

**ORDINANCE NO. 2006-1860**

**AN ORDINANCE PROHIBITING SMOKING IN  
PUBLIC PLACES (AS DEFINED HEREIN),  
CITY-OWNED FACILITIES, OUTDOOR  
ARENAS, STADIUMS, AND PLACES OF  
EMPLOYMENT, AND PROVIDING  
PENALTIES FOR VIOLATIONS**

**WHEREAS**, environmental tobacco smoke is a leading public health problem in the City of Pell City, Alabama and throughout the United States; and

**WHEREAS**, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (sometimes hereinafter referred to as "environmental tobacco smoke") is a cause of disease and illness in otherwise healthy nonsmokers; and

**WHEREAS**, the use of lighted smoking products inherently creates a health hazard of secondhand smoke, which affects the public health, indoor environment, and the enjoyment of public places; and

**WHEREAS**, there exists conclusive evidence that environmental tobacco smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies and irritations to the eyes, ears, nose, and throat of both smokers and nonsmokers; and

**WHEREAS**, environmental tobacco smoke, which includes both exhaled and sidestream smoke from burning cigarettes, causes the deaths of over 65,000 Americans each year; and

**WHEREAS**, the harmful effects of environmental tobacco smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; and

**WHEREAS**, 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; and

**WHEREAS**, children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

**WHEREAS**, food and beverage establishments have been shown to be locations of significant exposure to environmental tobacco smoke by the citizens of the City of Pell City; and

**WHEREAS**, the United States 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; and

**WHEREAS**, the Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

**WHEREAS**, both the Public Health Services National Toxicology Program and the World Health Organization's International Agency for Research on Cancer identify environmental tobacco smoke as a human Class A carcinogen and state that there is no safe level of exposure; and

**WHEREAS**, there are laws, ordinances, and regulations in place which protect workers from other environmental hazards, including Class A carcinogens such as asbestos, arsenic, and benzene, but none which regulate exposure to environmental tobacco smoke; and

**WHEREAS**, the United States Surgeon General, the American Cancer Society, the American Lung Association, and the Alabama Department of Public Health have concluded that involuntary smoking is a cause of disease, including lung cancer, in nonsmokers; and

**WHEREAS**, smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke; and

**WHEREAS**, 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; and

**WHEREAS**, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PELL CITY, ALABAMA**, that the Council recognizes the rights of those who wish to breathe smoke-free air and hereby establishes this Ordinance and the regulations contained herein to protect and improve the public health and welfare:

**SECTION 1. DEFINITIONS.** Unless the context clearly indicates a different meaning, the words, terms and phrases used in this Ordinance shall have the following meanings:

**Bar:** 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, and in which the percentage of gross receipts of said establishment from the sale of food is less than twenty percent (20%). The term "bar" shall include, but is not limited to, taverns, nightclubs, cocktail lounges, and cabarets. Additionally, a "bar" shall not allow the entrance or presence of any person under the age of twenty-one (21) years old, including employees.

**Business:** 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 as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

**Employee:** 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.

**Employer:** A person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the service of one or more individual persons.

**Enclosed Area:** 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.

**Health Care Facility:** 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, semiprivate rooms, and wards within health care facilities.

**Place of Employment:** 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, 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.

**Pub:** An eating establishment (1) which gives or offers for sale food to the public, guests, or employees; (2) in which alcoholic beverages are also served for consumption by guests on the

premises; and (3) in which the percentage of gross receipts of said establishment from the sale of alcohol is greater than forty percent (40%) and less than eighty percent (80%).

**Public Place:** 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, health care facilities, 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 residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

**Restaurant:** 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 an establishment in which alcoholic beverages are also served for consumption by guests on the premises and in which the percentage of gross receipts of said establishment from the sale of alcohol is equal to or less than forty percent (40%).

**Retail Tobacco Store:** A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

**Shopping Mall:** An enclosed public walkway or hall area that serves to connect retail or professional establishments.

**Smoking:** Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

**Sports Arena:** 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.

**SECTION 2. APPLICATION OF ORDINANCE TO CITY-OWNED FACILITIES.** All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Pell City, shall be subject to the provisions of this Ordinance.

