

**AN ORDINANCE ESTABLISHING A NON-SMOKING POLICY FOR THE CITY OF ALEXANDER CITY, ALABAMA**

This Article shall be known as the City of Alexander City Smokefree Air Ordinance of 2008.

**SECTION 1. 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 primarily to the serving of alcoholic beverages for consumption by guests on the premises and where food sales represent twenty-five (25) per cent or less of the bar's gross annual receipts. This definition includes, but is 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. **"City"** means City of Alexander City.
- D. **"City Council"** means City Council of the City of Alexander City.
- E. **"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.
- F. **"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.
- G. **"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.
- H. **"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.
- I. **"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.
- J. **"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 U. S. C. Section 501.

- K. **"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.
- L. **"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.
- M. **"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.
- N. **"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.
- O. **"Shopping Mall"** means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- P. **"Smoking"** means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.
- Q. **"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.

**SECTION 2. Application of Article to City of Alexander City Facilities.**

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Alexander City shall be subject to the provisions of this Article.

**SECTION 3. Prohibition of Smoking in Enclosed Public Places.**

Smoking shall be prohibited in all enclosed public places within the City of Alexander City, 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 nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
- C. Convention facilities.
- D. Educational facilities, both public and private.
- E. Elevators.
- F. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- G. Health care facilities.
- H. Hotel and motel lobbies.
- I. Licensed child care and adult day care facilities.

- J. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- K. Polling places.
- L. Private clubs when being used for a function to which the general public is invited.
- M. Public transportation facilities, including buses and taxicabs, under the authority of the City of Alexander City, and ticket, boarding, and waiting areas public transit depots.
- N. Restaurants.
- O. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- P. Retail stores.
- Q. 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 of Alexander City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Alexander City.
- R. Service lines.
- S. Shopping malls.
- T. Sports arenas, including enclosed places in outdoor arenas.

**SECTION 4. 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 Article and to all prospective employees upon their application for employment.

**SECTION 5. Prohibition of Smoking in Outdoor Arenas and Stadiums.**

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

**SECTION 6. Reasonable Distance.**

Smoking is prohibited within a reasonable distance of ten (10) feet 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.

The owner, operator, manager or other persons in control of an establishment may declare that smoking is prohibited within a greater distance outside an enclosed area where smoking is prohibited. If smoking is prohibited outside the building within a greater distance than ten (10) feet, a conspicuous sign shall be posted at every entrance stating that smoking is prohibited within a specific distance (in feet) from the building. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this section is posted.

**SECTION 7. Where Smoking Not Regulated.**

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 3 and 4:

- A. Private residences, except when used as a licensed child care, adult day care, or health care facility.
- B. Bars

- C. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty (20) per cent 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 Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- D. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
- E. 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 Article.
- F. Private clubs that have no employees, except when being used for a function to which the general public is invited.
- G. Outdoor areas of places of employment except those covered by the provisions of sections 5 and 6.

**SECTION 8. Declaration of Establishment 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 sections 9-A is posted.

**SECTION 9. Posting of Signs; Responsibility of Proprietors.**

- 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 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.
- C. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.
- D. The owner, operator, manager or other person having control of any area where smoking is prohibited by this Article shall request any person smoking in violation of this Article to stop.

**SECTION 10. 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, 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.
- 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.

**SECTION 11. Enforcement.**

- A. This Article shall be enforced by the Code Enforcement Officer, or an authorized representative thereof, or the Mayor or his duly authorized designees or representatives.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Alexander City.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Mayor or his designees.
- D. The Code Enforcement Officer, Alexander City Fire Department, the Building Official or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee, of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the Code Enforcement Officer, the Mayor 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 Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

**SECTION 12. 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 a misdemeanor, punishable by a fine not exceeding fifty dollars (\$50.00).
- 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 a misdemeanor, punishable by:
  - 1. A fine not exceeding one hundred dollars (\$100.00) for a first violation.
  - 2. A fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year.
  - 3. A fine not exceeding five hundred dollars (\$500.00) 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. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the Code Enforcement Officer or the Mayor by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Code Enforcement Officer and/or 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.

**SECTION 13. Public Education.**

The Mayor designees 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.

**SECTION 14. Governmental Agency Cooperation.**

The Mayor shall annually request other governmental and educational agencies having facilities within the City of Alexander City to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, County, City and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

**SECTION 15. Other Applicable Laws.**

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

**SECTION 16. Liberal Construction.**

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

**SECTION 17. 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 18. Effective Date.**

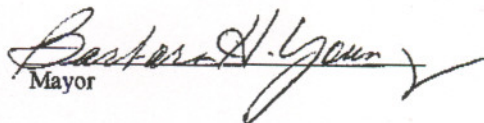
This Article shall be effective on January 1, 2009, after the date of its adoption and publication as required by law

The City Clerk is hereby authorized and directed to publish this Ordinance one (1) time in the Alexander City Outlook, a newspaper of general circulation within the City of Alexander City, Alabama.

ADOPTED this 2<sup>nd</sup> day of June, 2008.

  
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President of the Council

APPROVED this 2<sup>nd</sup> day of June, 2008.

  
\_\_\_\_\_  
Mayor


ATTEST:

  
\_\_\_\_\_  
City Clerk

**CERTIFICATION OF CITY CLERK**

The undersigned, as Clerk of the City of Alexander City, Alabama, hereby certifies that the foregoing is a correct, and complete copy of Ordinance No. 2008-22 which was duly adopted by the City Council on the 2<sup>nd</sup> day of June, 2008.

**WITNESS MY SIGNATURE**, as Clerk of the City of Alexander City, Alabama, under the seal thereof, this 2<sup>nd</sup> day of June, 2008.

  
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As Clerk of the City of  
Alexander City, Alabama

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