

ORDINANCE NO. 2005 - 1

BE IT ORDAINED by the City Council of the City of Ozark, Alabama that the Council recognizes the rights of those who wish to breathe smoke free air. Therefore, the Council enacts this ordinance to protect and improve the public health and welfare by prohibiting smoking in public places, regulating smoking in places of employment and by requiring food and beverage establishments to make certain choices concerning smoking in their facilities.

Section 1- Purpose

The purpose of this ordinance is to:

- A) 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
- B) Strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers to breath smoke-free air and to recognize that, where these needs conflict, the need to breathe smoke-free air shall have priority.

Section 2 - 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.

“Business Agent” means an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

“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.

“Enclosed” means a space, structure, facility or any portion thereof, bounded by walls (with or without windows) continuous from floor to ceiling or deck above and served by heating, ventilating and air conditioning (HVAC) system(s), and through which air can circulate from one portion to another, including, but not limited to offices, rooms, hallways, customer service areas, foyers, common areas, waiting areas, restrooms, lounges, and eating areas.

“Food and/or Beverage Establishment” means any establishment which is required to have a business license from the City of Ozark and which provides food and/or beverage under a permit from the Health Department and/or an “on premises” liquor license from the Alcoholic Beverage Control (ABC) Board.

“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 nonsmoking 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.

Section 3 - 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.

Section 4 - Smoking in public places

A) Smoking shall be prohibited in all enclosed public places within the city, including but not limited to the following places;

- 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.
- 7) Public areas of aquariums, galleries, libraries and museums when open to the public.
- 8) 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.
- 9) Sports arenas (enclosed) and convention halls, except in designated smoking areas.
- 10) 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.
- 11) 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.
- 12) Polling places.
- 13) 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.

Section 5 - Food and Beverage Establishments designated as SMOKE-FREE or SMOKING

- A. It shall be the responsibility of the owner of the Food and Beverage establishment to designate his/her establishment as one of the following: (1) SMOKE-FREE or (2) SMOKING.
- B. For establishments designated as SMOKE-FREE, no smoking by any persons (employees or patrons) at anytime will be allowed in any part of the enclosed areas at the establishment.
- C. For establishments designated as SMOKE-FREE, signage shall be posted conspicuously on or adjacent to each and every door to the establishment that is generally accessed by

patrons or employees, plainly visible from the exterior of the building to persons entering through the door. Signage shall be no smaller than 8.5 inches by 11 inches with white lettering on red or black background, and include the following statements: "This establishment is a SMOKE-FREE facility" with letters no smaller than 5/8 inch tall; "Smoking is prohibited throughout this facility at all times" with letters no smaller than 1/4 inch tall; and "City of Ozark Ordinance No. 2005-1" with letters no smaller than 1/8 inch tall.

- D. For establishments designated as SMOKING, smoking by patrons shall be allowed throughout all enclosed areas generally occupied by patrons.
- E. For establishments designated as SMOKING, signage shall be posted conspicuously or adjacent to each and every door to the establishment that is generally accessed by patrons or employees, plainly visible from the exterior of the building 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 include the following statements: "This establishment is a SMOKING facility" with letters no smaller than 5/8 inch tall; "Smoking is allowed throughout this facility at all times" with letters no smaller than 1/4 inch tall; "There is no nonsmoking section" with letters no smaller than 1/4 inch tall; and "City of Ozark Ordinance No. 2005-1" with letters no smaller than 1/8 inch tall.
- F. For establishments designated SMOKING, patrons shall not be offered a choice of a nonsmoking section; if ashtrays are made available/distributed for patrons, they shall be made available/distributed throughout all enclosed areas generally occupied by patrons.
- G. Two or more Food and Beverage establishments operating under separate permits and/or licenses shall not be directly connected by any interior means of access including but not limited to doorways, windows, service bars or service windows, unless each has the same designation (SMOKE-FREE or SMOKING). If SMOKING is chosen for any but not for all of the establishments, each one for which SMOKING is chosen must have HVAC systems(s) which serve only that area, and the HVAC system shall be balanced so as to keep a 0% pressure environment in all doorways and windows, and be physically separated in its entirety by walls which extend from floor to ceiling or deck above and any doors to that area must be self closing.
- H. Food and Beverage establishments who elect to be SMOKE-FREE may offer employees a separate designated smoking area outside the establishment.
- I. Smoking may be permitted in hotel, motel, inn, bed and breakfast and lodging rooms that are rented to guests designated as "smoking rooms". A facility which offers such rooms for rent to guests may add additional language to the required signage after "Smoking is prohibited throughout this facility at all times" stating "Lodging rooms are available for guests who smoke" in matching letters.

