

AN ORDINANCE TO PROHIBIT SMOKING IN PUBLIC PLACES

Sponsored by: Mr. Copeland, Mr. Williams, Mr. Richardson

Whereas, the United States Surgeon General has long warned that smoking is a health hazard; and,

WHEREAS, the City Council of the City of Mobile has held several public meetings at which citizens have voiced their opinions concerning the matter of smoking regulations for the City of Mobile; and,

WHEREAS, numerous studies have shown that exposure to second hand smoke, a known carcinogen, causes disease and premature death in children and adults who do not smoke and that health hazards induced by breathing secondhand smoke may include lung cancer, heart disease, respiratory infection and decreased respiratory function.

NOW, THEREFORE the City Council of the City of Mobile finds that secondhand smoke is a form of air pollution, a danger to health, and a material public nuisance, and deems it appropriate to enact the following ordinance to (1) protect the public health and welfare by prohibiting smoking in public places and places of employment, (2) guarantee the right of non-smokers, and (3) recognize the need to breath smoke-free air.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE,
ALABAMA, as follows:

SECTION ONE. DEFINITIONS. As used in this Ordinance, the following terms and words shall have the meaning ascribed to them:

Bar means an establishment that (a) 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, and (b) that is licensed for "on

premises” retail sales of alcoholic beverages by the Alabama Alcohol Beverage Control Board, including but not limited to any establishment that holds a valid and duly issued club liquor license. For purposes of this Ordinance, the serving of food shall be considered incidental to the consumption of alcoholic beverages only if food sales make up less than ten percent (10%) of the total revenue of the establishment.

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.

City means the City of Mobile, Alabama.

Common Area means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, interior and/or exterior general public entryway or exit, refreshment area, or restroom.

Employee means any person who is employed for compensation, profit or who volunteers his or her services for an employer.

Employer means any person, partnership, corporation, association or other entity that employs one or more persons.

Enclosed Area means all space between a floor and ceiling that is bounded on at least 50% of its 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.

Health care facility means any office, institution, or business providing individual care or medical treatment of diseases, whether physical, mental, emotional, psychological or physiological conditions, including but not limited to hospitals, rehabilitation hospitals or clinics, weight control clinics, nursing homes, homes for the aging or chronically ill, and offices of surgeons, chiropractors, physical therapists, physicians, doctors, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, wards, and common areas.

Place of employment means any enclosed indoor area under the control of an employer to which employees have access during the course of employment, including but not limited to work areas, private offices, employee lounges, employee restrooms,

conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, constructions sites, temporary offices, and vehicles. A private residence is a place of employment, if it contains certain places of business, such as child care, adult day care centers, or health care facilities.

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 of Mobile grounds.

Private club means an organization or entity, 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, 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 or entity are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization or entity has established bylaws and/or a constitution to govern its activities. The organization or entity has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501. For purposes of this Ordinance, the serving or sale of alcoholic beverages shall be considered incidental to the operation of such organization or entity only if the sale of alcoholic beverages makes up less than ten percent (10%) of the total revenue of the establishment.

Public place means any area, to which the public is invited or permitted, including but not limited to retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, stadiums, sports facilities, waiting areas for any business, establishment, etc., restrooms, elevators, government or civic buildings, educational facilities, medical or health facilities, public transportation, and hotels and motels. A private residence does not constitute a "public place," unless it is used as a child care, day care or health care facility.

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 attached to or within the restaurant.

Retail tobacco store means a retail store which is the sole occupant of the building in which it is located and derives at least 90% of its gross quarterly revenue from the sale

of tobacco, tobacco products and accessories, such as pipes, matches, lighters and ashtrays. Revenue generated from cigarette vending machine sales shall not be used to determine whether a retail store satisfies this definition. "Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of on-premises liquor, food, or restaurant license.

Service line means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, ticket lines, and sporting event lines.

Shopping mall means an enclosed public walkway, corridor, or hall area that serves to connect retail or professional establishments.

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 form.

Sports Area 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 completion, or witness sports or other events.

