

ORDINANCE NO. 2003-303

BE IT ORDAINED by the Board of Commissioners of the City of Dothan, Alabama as follows:

Section 1. That Chapter 46, Health and Sanitation, Article IV, Smoking Pollution Control, Sec. 46-96 through Sec. 46-109 of the Code of Ordinances is hereby amended to read as follows:

Sec. 46-96. Purpose.

The purpose of this article is to:

- (1) Protect the public health and welfare by prohibiting smoking in public places, except in designated smoking areas, and by regulating smoking in places of employment; and
- (2) Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers to breathe smoke-free air and to recognize that, where these needs conflict, the need to breathe smoke-free air shall have priority.

Sec. 46-97. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Bar or cocktail lounge” means any establishment which is primarily engaged in the business of selling and dispensing alcoholic beverages.

“Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

“Dining Area” means any enclosed area containing a counter or tables upon which meals are served.

“Employee” means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

“Employer” means any person, including a municipal corporation, or nonprofit entity who employs the services of one or more individual persons. Motion picture theater means any theater engaged in the business of exhibiting motion pictures.

“Minor” means a person who is not at least 19 years of age.

“Non-Profit Entity” means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes, the net proceeds from the operation of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a nonprofit entity within the meaning of this article.

"Place of Employment" means any enclosed area under the control of a public or private employer in which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways.

(1) A private residence is not a place of employment unless it is used as a child care or health care facility.

(2) The dining area of a restaurant is not a place of employment.

"Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to city-owned facilities, banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters and waiting rooms. A private residence is not a public place.

"Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term "restaurant" shall not include a cocktail lounge or tavern if the cocktail lounge or tavern is a bar as defined in this section.

"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.

"Separated Bar Area" means a room or area where alcohol is served that is totally enclosed by a solid floor to ceiling wall, is adequately ventilated and equipped with a self closing door.

"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.

"Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.

"Smoking Establishment" means any restaurant which permits patrons to smoke throughout the entire facility. Smoking establishments shall not provide separate non-smoking areas.

"Sport Arena" means sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.

Sec. 46-98. Application of article to city-owned facilities.

All enclosed facilities owned by the city shall be designated as no smoking except in designated smoking areas.

Sec. 46-99. Smoking in public places.

(a) Smoking shall be prohibited in all enclosed places within the city, including but not limited to the following places and with the following exceptions:

(1) Elevators.

(2) Buses, taxicabs and other means of public transit under the authority of the city; and ticket, boarding and waiting areas of public transit depots. However, this prohibition does not prevent:

a. The establishment of separate waiting areas of equal size for smokers and nonsmokers;

(3) Restrooms.

(4) Service lines.

(5) Retail stores, except areas in such stores not open to the public and all areas within tobacco stores.

(6) All areas available to and customarily used by the general public in all city-owned facilities, nonprofit entities and businesses patronized by the public. See subsection 46-101(a)(7).

(7) Restaurants.

a. A restaurant may have a separated bar area in which smoking is permitted.

(8) Public areas of aquariums, galleries, libraries and museums when open to the public.

(9) Any building not open to the sky which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except when smoking is part of a stage production.

(10) Sports arenas (enclosed) and convention halls, except in designated smoking areas.

- (11) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the city or any political subdivision of the state during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the city.
- (12) Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including but not limited to hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices.
- (13) Polling places.
- (14) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility described in this section may declare that entire establishment or facility as a nonsmoking establishment.

Sec. 46-100. Places of employment.

- (a) It shall be the responsibility of employers to provide smoke-free areas for nonsmoking employees within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.
- (b) Each employer having an enclosed place of employment located within the city shall adopt, implement, make known and maintain a written smoking policy which shall contain at a minimum the following:
- (1) Any employee in a place of employment shall have the right to designate his work area as a nonsmoking area and to post the area with an appropriate sign, to be provided by the employer. If, due to the proximity of smokers, size of the work area, poor ventilation or other factors, such designation does not reduce the effects of smoke to the satisfaction of the employee, the employer shall make additional accommodation by expanding the size of the work area subject to the prohibition against smoking or implementing other measures reasonably designed to eliminate the effects of smoke on the employee.
- (2) Smoking shall be prohibited in all common work areas in a place of employment, unless every person who works in that area agrees in writing that a smoking area will be designated.
- (3) There shall be provided and maintained separate and contiguous nonsmoking areas of not less than 50 percent of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges or provision and maintenance of separate and equal sized cafeterias, lunchrooms and employee lounges for smokers and nonsmokers.

