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ORDINANCE NO. O-25-07**Regulating Smoking in Workplaces and Public Places**

Whereas, the City Council hereby makes the following findings:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand 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.

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. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually.

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen.

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, pre-menopausal women; heart disease; and death.

There is no safe level of exposure to secondhand smoke.

A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke free workplaces and public places may be associated with a reduction in morbidity from heart disease.

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. 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.

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.

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking.

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smoke free environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smoke free in their entirety.

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure, and \$4.6 billion in lost productivity.

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke free. Creation of smoke free workplaces is sound economic policy and provides the maximum level of employee health and safety.

Hundreds of communities in the U.S., plus numerous states, including California, Delaware, Florida, Massachusetts, Montana, New Jersey, New York, and Washington, have enacted laws requiring workplaces, restaurants, bars, and other public places to be smoke free, as have numerous countries, including Ireland, New Zealand, Norway, Scotland, Sweden, Uganda, and Uruguay.

There is no legal or constitutional right to smoke. Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.

Smoking is a potential cause of fires. Cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses.

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance; and,

Whereas, the City Council 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; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke;

Now, Therefore, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GADSDEN, ALABAMA, as follows:

Section 1. Chapter 46 of the City Code, entitled Environment, is amended by adding a new article, entitled Smoke Free Environment, as follows:

**Sec. 46-151. 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 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) *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 ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

(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, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This term includes all waiting rooms, hallways, private rooms, semi-private rooms, and wards within health care facilities.

(g) *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, private offices, 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.

(h) *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, or similar purpose.

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 26 U.S.Code §501.

(i) *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, gaming facilities, health care facilities, hotels and motels, 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.

(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 includes a bar area within the restaurant.

(k) *Service line* means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(l) *Shopping mall* means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(m) *Smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

(n) *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.

#### **Sec. 46-152. Application of article to city facilities.**

All facilities, including buildings and vehicles owned, leased, operated or controlled by the city shall be subject to the provisions of this article. Smoking is prohibited at all such facilities and within 20 feet of the property line of the property owned, leased, operated or controlled by the city.

**Sec. 46-153. Prohibition of smoking in enclosed public places.**

Smoking shall be prohibited in the following enclosed public places within the city:

- (a) Aquariums, galleries, libraries, and museums.
- (b) Child care and adult day care facilities.
- (c) Convention facilities.
- (d) Educational facilities, both public and private.
- (e) Elevators.
- (f) Polling places.
- (g) Public transportation facilities, including buses and taxicabs and ticket, boarding, and waiting areas of public transit depots.
- (h) Any restaurant which elects to be a smoke-free establishment.
- (i) 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.
- (j) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances, except for performers on stage as part of the theatrical production.

**Sec. 46-154. Prohibition of smoking in places of employment.**

(a) Each employer shall implement and maintain a written policy for its employees on smoking.

(b) The employer may implement a policy which prohibits smoking in any place of employment of the employer. Smoking may be prohibited in all enclosed facilities within places of employment, including 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.

(c) The employer may implement a policy which allows for smoking in its place of employment. In situations where smokers and non-smokers must work in close proximity and non-smokers will be exposed to smoke, the preferences of the non-smoker will prevail.

(d) An employer is not required to incur any expense for making structural or other physical modifications to accommodate the preferences of smoking or non-smoking employees.

(e) The smoking policy shall be announced within one month of its adoption to all employees working in the place of employment and posted conspicuously in all workplaces under the employer's control.

#### **Sec. 46-155. Designation of smoking areas.**

(a) The owner, lessee or person otherwise in charge or control of a place or area within which smoking would otherwise be prohibited by this article may designate one or more areas thereof as smoking areas.

(b) Any area designated as a smoking area shall conform to the following requirements and a smoking permitted sign shall be displayed therein:

- (1) Each area should be set apart or separated from non-smoking areas.
- (2) Existing barriers and ventilation systems shall be used to minimize the irritating and toxic effects of smoke in adjacent non-smoking areas.
- (3) The area shall be designated by appropriate signs which are clearly visible to employees and patrons in and entering the area.
- (4) The area shall contain ashtrays, containers and proper facilities for the extinguishment of smoking materials.
- (5) The following areas shall not be designated as nor form part of designated smoking areas:
  - a. Any elevator.
  - b. A service line, meat or produce counter, or a cashier or check-out line.
  - c. Public restroom facilities.
  - d. The spectator area of concert halls, public assembly areas, auditoriums and indoor public recreational facilities of municipal facilities or municipal agency facilities.
  - e. Lobby or reception areas of municipal facilities or municipal agency facilities.

f. A restaurant which elects to be a smoke-free establishment, provided it complies with the provisions of §46-159.

