ORDINANCE NO. 398

AN ORDINANCE BY THE CITY OF CLARKSTON TO AMEND CHAPTER 10 OF THE CODE TO ADD NEW ARTICLE VII, ENTITLED "CLEAN INDOOR AIR" TO PROHIBIT SMOKING IN DESIGNATED WORKPLACES AND PUBLIC PLACES

WHEREAS, the 2006 U.S. Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry.[1] According to the 2010 U.S. Surgeon General's Report, How Tobacco Smoke Causes Disease, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.[2] According to the 2014 U.S. Surgeon General's Report, The Health Consequences of Smoking—50 Years of Progress, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke[3]; 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. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually[4]; and

WHEREAS, the Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen[5]; and

WHEREAS, based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death[6]; and

WHEREAS, there is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke[7]; and

WHEREAS, in reviewing 11 studies concluding that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smokefree laws, the Institute of Medicine of the National Academies concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smokefree laws reduce heart attacks[8]; and

WHEREAS, a significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% 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[9]; and

WHEREAS, studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in hospitality workers find dramatic reductions in the levels of these biomarkers after a smokefree law takes effect. Average cotinine levels of New York City restaurant and bar workers decreased by 85% after the city's smokefree law went into effect.[10] After the implementation of Ontario, Canada's Smokefree Indoor Air Law, levels of NNAL were reduced by 52% in nonsmoking casino employees and cotinine levels fell by 98%[11]; and

WHEREAS, smokefree indoor air laws result in a significant reduction in fine particulate matter and improved air quality. A Grand Rapids, Michigan study that monitored six restaurants before and after implementation of the state's smokefree air law found that PM2.5 fine particulate matter was reduced by 92 percent after the law went into effect, indicating that the vast majority of indoor air pollution in all six venues was due to secondhand smoke. The results in Grand Rapids were consistent with results in Wilmington, Delaware; Boston, Massachusetts; and Western New York[12]; and

WHEREAS, following a Health Hazard Evaluation of Las Vegas casino employees' secondhand smoke exposure in the workplace, which included indoor air quality tests and biomarker assessments, the National Institute of Occupational Safety & Health (NIOSH) concluded that the casino employees are exposed to dangerous levels of secondhand smoke at work and that their bodies absorb high levels of tobacco-specific chemicals NNK and cotinine during work shifts. NIOSH also concluded that the "best means of eliminating workplace exposure to [secondhand smoke] is to ban all smoking in the casinos."[13] A subsequent study in Nevada, whose Clean Indoor Air Act permits smoking in designated areas of casinos, bars, and taverns, indicates that strong 100% smokefree laws are the only effective way to protect indoor air quality. The study sampled the air quality in 15 casino gaming areas and corresponding nonsmoking areas, and the results indicated that the Clean Indoor Air Act failed to protect air quality in the nonsmoking areas, including children-friendly areas[14]; and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.[15] The Americans With Disabilities Act,

which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability[16]; and

WHEREAS, the U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking[17]; and

WHEREAS, given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety[18]; and

WHEREAS, during periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations.[19] Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smokefree outdoor area[20]; and

WHEREAS, residual tobacco contamination, or "thirdhand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings. Gases can be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds.[21] Tobacco residue is noticeably present in dust throughout places where smoking has occurred.[22] Given the rapid sorption and persistence of high levels of residual nicotine from tobacco smoke on indoor surfaces, including clothing and human skin, this recently identified process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion.[23] The dangers of residual tobacco contamination are present in hotels, even in nonsmoking rooms. Compared with hotels that are completely smokefree, surface nicotine and air 3EP are elevated in nonsmoking and smoking rooms of hotels that allow smoking. Air nicotine levels in smoking rooms are significantly higher than those in nonsmoking rooms of hotels that do and do not completely prohibit smoking. Hallway surfaces outside of smoking rooms also show higher levels of nicotine than those outside of nonsmoking rooms. Partial smoking restrictions in hotels do not protect non-smoking guests from exposure to tobacco smoke and tobacco-specific carcinogens[24]; and