- (4) Employers have the right to designate smoking areas within their facilities so long as it does not infringe on the rights of nonsmokers.
- (5) If any dispute arises under the smoking policy, the health concerns of the nonsmoker shall be given precedence.
- (c) The smoking policy shall be communicated to all employees within three weeks of its adoption.
- (d) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- (e) Notwithstanding any other provision of this section, every employer shall have the right to designate any place of employment or any portion thereof as a nonsmoking area.

Sec. 46-101. Exceptions to restrictions.

- (a) Notwithstanding any other section of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:
 - (1) Bars, cocktail lounges or taverns which prohibit the admission of minors.
 - (2) Private residences, except when used as a child care or health care facility.
 - (3) Hotel and motel rooms rented to guests.
 - (4) Retail tobacco stores and tobacco processors.
 - (5) A restaurant which elects to become a "smoking establishment" provided they comply with the requirements of 46-102(b).
 - (6) Hotel and motel conference or meeting rooms and public and private assembly rooms while these places are being used for private functions.
 - (7) A private, enclosed office, if all persons present consent, and further provided that this exception shall not be construed to permit smoking in the reception areas of lobbies or offices. This exception does not apply to city-owned facilities.
- (b) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

Sec. 46-102. Posting of signs.

- (a) No smoking signs, with letters of not less than 5/8 inch (approximately 66 points) in height 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, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this article by the owner, operator, manager or other person having control of such building or other place.
- (b) If a restaurant elects to be a smoking establishment they must display signs at all entrances identifying the business as a smoking establishment with letters of not less than 5/8 inch (approximately 66 points) in height and the signs shall include the notice that smoking is allowed throughout the establishment and that there is no non-smoking section, in letters not less than 1/4 inch in height (approximately 36 points).
- (c) Every theater owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium, and, for motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.
- (d) Every restaurant shall have posted at every entrance a sign in conformity with section A or B above clearly stating that smoking is prohibited or that a restaurant is a smoking establishment.

Sec. 46-103. Enforcement.

- (a) This article is enforceable by any duly sworn police officer employed by the city, the county health officer or a duly authorized representative thereof, or as otherwise allowed by law for prosecution of offenses.
- (b) Any citizen who desires to register a complaint under this article may initiate enforcement with the department of health.
- (c) The fire department or the health department shall require, while an establishment is undergoing otherwise mandated inspections, a self-certification from the owner, manager, operator or other person having control of such establishment that all requirements of this article have been complied with.
- (d) Any owner, manager, operator or employee of any establishment regulated by this article may inform any person violating this article of the appropriate provisions of this article.
- (e) Notwithstanding any other provision of this article, a private citizen may bring legal action to enforce this article.

Sec. 46-104. Violations and penalties.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of the provisions of this article.

(b) It shall be unlawful for any person to smoke in any area where smoking is prohibited by this article.

(c) Any person who violates this article is subject to summons by the department of health or a police officer to appear in municipal court to answer the charges punishable by:

(1) A fine not exceeding \$100.00 for a first violation.

(2) A fine not exceeding \$200.00 or 80 hours of community service with a charitable organization, designated by the court, or both the fine and community service for a second violation of this article within one year.

Sec. 46-105. Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this article.

Sec. 46-106. Notification requirements.

Restaurants shall notify the City of Dothan Business License Division in writing of their status (smoke-free or smoking) within thirty (30) days of the passage of this ordinance. If within ninety (90) days of their initial status choice (smoke-free or smoking) a restaurant wishes to change their status (smoke-free or smoking) they may do so in writing by notifying the Business License Division. Thereafter if a restaurant wishes to change their status (smoke-free or smoking) they may do so in writing only at the time they renew/purchase the business license. There is no fee associated with the initial election or change in smoking status.

Sec. 46-107. Governmental agency cooperation.

The board of commissioners shall annually request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this article.

Sec. 46-108. Effect of other applicable laws.

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

Sec. 46-109. Education.

The department of health shall develop a program to inform citizens of this article and to assist owners, operators and managers to comply.

Ord. No. 2003-303 Amending Chapter 46, Article IV of the Code of Ordinances continued.

Section 2. After publication as required by law, this ordinance shall become effective immediately.

PASSED, ADOPTED AND APPROVED on October 21, 2003.

Chute Savell

Mayor

ATTEST:

Pam McCoy

City Clerk

J. H. Peary
Associate Commissioner

James M. Lawrence
Associate Commissioner

Don Clemente
Associate Commissioner

[Signature]
Associate Commissioner

Pat R
Associate Commissioner

[Signature]
Associate Commissioner

BOARD OF CITY COMMISSIONERS