

ORDINANCE NO. 2007-41

CITY OF MADISON CLEAN AIR ORDINANCE, TO REPEAL AND REPLACE ARTICLE V, CHAPTER 12 OF THE CITY OF MADISON CODE OF ORDINANCES.

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

Section 1. Definitions

The following words and phrases, whenever used in this Ordinance, shall be construed as defined in this Section:

- (a) "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.
- (b) "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.
- (c) "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.
- (d) "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.
- (e) "Healthcare 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 definition shall include all waiting rooms, hallways, private rooms, semi-private rooms and wards within healthcare facilities.
- (f) "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. A private residence is not a "place of employment" unless it is used as a child care, adult day care or healthcare facility.
- (g) "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, patriotic, political, 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 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.C. Section 501.
- (h) "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, healthcare 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 healthcare facility.

- (i) "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.
- (j) "Service Line" means an indoor 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.
- (k) "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (l) "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other lighted tobacco product in any manner or in any form.
- (m) "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.
- (n) "Enclosed Smoking Area" means an area within a building that has physical barriers such as walls and doors extending from floor to ceiling that prohibit smoke from entering a non-smoking area within such building. All common areas, such as lobbies, restrooms, waiting areas, common hallways and the like, shall be located in the non-smoking area of a building unless the building provides for separate and distinct common areas being provided in both the non-smoking and enclosed smoking areas of the building.

Section 2. Application of Ordinance to City-Owned Facilities

All enclosed facilities, including buildings and vehicles owned, leased or operated by the City of Madison, shall be subject to the provisions of this Ordinance.

Section 3. Prohibition of Smoking in Enclosed Public Places

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

- (a) Aquariums, galleries, libraries and museums.
- (b) 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.
- (c) Child care and adult day care facilities.
- (d) Convention facilities, except as specified in Section 7 (e) and (f) below.
- (e) Educational facilities, both public and private.
- (f) Elevators.
- (g) Healthcare facilities.

- (h) Hotels and motels, except as specified in Section 7 (e) and (f) below.
- (i) Lobbies, hallways and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential facilities.
- (j) Polling places.
- (k) Private clubs when being used for a function to which the general public is invited, except as specified in Section 7 (e) and (f) below.
- (l) Restaurants, except as specified in Section 7 (e) and (f) below.
- (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, except as specified in Section 7 (e) and (f) below.
- (s) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals or other similar performances.

Section 4. Prohibition of Smoking in Places of Employment

- (a) Smoking shall be prohibited in all enclosed facilities within places of employment, except as listed in Section 3 above. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.
- (b) This prohibition on smoking shall be communicated to all existing employees by the effective date of the Ordinance and to all prospective employees upon their application for employment.

Section 5. 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.

Section 6. Reasonable Distance

Smoking is prohibited within a reasonable distance of fifteen (15) 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.

Section 7. Where Smoking Is Not Regulated

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 3 and 4:

- (a) Private residences, except when used as a child care, adult day care, or healthcare facility.

- (b) 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. 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 Ordinance.
- (c) Private and semi-private 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 permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
- (d) Outdoor areas of places of employment except those covered by the provisions of Sections 5 and 6.
- (e) Enclosed Smoking Areas as described in the Definitions Section of this Ordinance.
- (f) Clearly Identified Smoking Facilities as defined in Section 8 of this Ordinance.

Section 8. Declaration of an Establishment as a Smoking Facility

Notwithstanding any other provision of this Ordinance, an owner, proprietor or other person in control of an establishment may declare that the entire facility is a smoking place. Such establishment must be clearly designated by signage as described in Section 9 of this ordinance or the establishment will be subject to the provisions of this ordinance. No one under 19 years of age shall be allowed in such establishments unless accompanied by a parent or guardian.

Section 9. 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 Ordinance, 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 by this Ordinance 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 Ordinance by the owner, operator, manager or other person having control of the area.
- (d) The owner or proprietor of a Smoking Facility as defined in Section 8 of this ordinance shall post signs at all entrances to such buildings stating "This is a Smoking Facility. No one under 19 years of age is allowed unless accompanied by a parent or guardian."

Section 10. Enforcement

- (a) Provisions of this Ordinance regarding structures and signage shall be enforced by the Code Enforcement Divisions of the City of Madison Planning and Building Department. Provisions related to individuals shall be enforced by the City of Madison Police Department.
- (b) Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Madison.

- (c) Planning and Building Department, Fire Department or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.
- (d) An owner, manager, operator or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.
- (e) Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action in the City of Madison Municipal Court to enforce this Ordinance.

Section 11. Violations and Penalties

- (a) A person who willfully smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by a fine not exceeding one hundred dollars (\$100).
- (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 Ordinance 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 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 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.
- (d) Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

Section 12. Other Applicable Laws

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

Section 13. Severability

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

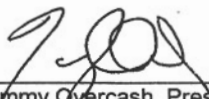
Section 14. Repealer

Article V of Chapter 12 of the City of Madison Code of Ordinances is hereby repealed and replaced with this Ordinance.

Section 15. Effective Date

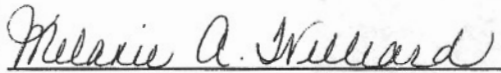
This Ordinance shall be effective sixty (60) days from and after the date of its adoption.

READ, PASSED, AND ADOPTED at a regularly scheduled meeting of the City Council of the City of Madison, Alabama on this 12th day of February, 2007.



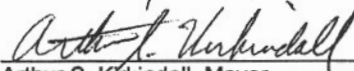
Tommy Overcash, President
Madison City Council
City of Madison, Alabama

ATTEST:



Melanie A. Williard, City Clerk-Treasurer

APPROVED this 12th day of February, 2007.



Arthur S. Kirkindall, Mayor
City of Madison, Alabama