WHEREAS, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug

Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent."[25] According to a more recent study, electronic cigarette emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.[26] Electronic cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions. The World Health Organization (WHO) recommends that electronic smoking devices not be used indoors, especially in smokefree environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smokefree laws[27]; and

WHEREAS, the Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly $10 billion a year: $5 billion in estimated medical costs associated with secondhand smoke exposure and $4.6 billion in lost productivity[28]; 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 smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety[29]; and

WHEREAS, there is no legal or constitutional "right to smoke."[30] Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous[31]; 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[32]; and

WHEREAS, the smoking of tobacco, hookahs, or marijuana and the use of electronic cigarettes are forms of air pollution and constitute both a danger to health and a material public nuisance; and

WHEREAS, accordingly, the City of Clarkston desires to act to protect the public health by prohibiting smoking in all public places and all workplaces.

NOW THEREFORE, BE IT ORDAINED by the City of Clarkston, as follows:

Section 1. Chapter 10 of the Code of Ordinances, regarding Health and Sanitation, is hereby amended to add new Article VII, entitled "Clean Indoor Air." The "Clarkston Clean Indoor Air Ordinance" attached hereto and consisting of 10 pages is hereby adopted and Sections 10-60 through 10-78 are hereby added to the Code of Ordinances.

Section 2. 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 3. This Article shall be effective thirty (30) days from and after the date of its adoption.

ADOPTED this 4 day of August, 2016.

ATTEST:

CITY COUNCIL OF
CITY OF CLARKSTON, GEORGIA

Tracy Ashby, City Clerk
(SEAL)

Mayor Ted Terry

Approved as to Form:

7-21-16

Stephen G. Quinn, City Attorney

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Clarkston Clean Indoor Air Ordinance

Sec. 10-60. Findings and Intent

The City of Clarkston finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

Sec. 10-61. Definitions

The following words and phrases, whenever used in this Article, 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. "Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

D. "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.

E. "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.

F. "Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

G. "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, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, 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.

H. "Hookah" means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

I. "Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, 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.

J. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on [City or County] grounds.

K. "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.

L. "Public Event" means an event which is open to and may be attended by the general public, including but not limited to, concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

M. "Public Place" means an area to which the public is invited or permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and 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 residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

N. "Recreational Area" means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.

O. "Restaurant" means an eating establishment which gives or offers for sale food to the public, guests, or employees, including but not limited to, coffee shops, cafeterias, sandwich stands, private and public school cafeterias, 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.

P. "Service Line" means an indoor or outdoor 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, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

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

R. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

S. "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

Sec. 10-62. City Facilities and Property

All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Clarkston, as well as all outdoor property adjacent to such buildings and under the control of the City, shall be subject to the provisions of this Article.

Sec. 10-63. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the City of Clarkston, including but not limited to, the following places:

A. Aquariums, galleries, libraries, and museums.

B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.

C. Bars.

D. Bingo facilities.

E. Child care and adult day care facilities.

F. Convention facilities.

G. Educational facilities, both public and private.

H. Elevators.

I. Health care facilities.

J. Hotels and motels.

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

L. Parking structures.

M. Polling places.

N. Public transportation vehicles, including buses and vehicles for hire, and ticket, boarding, and waiting areas of public transportation facilities.

O. Restaurants.

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

Q. Retail stores.

R. Service lines.

S. Shopping malls.

T. Sports arenas, including enclosed places in outdoor arenas.

U. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 10-64. Prohibition of Smoking in Enclosed Places of Employment

A. Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, 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 Article and to all prospective employees upon their application for employment.

Sec. 10-65. Prohibition of Smoking in Certain Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

A. All private and semi-private rooms in nursing homes.

B. All hotel and motel guest rooms.

Sec. 10-66. Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor places:

A. Within thirty (30) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.

B. On all outdoor property that is adjacent to buildings owned, leased, or operated by the City of Clarkston.

C. In, and within 30 feet of, outdoor seating or serving areas of restaurants.

D. In outdoor shopping malls, including parking structures.

E. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 30 feet of, bleachers and grandstands for use by spectators at sporting and other public events.

