ORDINANCE NO. O-7-04

AN ORDINANCE TO AMEND CHAPTER 18A OF THE CITY CODE ENTITLED "SMOKING AND TOBACCO PRODUCTS PLACEMENT" SECTION 18A-2 ENTITLED "SMOKING PROHIBITED IN CERTAIN AREAS" SECTION 18A-3 ENTITLED "EXCEPTIONS", SECTION 18A-6 ENTITLED "DESIGNATED SMOKING AREAS" AND SECTION 18A-7 ENTITLED "SMOKING IN EATING AND DRINKING ESTABLISHMENTS" SO AS TO PROHIBIT SMOKING IN EATING AND DRINKING ESTABLISHMENTS IN THE CITY, EXCEPT PRIVATE CLUBS AND WITH STANDARDS FOR DEFERRALS OF EFFECTIVE DATE FOR CERTAIN ESTABLISHMENTS AND FURTHER TO RENUMBER CERTAIN SUBSECTION NUMBERS

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled that Chapter 18A of the City Code, Section 18A-2, 18A-3, 18A-6 and 18A-7 are hereby amended to read as follows:

CHAPTER 18A. SMOKING AND TOBACCO PRODUCTS PLACEMENT

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Sec. 18A-2. Smoking prohibited in certain areas.

A person must not smoke in any:

(1) * * * * * * * *
(2) * * * * * * * *
(3) * * * * * * * *
(4) * * * * * * * *
(5) * * * * * * * *
(6) * * * * * * * *
(7) * * * * * * * *
(8) Public areas of a retail store, <u>eating and drinking establishment,</u> bank, factory or any other private business, except:
[a. An eating and drinking establishment, except as provided in section 18A-7 of this chapter:]
[b] <u>a.</u> * * * * *
[c] <u>b.</u> * * * * *
[d] <u>c.</u> * * * * *
(9) * * * * * * * *
(10) * * * * * * * *
(11) * * * * * * * *
(12) * * * * * * * *

Sec. 18A-3. Exceptions.

Smoking is permitted:

(1) * * * * * * * *
(2) * * * * * * * *
(3) * * * * * * * *
(4) * * * * * * * *
(5) * * * * * * * *
(6) * * * * * * * *
(7) * * * * * * * *
(8) * * * * * * * *
(9) In the bar or dining area of a club as the term "club" is defined in the state alcoholic beverage law and the club has an alcoholic beverage license issued to private clubs under the state alcoholic beverages law which allows consumption of alcoholic beverages on the premises.

Sec. 18A-6. Designated smoking areas.

The person in charge of any area specified in section 18A-2 may designate separate areas where smoking is permitted; provided that:

(1) An area must not be designated as a smoking area if smoking in that area is prohibited by this Chapter 18A; by any other law, ordinance or regulation or by a fire marshal.
(2) * * * * * * * *
(3) * * * * * * * *
(4) * * * * * * * *

Sec. 18A-7. Smoking in eating and drinking establishments.

(a) *Definitions.* In this section, the following words have the meaning indicated:

(1) "Bar" means an indoor, enclosed area where the primary activity is the service of alcoholic beverages and where the service of food is only incidental to the service of alcoholic beverages.

(2) "Eating and drinking establishment" means a food and drink service facility or establishment open to the public and regulated under Chapter 18A. Eating and drinking establishments under this section are not clubs as defined under the state alcoholic beverage control laws.

(3) "Enclosed" means separated by walls or partitions and under roof.

(4) "Indoor" means covered by a roof and enclosed.

(5) "Private function" means an event in an enclosed area to which entry is not available to the general public but only to those whom the sponsor of the event invites. "Private function" does not mean an event held by a private club or association to which members of the general public are invited.

(6) "Separate ventilation system" means a mechanical HVAC unit which vents directly outdoors, is not interconnected to the system operating in non-smoking areas and is an approved system as defined in the *Building Code*.

(b) *Applicability.*

(1) This section applies to eating and drinking establishments [if the total seating capacity of all non-bar areas is fifty (50) or more].

(2) This section does not apply to any area of an eating and drinking establishment that is: [a bar; or] being used exclusively for a private function or is a private club as defined under the state alcoholic beverage control laws which has a private club license for consumption on premises.

[(c) *Nonsmoking area required.* A person who operates an eating and drinking establishment must designate a contiguous, nonsmoking area that is at least fifty (50) percent of the total seating area of that part of the establishment that is not: a bar; or being used exclusively for a private function].

[(d)] (c) *Notice.* Any person who operates an eating and drinking establishment subject to this section must:

(1) Post conspicuously at each entrance a sign stating that [a nonsmoking area is available;] smoking is not permitted on premises.

[(2) Ask whether each patron wants to be seated in the smoking or nonsmoking area;]

[(3)] (2) Refuse to seat or serve a person who smokes [in the nonsmoking area]; and

[(4)] (3) Ask a person who smokes [in a nonsmoking area] on the indoor premises to leave the establishment if the person continues to smoke after proper warning.

[(e)] (d) *Prohibition.* A person must not smoke in:

(1) [An area that is designated for nonsmoking under this section]; Any portion of the indoor premises of an eating and drinking establishment; or

(2) Any restroom that is open to customers.

[(f)] (e) *Enforcement and penalty.*

(1) A person who operates an eating and drinking establishment in violation of any provision of this section may be punished pursuant to the provisions of section 18A-[12] 11.

(2) A person who smokes in a nonsmoking area in violation of this section may be punished pursuant to the provisions of section 18A-[12] 11.

* * * * *

BE IT FURTHER ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland that this ordinance shall become effective at the expiration of twenty (20) calendar days following approval by the Mayor, except that for those eating and drinking establishments meeting the following standards the effective date of this ordinance shall be deferred for twelve (12) calendar months following the date of approval of this Ordinance by the Mayor.

Standards for Deferral of Effective Date of Ordinance

The eating and drinking establishment must:

(1) Be in operation and open for business with a valid use and occupancy certificate; and
(2) The establishment contains as of the date of approval of this Ordinance by the Mayor:

a. A separate smoking area which is enclosed on all sides from floor to ceiling by solid walls with self closing doors used for ingress and egress and has a separate ventilation system; and

b. To the extent possible is not located in an area that patrons must pass through to use restrooms or be seated in the non-smoking areas of the establishment.

(3) Within twenty (20) days from the date of approval of this Ordinance by the Mayor, the owner or operator of the eating and drinking establishment must apply to the City Manager or his designee for deferral of the Ordinance and request certification by the City of compliance with these deferral standards. Within ten (10) days from timely receipt of said application for certification, the City Manager or his designee must certify or deny certification of the establishment.

ADOPTED this 1st day of March, 2004 by the City Council of Gaithersburg, Maryland.

SIDNEY A. KATZ, MAYOR and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this 1st day of March, 2004. APPROVED by the Mayor of the City of Gaithersburg, this 1st day of March, 2004.

SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the 1st day of March, 2004, and that the same was approved by the Mayor of the City of Gaithersburg on the 1st day of March, 2004. This Ordinance will become effective on the 22nd day of March, 2004, except as noted above for establishments containing certain improvements, in which case, this Ordinance will become effective on the 22nd day of March, 2005.

David B. Humpton, City Manager