Tobacco bar means an establishment whose business is the sole occupant of the building and is devoted to the serving of tobacco products, and which serves only complimentary snacks. The tobacco bar contains no kitchen facilities and has no access to kitchen facilities, catering, or food, other than the complimentary snacks. A tobacco bar derives ninety per cent (90%) or greater of its revenue from the sale of tobacco products and devotes a minimum of fifty percent (50%) of net floor space to the display, storage, and sale of actual tobacco products, and does not permit the on-premises use of tobacco products not purchased on the premises. No person under the age of twenty-one (21) years is allowed in a tobacco bar. "Tobacco bar" does not include a department or section of a larger commercial establishment.

Tobacco Retailer means any person, government, or entity who sells tobacco products to individuals for personal consumption, or who operates a facility where self-service displays of tobacco products are permitted.

SECTION TWO. PROHIBITION OF SMOKING IN PUBLIC PLACES.

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

- (1). Aquariums, galleries, libraries and museums.
- (2). Areas available to and customarily used by the general public in business and nonprofit entities patronized by the public, including but not limited to professional and commercial offices and office buildings of all types, banks, grocery stores/supermarkets, convenience stores, and retail establishments of all types, hotels and motels.
- (3). Bingo facilities.
- (4). Convention and meeting facilities of all types.
- (5). Educational facilities, both public and private.
- (6). Elevators.
- (7). Theaters and facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- (8). Health care facilities and offices.
- (9). Child care and adult care facilities.
- (10). Polling places.
- (11). Public transportation facilities, including buses, taxicabs, limousines, and ticket, boarding and waiting areas of public transit depots.
- (12). Restaurants.
- (13). Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (14). Rooms, chambers, places of meeting or public assembly, including school buildings under the control of an agency, board, commission, committee or the council of the City, to the extent the place is subject to the jurisdiction of the city.

- (15). Service lines.
- (16). Shopping malls.
- (17). Any property owned or leased by the City of Mobile.
- (18). Sports arenas, including enclosed places in outdoor arenas.
- (19). Public sidewalks located within the Downtown Mobile Business Improvement District as that District is defined in Ordinance 50-039 adopted May 10, 2005.
- (20). All other indoor locations where the public may gather.

SECTION THREE. PROHIBITION OF SMOKING IN PUBLIC PARKS, PLAYGROUNDS, AND RECREATIONAL AREAS.

Smoking is and shall be prohibited in all areas of municipally owned parks, playgrounds, or public use lands where the general public congregates, including but not limited to public bleacher areas, pavilions, concession areas, playgrounds, outdoor cooking areas, gazebos, tennis courts, pools, playing fields, dugouts, skate parks, parking lots, and walking/running track areas, and other outdoor locations where the public may gather.

SECTION FOUR. EXEMPTIONS. Notwithstanding any other provisions of this article to the contrary, the following areas shall be exempted from the provisions of this section:

- (1). Private residences, except smoking is prohibited at all times within any private residence that is a licensed childcare, adult day care, or health care facility.
- (2). Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this section, and provided that the store operated as a tobacco retail shop for at least sixty (60) days prior to the passage of this ordinance.

(3). Bars, so long as they comply with the requirements of Section Five of this Ordinance.

(4). Outdoor areas of restaurants including but not limited to decks, verandas, and porches, but only after 8:00 p.m. on each day. Smoking shall be prohibited in such areas prior to 8:00 p.m. on each day.

(5). Private clubs, including veterans associations.

(6). Tobacco bars.

SECTION FIVE. BARS.

(1) For Bars that allow smoking, smoking by patrons and customers shall be allowed throughout all areas generally occupied by patrons and customers. No person under the age of twenty-one (21) years shall be admitted as a patron or a customer on the premises of a Bar that allows smoking; and it shall be unlawful for the owner, business agent, manager, or other person having control of any such establishment to admit any person under the age of twenty-one (21) years on the premises as a patron, customer, or employee.

