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**THE TOWN OF EDGEWOOD FINDS THAT SMOKING IS A FORM OF AIR POLLUTION, A POSITIVE DANGER TO HEALTH, AND A MATERIAL ANNOYANCE, INCONVENIENCE, NUISANCE, DISCOMFORT, AND A HEALTH HAZARD TO THOSE WHO ARE PRESENT IN CONFINED SPACES AND THEREFORE THE TOWN OF EDGEWOOD ORDAINS:**

## **SEC. 1 TITLE**

This Ordinance shall be known as the Town of Edgewood Smokefree Air Act of 2005. No person shall smoke in a public place or in any business or place of employment except as permitted in this ordinance.

## **SEC. 2. DEFINITIONS**

The following words and phrases, whenever used in this Ordinance, shall be construed as defined in this Section:

- A. "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.
- B. "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.
- C. "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 non-profit entity.
- D. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- E. "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.
- F. "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, homes for the aging or chronically ill, 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.

- G. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, 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.
- H. "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.
- I. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation 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 club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- J. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private 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.
- K. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- L. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- M. "Shopping Mall" means an enclosed public walkway or hall area that

serves to connect retail or professional establishments.

- N. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.
- O. "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.

### **SEC. 3. APPLICATION OF ORDINANCE TO TOWN OF EDGEWOOD FACILITIES**

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the Town of Edgewood, of Santa Fe County shall be subject to the provisions of this Ordinance.

### **SEC. 4. PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES**

Smoking shall be prohibited in all enclosed public places within the Town of Edgewood of Santa Fe County, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
- C. Bars.
- D. Bingo facilities.
- E. Convention facilities.
- F. Educational facilities, both public and private.
- G. Elevators.
- H. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- I. Health care facilities.
- J. Hotel and motel lobbies.
- K. Licensed child care and adult day care facilities.
- L. Lobbies, hallways, and other common areas in apartment buildings,

condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

- M. Polling places.
- N. Private clubs when being used for a function to which the general public is invited.
- O. Public transportation facilities, including buses and taxicabs, under the authority of the Town of Edgewood of Santa Fe County, and ticket, boarding, and waiting areas of public transit depots.
- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores.
- S. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the Town of Edgewood or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the Town of Edgewood.
- T. Service lines.
- U. Shopping malls.
- V. Sports arenas, including enclosed places in outdoor arenas.

**SEC. 5. PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT**

- A. Smoking shall be prohibited in all enclosed facilities 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.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

**SEC. 6. PROHIBITION OF SMOKING IN OUTDOOR ARENAS, STADIUMS**

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters.

**SEC. 7. REASONABLE DISTANCE**

Smoking is prohibited within a reasonable distance outside 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.

#### **SEC. 8. WHERE SMOKING NOT REGULATED**

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 4 and 5:

- A. Private residences, except when used as a licensed child care, adult day care, or health care facility.
- B. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
- D. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) 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 smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
- E. Private clubs that have no employees, except when being used for a function to which the general public is invited.
- F. Outdoor areas of places of employment except those covered by the provisions of Sections 6, and 7.

#### **SEC. 9. DECLARATION OF ESTABLISHMENT AS NONSMOKING**

Notwithstanding any other provision of this Ordinance, 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 10(A) is posted.

#### **SEC. 10. 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 Ordinance, by the owner, operator, manager, or other person in control of that place.

- B. Every public place and place of employment where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- C. All ashtrays shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.

#### **SEC. 12. ENFORCEMENT**

- A. This Ordinance shall be enforced by Planning & Zoning Code Enforcement or an authorized designee.
- B. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the Town of Edgewood of Santa Fe County.
- C. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Planning & Zoning Department.
- D. An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.

#### **SEC. 13. VIOLATIONS AND PENALTIES**

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- 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 Ordinance shall be guilty of an infraction, punishable by:
  - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
  - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
  - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. In addition to the fines established by this Section, violation of this Ordinance 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 Ordinance occurs shall be considered a separate and distinct violation.

**SEC. 14. PUBLIC EDUCATION**

The Planning & Zoning Office shall engage in a continuing program to explain and clarify the purposes and requirements of this Ordinance 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 ordinance.

**SEC. 15. OTHER APPLICABLE LAWS**

This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.


**SEC. 16. SEVERABILITY**

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

**SEC. 17. EFFECTIVE DATE**

This Ordinance shall be effective thirty (30) days from and after the date of its adoption.

PASSED AND APPROVED THIS 6<sup>TH</sup> DAY OF JULY, 2005

  
\_\_\_\_\_  
Mayor

ATTEST:  
  
\_\_\_\_\_  
Karen Alarid Clerk-Treasurer



## Public Notice

Be advised that the Governing Body of the Town of Edgewood adopted the following ordinance at their July 6, 2005 regular council meeting:

- 1) AN ORDINANCE ESTABLISHING SMOKE FREE AIR ACT REGULATIONS WITHIN THE TOWN OF EDGEWOOD.

The above mentioned ordinance will become effective thirty (30) days after the date of its adoption (August 8, 2005). For more information on this ordinance you may call Karen Alarid at 286-4518 ext. 1 or Karen Mahalick at 286-4518 ext. 3.

Dated: July 8th, 2005  
Town of Edgewood, New Mexico



Town Clerk-Treasurer

**POSTED:**  
Phillips Sixty-Six Station  
Stuckey's  
Radio Shack  
John Brooks  
Smiths Grocery  
Town Clerk's Office