

**ORDINANCE NO. 1962 - AN ORDINANCE TO REPEAL ORDINANCE NO. 1693 AND TO PROHIBIT SMOKING IN CERTAIN ENCLOSED PLACES AND CERTAIN OUTDOOR PUBLIC PLACES IN THE CITY**

WHEREAS, the City Council of the City of Mountain Brook, Alabama is aware that studies show that (1) second-hand smoke exposure can cause disease and premature death in children and adults who do not smoke; (2) children exposed to second-hand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks; (3) even occasional exposure of adults to second-hand smoke can have immediate adverse effects on the cardiovascular system and can cause coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to second-hand smoke; (5) establishing smoke-free public places and places of employment are the only effective ways to ensure that second-hand smoke exposure does not occur in such places because ventilation and other air cleaning technologies cannot completely control exposure of non-smokers to second-hand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry;

WHEREAS, the Council is aware that studies have shown that (1) residual tobacco contamination, or "third-hand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings; (2) tobacco residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins; (3) sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings; (4) 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; and (5) even the rapid absorption and persistence of high levels of residual nicotine from tobacco smoke on indoor surfaces, including clothing and human skin, exposure to "third-hand smoke" can represent an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion;

WHEREAS, the Council finds that unregulated electronic 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, and that 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;

WHEREAS, the City Council of the City of Mountain Brook, Alabama is concerned about the health hazards induced by breathing second-hand smoke which include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchospasm;

WHEREAS, the City Council of the City of Mountain Brook, Alabama finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in certain enclosed public places, enclosed places of employment, and certain outdoor public places; (2) to regulate the use of electronic smoking devices like other traditional forms of smoking; (3) to promote the right of non-smokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority in certain places over the desire to smoke; and (4) reasonably balance the interests and rights of all its citizens regarding smoking in certain public places.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

1. **Definitions.** As used in this ordinance, the following words and phrases shall have the following meanings:

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- (1) **BAR.** An establishment that is licensed by the City for the serving of alcoholic beverages that are intended for consumption by guests on the premises. In addition to the consumption of those beverages, operations at a bar may include serving of food to the public. The term "bar" may include a tavern, nightclub or cocktail lounge.
- (2) **CIGAR BAR.** A licensed establishment in which the primary activity is the sale, manufacture or promotion of cigars or cigar accessories, and in which the sale of the other products is merely incidental.
- (3) **CITY.** The term "City" means the City of Mountain Brook, Alabama, a municipal corporation.
- (4) **CITY PROPERTY.** Any real property within the City that is owned, leased or controlled by the City or any agencies or boards thereof. The term "City Property" does not include any property that is leased to the City by the Mountain Brook Board of Education.
- (5) **ELECTRONIC SMOKING DEVICE.** 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.
- (6) **ENCLOSED AREA.** All area or 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.
- (7) **GOVERNMENT BUILDING.** Any building operated or occupied by state, county or city government, or any agencies thereof, or any other separate corporate instrumentality or unit of state, county or city government.
- (8) **GOVERNMENT PROPERTY.** Any real property that is owned, leased or otherwise controlled or utilized by state, county or city government, or any agencies thereof, or any other separate corporate instrumentality or unit of state, county or city government.
- (9) **HEALTH CARE FACILITY.** "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.
- (10) **LICENSED BUSINESS.** A person, organization or entity required to obtain a license from the City in order to engage in business or conduct business in the City.
- (11) **OUTDOOR PRIVATE PROPERTY.** Outdoor private property is any outside area, land, space or place that is owned, leased or otherwise controlled by a private person, including any privately-controlled place outside an enclosed place of employment, outside an enclosed public place where the public may congregate or in the outside common area of a residential, business or commercial development.
- (12) **OUTDOOR PUBLIC PLACE.** An outdoor public place is any outside area, land, or space on government property where the public is invited or may use, including, but not limited to, any recreational area, athletic field, stadium, amphitheater, arena, bleachers,

stage, grandstand, temporary seating area, playground equipment, pavilion, shelter, concession stand, picnic table, bench, sidewalk, path or other structure, improvement or facility on that place.