(2). For Bars that allow smoking, signage shall be posted on or adjacent to each and every exterior door to the establishment that is generally accessed by patrons or employees, plainly visible to persons entering through the door. Signage shall be no smaller than 8.5 inches by 11 inches, with white lettering on a red or black background, and including at least one of the following statements: "This establishment is a smoking facility" with letters no smaller than five-eighths of an inch tall; or "Smoking is allowed throughout this facility at all times" with letters no smaller than five-eighths of an inch tall.

SECTION SIX. TOBACCO BARS. No person under the age of twenty-one (21) years is or shall be allowed in a tobacco bar.

SECTION SEVEN. PROHIBITION OF SMOKING IN ENCLOSED WORK PLACES. 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. 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.

SECTION EIGHT. OFFENSES. A person violates this section and commits an offense if he or she:

(1). Smokes in a public place, taxicab, bus or public passenger carrier, that is not engaged in interstate commerce.

(2). Is the owner, lessee, or other person in charge of a public place, and fails to make a reasonable effort to inform those on the premises that smoking in a public place which is not designated as a smoking area under this section is proscribed behavior.

SECTION NINE. ENFORCEMENT.

A. This Article shall be enforced by the Municipal Code Enforcement Officer, Police Officer, Fire Department Official, or by the employees of the Mobile County Health Department, 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 Mobile.

C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Mobile County Health Department.

D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing 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 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 law enforcement.

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 Mobile County Health Department, 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.

H. 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.

SECTION TEN. VIOLATION; PENALTY.

A. Any person found guilty of violating the provisions of this Article shall be punished with a fine of seventy dollars (\$70.00) plus court costs, or by community service for a period not exceeding six (6) months, or by both fine and imprisonment and/or community service at the discretion of the judge.

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 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 occurring within one (1) year of any previous violations.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation occurring within one (1) year of any previous violations.

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

D. 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 or for the premises on which the violation occurred.

SECTION ELEVEN. MISCELLANEOUS. Nothing in this section excuses noncompliance with any federal or state law, city ordinance, or any rule or regulation which prohibits smoking.

Notwithstanding any other provision of this Ordinance, an owner, operator, or other person in control of an establishment, facility, or business may declare that entire establishment, facility, or business as a nonsmoking place.

SECTION TWELVE. CITY BUILDINGS AND VEHICLES. It shall be unlawful for any person to smoke in any city-owned or operated building, vehicle or other facility.

SECTION THIRTEEN. VENDING MACHINES. It shall be unlawful and an offense against this City for any business owner or manager of any retail establishment within the jurisdiction of this City, to allow the existence of a vending machine containing tobacco products in any area where minors are allowed.

SECTION FOURTEEN. REASONABLE DISTANCE. Smoking is and shall be prohibited within a reasonable distance of fifteen (15) feet, when attainable, outside an enclosed area where smoking is prohibited, including a reasonable distance of fifteen (15) feet, when attainable, from each and every exterior door to the establishment that is generally accessed by patrons or employees, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or other means. (If fifteen (15) feet is not achievable, no less than seven (7) feet is required.

The owner, operator, manager, or other person in control of an establishment may declare that smoking is prohibited within a distance greater than fifteen (15) feet, when attainable, outside an enclosed area where smoking is prohibited. If smoking is prohibited outside the establishment within a distance greater than fifteen (15) feet, when attainable, a conspicuous sign shall be posted at every entrance stating that smoking is prohibited within a specified 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.

(If fifteen (15) feet is not achievable, no less than seven (7) feet is required.)

SECTION FIFTEEN. SEVERABILITY. The provisions of this Ordinance are severable. If any part of this Ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, that declaration shall not affect the part or parts that remain.

SECTION SIXTEEN. NON-RETALIATION and NON-WAIVER OF EMPLOYEE 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 Ten, violation of this Subsection shall be a misdemeanor, 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.

SECTION SEVENTEEN. REPEALER. Ordinance 27-040, adopted June 21, 1994, and sections 27-61 through 27-73, are hereby repealed effective at midnight, October 1, 2012.

SECTION EIGHTEEN. EFFECTIVE DATE. This Ordinance shall be in full force and effect after its adoption and publication as required by law, commencing at midnight, October 1, 2012.

Adopted: AUG 21 2012



City Clerk