F. In outdoor recreational areas, including parking lots.

G. In, and within 30 feet of, all outdoor playgrounds.

H. In, and within 30 feet of, all outdoor public events.

I. In, and within 30 feet of, all outdoor public transportation stations, platforms, and shelters.

J. In all outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles, but only within 30 feet of the point of service.

K. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least 30 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 10-67. Prohibition of Smoking in Outdoor Places of Employment

A. Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, temporary offices such as trailers, restroom facilities, and vehicles.

B. 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.

Sec. 10-68. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, smoking shall be allowed in private residences, unless used as a childcare, adult day care, or health care facility.

Sec. 10-69. Temporary Grandfathering of Certain Establishments

Notwithstanding any other provision of this Article, smoking shall be permitted until December 31, 2018, in the following places:

A. "Qualified adult entertainment establishments" recognized pursuant to City Code § 2.5-31; and

B. Businesses that meet all of the following criteria:

1. The business was operating at its current location pursuant to a valid business license issued by the City of Clarkston on April 1, 2016;

2. The primary business conducted at the licensed establishment is the retail sale of tobacco, other plant product used for smoking, accessories used for smoking, Electronic Smoking Devices, or substances intended to be inhaled through electronic smoking devices; and

3. No person under twenty-one (21) years old is permitted inside the business at any time.

With respect to the foregoing subsection B., failure to maintain all of the required conditions in place at all times will result in the permanent revocation of grandfathered status of the business, upon notice to the business, due process, and a determination by the City Council at a regular meeting that the business has failed to maintain compliance with this Section.

Sec. 10-70. Declaration of Establishment or Outdoor Area as Nonsmoking

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 10-71 is posted.

Sec. 10-71. Posting of Signs and Removal of Ashtrays Where Smoking Prohibited

The owner, operator, manager, or other person in control of a place of employment, public place, or residential facility where smoking is prohibited by this Article shall:

A. Clearly and conspicuously post "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) in that place.

B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited or, in the case of outdoor places, clearly and conspicuously post "No Smoking" signs in appropriate locations as determined by the City Manager or an authorized designee.

C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.

D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

Sec. 10-72. Warning Sign to be Posted in Businesses Where Nicotine Products Sold

(a) Any person owning or operating a place of business in which cigarettes, tobacco products, tobacco related objects, or Electronic Smoking Devices are sold or offered for sale shall post in a conspicuous place a sign which shall contain the following statement:

"SALE OF CIGARETTES, TOBACCO, TOBACCO PRODUCTS, OR TOBACCO RELATED OBJECTS, ALTERNATIVE NICOTINE PRODUCTS, VAPOR PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW."

Such sign shall be printed in letters of at least one-half inch in height.

(b) Every person owning or operating a business described in subsection (a) of this section shall also post a sign containing the same statement in the six most common languages used in Clarkston other than English. Such sign shall be obtained from City Hall by such person.

Sec. 10-73. Nonretaliation; Nonwaiver of Rights

A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 10-75, violation of this Subsection shall be punishable by a fine not to exceed $1000 for each violation.

B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 10-74. Enforcement

A. This Article shall be enforced by the Police Department, the Quality of Life Officer, the City Manager or an authorized designee.

B. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Clarkston.

C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the City Manager.

D. The Quality of Life Officer shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

E. An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish or turn off the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.

Sec. 10-75. 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 not exceeding fifty dollars ($50).

B. Except as otherwise provided in Section 10-73(A), 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:

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 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. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 10-76. Public Education

The City Manager shall engage in a continuing program to explain and clarify the purposes and requirements of this Article 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. 10-77. Other Applicable Laws

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

Sec. 10-78. Liberal Construction

This Article shall be liberally construed so as to further its purposes.