- (13) **PLACE OF EMPLOYMENT.** 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, interior construction sites, temporary offices and vehicles. A “place of employment” does not include either (a) the space or area outside an enclosed place of employment if that area is on outdoor private property, or (b) a private residence (single family or multifamily) that is not used in conjunction with a home occupation involving the employment of persons other than those residing in the private residence.
- (14) **PRIVATE CLUB.** A premise operated by an organization which is not available to and not customarily used by the general public and entry and privileges thereto are established by regulations of that organization.
- (15) **PUBLIC PLACE.** An area on public or private property to which the public is invited, including but not limited to licensed businesses, bars, restaurants, hotels, motels, health care facilities, government buildings, government property, recreational areas, athletic facilities, and public transportation shelters.
- (16) **RECREATIONAL AREA.** Any area in the City that is open to the public and primarily intended for recreational purposes, whether or not any fee for admission is charged, including but not limited to parks, athletic fields, playgrounds, gardens, golf courses, and trails.
- (17) **RESTAURANT.** 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.
- (18) **RETAIL TOBACCO STORE:** A retail store whose primary business is the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- (19) **SMOKING:** The inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form; 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 Ordinance.

2. **Prohibition.** Except as otherwise provided in this subsection, no person shall smoke in any enclosed area in a public place, in any enclosed area at a place of employment or in an outdoor public place within the City. This prohibition does not apply to any of the following:

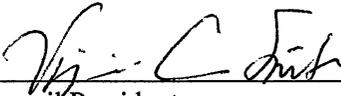
- (1) Smoking in private residences (single family or multifamily), unless used in conjunction with a home occupation involving the employment of persons other than those residing there;
- (2) Cigar Bars or retail tobacco stores;
- (3) Private clubs;
- (4) Smoking on outdoor private property; and
- (5) Smoking at an outdoor public place on City property if a smoker is not within twenty (20) feet of a nonsmoker. If a person commences smoking outside on such a place and that

smoker and a nonsmoker subsequently come within the same twenty (20) foot area, the smoker shall not violate this ordinance if they walk through or away from that area or otherwise remove themselves from it following the request of the nonsmoker.

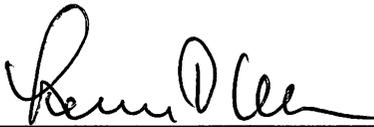
3. Signs. (1) The owner, operator, manager, or other person in charge of an enclosed area at a public place or an enclosed area at a place of employment within the City shall clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) at those places near all entrances to them.  
  
(2) The manager or official who is in charge of an outdoor recreational area on City property shall clearly and conspicuously post signs near all regular entrances to any such area stating "No Smoking within Twenty (20) Feet of a Nonsmoker"; provided that no obligation exists to post such signs at or along sidewalks, streets, alleys, ways, trails, or public parking lots or outside buildings on City property.
4. Obligation of Person in Charge. The person in charge of an enclosed area in a public place or an enclosed area at place of employment within the City shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this ordinance in those places. It shall be an affirmative defense to an alleged violation of this subsection that the person having control of such a place has asked that the lighted cigarette, cigar, pipe, other tobacco product or electronic smoking device be extinguished or use of same cease, and has asked the smoker to leave the establishment if that person has failed or refused to extinguish the lighted cigarette, cigar, pipe or other tobacco products or cease use of an electronic smoking device.
5. Fine for Smoking Violation. A person who violates the provisions of this ordinance by smoking in an area or place prohibited by this ordinance shall be guilty of a violation of this ordinance that is punishable by a fine of at least twenty-five dollars (\$25.00), but not to exceed one hundred dollars (\$100.00).
6. Fine for Person in Charge. The owner, operator, manager, or other person in charge of an enclosed area in a public place or an enclosed area at a place of employment within the City who fails to comply with the provisions of this ordinance shall be guilty of an ordinance violation that is 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 a one (1) year period;
  - (3) A fine not exceeding five hundred dollars (\$500) for third or subsequent violations within a one (1) year period.

7. Separate Violations. Each day on which a violation of this ordinance occurs shall be a separate and distinct violation.
8. Enforcement. Jurisdiction for violations of this ordinance shall be with the municipal court of the City. A charge of a violation shall be treated in the same manner as a traffic citation. Any law enforcement officer may issue a citation pursuant to this section.
9. Repealer. City Ordinance Number 1693 is hereby amended by this ordinance by repealing such ordinance and adopting this ordinance in its place. All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.
10. Severability. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.
11. Effective Date. This ordinance shall become effective November 1, 2016.

ADOPTED: This 26 day of Sept, 2016.

  
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Council President

ADOPTED: This 26 day of Sept, 2016.

  
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Mayor

#### CERTIFICATION

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, as its meeting held on Sept 26, 2016, as same appears in the minutes of record of said meeting, and published by posting copies thereof on Sept 27, 2016, at the following public places, which copies remained posted for five (5) days as required by law.

City Hall, 56 Church Street  
Gilchrist Pharmacy, 2850 Cahaba Road  
Overton Park, 3020 Overton Road  
Cahaba River Walk, 3503 Overton Road

  
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City Clerk