**Sec. 46-156. Prohibition of smoking in seating areas at outdoor events.**

Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

**Sec. 46-157. Reasonable distance.**

Smoking is prohibited within a reasonable distance of 20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

**Sec. 46-158. Where smoking not regulated.**

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of §§46-153 and 46-154:

(a) Private residences, except when used as a childcare, adult day care, or health care facility.

(b) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20% 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.

(c) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one 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.

(d) An entire room or hall which would otherwise be a public place, but which is being utilized for a private social function, provided that the event is under the control of the sponsor of the function.

(e) Outdoor areas of places of employment except those covered by the provisions of §§46-156 and 46-157.

(f) Areas available to and customarily used by 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.

(g) Bars.

(h) Bingo facilities.

(i) Gaming facilities.

(j) Health care facilities.

(k) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential facilities.

(l) Private clubs.

(m) Any restaurant which elects to become a smoking establishment, provided the restaurant complies with the requirements of §46-159.

(n) Restrooms, lobbies, reception areas, hallways and other common-use areas.

(o) Retail stores.

(p) Service lines.

(q) Shopping malls.

(r) Sports arenas, including enclosed places in outdoor arenas.

(s) Tobacco specialty retail shop where the sale of other products is merely incidental.

#### **Sec. 46-159. Restaurants.**

(a) Every restaurant shall have posted at every entrance a sign in conformity with §46-161 clearly stating that smoking is prohibited or that the restaurant is a smoking establishment

(b) If a restaurant elects to be a smoking establishment, it must display signs at all entrances identifying the business as a smoking establishment, stating that smoking is allowed throughout the establishment and that there is no non-smoking section. The letters on the signs must be at least 5/8 inch (approximately 66 points) in height.

#### **Sec. 46-160. Declaration of establishment as smoke-free.**

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 the entire establishment, facility, or outdoor area is a smoke-free place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of §46-161(a) is posted.

**Sec. 46-161. Posting of signs.**

(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 or 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 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 or by the owner, operator, manager, or other person having control of the area.

**Sec. 46-162. 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.

**Sec. 46-163. Enforcement.**

(a) This article shall be enforced by any police officer, the mayor or the mayor's designee.

(b) Notice of the provisions of this article shall be given to all applicants for a business license in the city.

(c) Any citizen who desires to register a complaint under this article may initiate enforcement with the police department, fire department, building department or the county health department.

(d) The fire department and building 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 article shall inform persons violating this article of the appropriate provisions hereof.

(f) Notwithstanding any other provision of this article, an employee or private citizen may bring legal action to enforce this article, to the extent permitted by state law.

(g) In addition to the remedies provided by the provisions of this section, 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, to the extent permitted by state law.

#### **Sec. 46-164. 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 violation, punishable by a fine not exceeding \$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 misdemeanor, punishable by:

(1) A fine not exceeding \$100 for a first violation.

(2) A fine not exceeding \$200 for a second violation within one year.

(3) A fine not exceeding \$500 for each additional violation within one 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 mayor or building department by restraining order, preliminary and permanent injunction, or

other means provided for by law, and 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.

#### **Sec. 46-165. Public Education.**

The fire department 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 article.

#### **Sec. 46-166. Governmental agency cooperation.**

The mayor 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. 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.

#### **Sec. 46-167. Construction and interpretation.**

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. This article shall be liberally construed so as to further its purposes.

#### **Section 2. 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 3. Effective date.**

The provisions of this ordinance shall be effective on the first day of the first month which is at least thirty days after the date of its adoption.

I certify that the City Council of the City of Gadsden, Alabama, duly adopted this ordinance at a public meeting held on March 20, 2007.

Iva Nelson  
Iva Nelson, City Clerk

APPROVED on March 30, 2007

Sherman Guyton  
Sherman Guyton, Mayor

2007240

## ORDINANCE NO. O-40-07

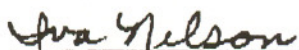
**Amending Section 46-152 adopted by Ordinance No. O-25-07  
Regulating Smoking in Workplaces and Public Places**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GADSDEN, ALABAMA, that Section 46-152 of the City Code, as adopted by Section 1 of Ordinance No. O-25-07, is amended to read as follows:

**Sec. 46-152. Application of article to city facilities.**

All facilities, including buildings and vehicles owned, leased, operated or controlled by the city shall be subject to the provisions of this article. Smoking is prohibited at all such facilities. This section shall not apply to the public streets, sidewalks and rights-of-way except those portions within property owned, leased, operated or controlled by the city. This section shall not apply to smoking outdoors except where prohibited in seating areas by Section 46-156. Smoking is prohibited within 20 feet of any entrance to a building owned, leased, operated or controlled by the city.

I certify that the City Council of the City of Gadsden, Alabama, duly adopted this ordinance at a public meeting held on May 15, 2007.

  
Iva Nelson, City Clerk

APPROVED on May 17, 2007

  
Sherman Guyton, Mayor