Section 6 - 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) 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.
 - 2) 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.
 - 3) Employers have the right to designate smoking areas within their facilities so long as it does not infringe on the rights of nonsmokers.
 - 4) 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.

Section 7 - 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 regarding the posting of notice.
 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.
- C) 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.

Section 8 - Posting of signs

- A) No smoking signs, with letters of not less than 5/8 inch 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. Restaurants shall comply with Section 5 (c) above.
- B) 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.

Section 9 - 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 Magistrate of the City of Ozark.
- 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.

Section 10 - Violations and penalties

- A. It shall be the responsibility of the owner, business agent, manager or other person having control of any business and/or establishment to ensure compliance with all sections of this ordinance pertaining to his/her place of business. A violator of this ordinance may receive:
1. In the case of a first violation, a fine of one hundred dollars (\$100.00);
 2. In the case of a second violation, within two years of the first violation, a fine of two hundred dollars (\$200.00); and,
 3. In the case of a third violation within two years of the first violation, a fine of three hundred dollars (\$300.00); and
 4. In the case of a fourth or subsequent violation within two years of the first violation, a fine of five hundred dollars (\$500.00) for each such violation.
- B. No provision, clause or sentence of this section of this ordinance shall be interpreted as prohibiting the City of Ozark from suspending or revoking any license or permit issued by and within the jurisdiction of the City of Ozark for repeated violations of this ordinance.
- C. If the owner, business agent, manager or other person having control of such Food and Beverage business and/or establishment attempts to enforce this ordinance and a patron violates it (smokes in SMOKE-FREE establishment), then the owner, business agent, manager or other person having control shall not be deemed to be in violation of this ordinance and the patron shall be subject to a fine as follows:
1. In the case of a first violation, a fine of one hundred dollars (\$100.00);
 2. In the case of a second violation, within two years of the first violation, a fine of two hundred dollars (\$200.00); and
 3. In the case of a third violation within two years of the first violation, a fine of three hundred dollars (\$300.00) for each violation.
 4. In the case of a fourth or subsequent violation within two years of the first violation, a fine of five hundred dollars (\$500.00) for each such violation.
- D. Each calendar day an owner, business agent, manager or other person having control of a

business and/or establishment operates in violation of any provision of this ordinance shall be deemed a separate violation; each calendar day a patron violates this ordinance (i.e., smokes in a SMOKE-FREE establishment) shall be deemed a separate violation.

Section 11 - Non-Retaliation

No owner, business agent, manager or other person having control of a business and/or Food and Beverage establishment shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this ordinance or exercises any right conferred by this ordinance.

Section 12 - Notification requirements

Restaurants shall notify the City of Ozark 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.

Section 13 - Governmental agency cooperation

The City Council 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.

Section 14 - Effect of other applicable laws

- A) Nothing in this ordinance shall be deemed to amend or repeal any applicable fire, health or other law, ordinance or regulation so as to permit smoking in areas where it is prohibited by such fire, health or other law, ordinance or regulation.
- B) Nothing in this ordinance shall be deemed to preempt the further limitation of smoking in the City of Ozark by any local regulatory body within the limits of its authority and jurisdiction.

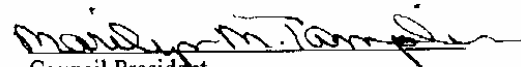
Section 15 - Severability

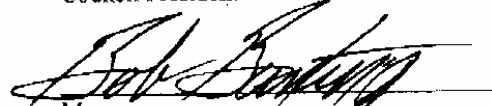
If any provision, clause, sentence, paragraph or word of this ordinance or the application thereof to any person, entity or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which shall be given effect without the invalid provisions or

application and to this end the provisions of this ordinance are declared severable.

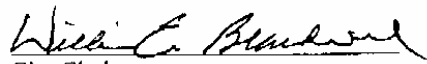
BE IT FURTHER ORDAINED, that this ordinance shall become effective upon its passage and publication as provided by law.

Adopted and approved this the 18TH day of January, 2005.


Council President


Mayor

ATTEST:


City Clerk