessee, operator, manager, or other person in control of any public place or place of employment may designate a non-enclosed area of a public place or place of employment, including outdoor areas, as an area where smoking is also prohibited provided that such employer, owner, lessee or occupant shall conspicuously post signs prohibiting smoking.

### **6.6.6. Exemptions.**

Notwithstanding any other provision of this chapter, smoking is allowed in the following areas:

- (1) Private residences or dwelling places, except when used as a child care, adult day care, or healthcare facility or any other home-based business open to the public.
- (2) Retail tobacco stores as defined in Section 6.6.2(M) of this chapter in operation prior to January 1, 2013. Any retail tobacco store that begins operation after January 1, 2013 may only qualify for an exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited.
- (3) Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms, provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited. Not more than 25% of the rooms rented to guests in a hotel or motel may be designated as rooms where smoking is allowed. The status of rooms as smoking or nonsmoking may not be changed, except to permanently add additional nonsmoking rooms.

#### **6.6.7. Enforcement; Complaints.**

- (a) This chapter shall be enforced by the Health Officer and police department.
- (b) Notice of the provisions of this chapter shall be given to all applicants for a business license in the City of Clinton.
- (c) Any person who desires to register a complaint pursuant to this chapter may initiate enforcement with the City through methods established by Resolution.
- (d) The City or its designees 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 any provision of this chapter of the appropriate provisions thereof.
- (f) In addition to the remedies provided by this chapter, the City 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 the municipal court.

#### **6.6.8. Violations.**

- (a) A person, corporation, partnership, association or other entity who violates any provision of this chapter shall be fined pursuant to 1-4-1. Each day that a violation occurs is a separate violation.

(b) A person who smokes in an area where smoking is prohibited under any provision of this chapter shall be fined in accordance with 1-4-1.

**6.6.9. Discrimination prohibited.**

No individual may be discriminated against in any manner because of the exercise of any rights afforded by this chapter. 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.

**6.6.10. Construction with other code provisions.**

No reference or omission in this chapter shall be construed to allow smoking if otherwise restricted or prohibited by other code provisions.

**6.6.11. Rules.**

The Health Officer in conjunction with the City Manager, are authorized to adopt rules necessary for the administration of this chapter.

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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SETH ADAMS, Mayor

ATTEST:

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LISA ANDERS, City Clerk