

Ordinance Number 2012-02

**ORDINANCE CREATING A SMOKE-FREE ENVIRONMENT  
IN WORKPLACES AND PUBLIC PLACES  
WITHIN THE CITY OF WARRIOR, ALABAMA**

This Article shall be known as the City of Warrior Smoke-free Air Ordinance.

**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. Such studies include:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*;

The U.S. Department of Health and Human Services, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*;

The National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency, Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*, August 1999;

The Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," *U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP*, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005; and

The World Health Organization (WHO), "Protection from exposure to secondhand smoke: policy recommendations," *World Health Organization (WHO)*, 2007.

**WHEREAS**, the U.S. Surgeon General has determined that secondhand smoke is responsible for the early deaths of thousands of Americans annually; 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; and

**WHEREAS**, children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

**WHEREAS**, 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; and

**WHEREAS**, the U.S. Surgeon General has determined that the simple separation of

smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

**WHEREAS**, the Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation; and

**WHEREAS**, a significant amount of secondhand smoke exposure occurs in the workplace; and

**WHEREAS**, smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke; and

**WHEREAS**, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety; 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; and

**WHEREAS**, the City Council of the City of Warrior, Alabama, 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; (2) to guarantee the right of nonsmokers to breathe smoke-free air, and (3) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WARRIOR, ALABAMA, AS FOLLOWS:**

**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 establishment where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
- 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 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.
- 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, 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.
- G. "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.
- H. "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 grounds.
- I. "Public Place" means an 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, hotels and motels, laundromats, 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.
- 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. "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.
- L. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.



- VI. "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, in any manner or in any form. "Smoking" also includes the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.
- N. "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.

#### **Application of Article to City-Owned Facilities and Property**

All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Warrior, 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.

#### **Prohibition of Smoking in Enclosed Public Places**

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

- A. 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. Child care and adult day care facilities.
- E. Convention facilities.
- F. Educational facilities, both public and private.
- G. Elevators.
- H. Health care facilities.
- I. Hotels and motels.
- 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. Restaurants.

- M. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- N. Retail stores.
- O. 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 or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- P. Service lines.
- Q. Shopping malls.
- R. Sports arenas, including enclosed places in outdoor arenas.
- S. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.
- T. All private and semi-private rooms in nursing homes.

#### **Prohibition of Smoking in Enclosed Places of Employment**

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.

#### **Prohibition of Smoking in Outdoor Public Places**

Smoking shall be prohibited in the following outdoor places:

- A. Within 20 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. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 20 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- C. In, and within 20 feet of, all outdoor playgrounds.
- D. 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, which shall not exceed twenty-five percent (25%) of the total outdoor common area, and which must otherwise be in compliance with this provision.

#### **Prohibition of Smoking in Outdoor Places of Employment**

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.

#### **Where Smoking Not Regulated**

Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited:

- A. In private residences, unless used as a childcare, adult day care, or health care facility.
- B. In 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.
- C. In restaurants, hotel and motel conference or meeting rooms, and public and private assembly rooms when these places are being used for private functions; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
- D. In 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 otherwise permitted by the owner, operator, manager or other person in control thereof.
- E. In outdoor areas of places of employment except those covered by the provisions of this Ordinance.
- F. In private, non-retail places of employment with 3 or fewer employees.

#### **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 hereunder is posted.

#### **Posting of Signs and Removal of Ashtrays**

"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.

Ashtrays and other smoking paraphernalia 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.

### **No retaliation; Nonwaiver of Rights**

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.

### **Enforcement**

- A. The City of Warrior Fire and Police Departments or an authorized designee shall enforce this Article.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license.
- C. Complaints hereunder shall be submitted to the Police or Fire Chief.
- D. The Fire Department, 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 Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.
- F. In addition to the remedies provided by the provisions of this Section, the Police Chief or Fire Chief may apply for injunctive relief to enforce these provisions in any court of competent jurisdiction or by other means provided for by law.

### **Violations and Penalties**

- A. Any person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of a violation, 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 Article shall be guilty of a violation, 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 Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

**Governmental Agency Cooperation**

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

**Other Applicable Laws**

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

**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.

**Sec. 1021. Effective Date**

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

Adopted this the 16<sup>th</sup> day of April, 2012.

Rena Hudson  
Mayor Rena Hudson

Attest:

Demetria Nixon  
City Clerk