**SECTION 3. PROHIBITION OF SMOKING IN PUBLIC PLACES.** Smoking shall be prohibited in all enclosed public places within the City of Pell City, including, but not limited to, the following places:

1. Galleries, libraries, and museums;
2. 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, professional offices, banks, laundromats, hotels, and motels;
3. Bingo facilities;
4. Convention facilities;
5. Educational facilities, both public and private;
6. Elevators;
7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;
8. Health care facilities;
9. Licensed child care and adult day care facilities;

10. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
11. Polling places;
12. Pubs in which the owner thereof has declared said establishment to be "nonsmoking;"
13. Public transportation facilities, including buses and taxicabs, under the authority of the City of Pell City, and ticket, boarding, and waiting areas of public transit depots;
14. Restaurants;
15. Restrooms, lobbies, reception areas, hallways, and other common-use areas;
16. Retail stores;
17. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of Pell City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of Pell City;
18. Shopping malls; and
19. Sports arenas, including enclosed places in outdoor arenas.

**SECTION 4. REGULATION OF SMOKING IN THE WORKPLACE.** Each employer in the City of Pell City shall implement and maintain a written smoking policy for its employees within sixty (60) days after the effective date of this Ordinance. The policy shall contain, at a minimum, the following provisions and requirements:

1. Any business may, at the employer=s discretion, be designated a nonsmoking facility;
2. If a business chooses to accommodate the preferences of nonsmoking and smoking employees, in sections where smokers and nonsmokers work in close proximity and nonsmokers will be exposed to smoke, the preferences of the nonsmoker will prevail. An employer is not required by this provision to incur any expense for making structural or other physical modification to accommodate the preferences of nonsmoking or smoking employees;
3. The smoking policy shall be announced within three (3) weeks of adoption to all employees working in the place of employment and posted conspicuously in all workplaces under the employer's control; and
4. No employer shall discharge or otherwise discriminate against any employee by reason of his/her insistence upon his/her rights to a reasonable accommodation as provided in this section.

**SECTION 5. PROHIBITION OF SMOKING IN OUTDOOR ARENAS AND STADIUMS.** Smoking shall be prohibited within fifty (50) feet of the seating areas of all outdoor arenas, stadiums, and amphitheaters.

**SECTION 6. REASONABLE DISTANCE.** Smoking is prohibited within a reasonable distance of fifty (50) feet outside the main entrance of an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through said main entrance.

**SECTION 7. WHERE SMOKING IS NOT REGULATED.** Notwithstanding any other provisions of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 3 and 4:

1. Private residences, except when used as a licensed child care, adult day care, or health care facility;
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;
3. Retail tobacco stores; provided that smoke from these places does not infiltrate areas where smoking is prohibited under the provisions of this Ordinance;
4. Pubs in which the owner thereof has declared said establishment to be "smoking";
5. That area of a restaurant which is declared by the owner of said restaurant to be "smoking" and: (a) which said area is completely separated (by wall, closed door, or otherwise) from the remaining "nonsmoking" area of said restaurant; and (b) which said area has its own separate HVAC system. Provided, however, the owner of a restaurant who chooses to maintain a "smoking" area as described herein shall insure that the "nonsmoking" area has its own bathroom facilities and that no person who desires to be served in the "nonsmoking" area is required to pass through the "smoking" area at any time.
6. Bars; and
7. Outdoor areas of places of employment except those covered by the provisions of Sections 5 and 6.

**SECTION 8. DECLARATION OF ESTABLISHMENT AS NONSMOKING.** Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 9 (A) is posted.

**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 within 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. Every public place and place of employment where smoking is permitted under the terms of this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is permitted.

**SECTION 10. NON-RETALIATION.** 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 Ordinance or reports or attempts to prosecute a violation of this Ordinance.

**SECTION 11. ENFORCEMENT.** The provisions of this Ordinance are enforceable by any duly sworn police officer employed by the City of Pell City, Alabama, the county health officer or a duly authorized representative thereof, or as otherwise allowed by law for prosecution of offenses.

**SECTION 12. VIOLATIONS AND PENALTIES.**

- A. A person who 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 fifty dollars (\$50.00).
- 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 (\$100.00) for a first violation;
  - 2. A fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year; and
  - 3. A fine not exceeding five hundred dollars (\$500.00) 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, operated, 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 upon which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

**SECTION 13. GOVERNMENTAL AGENCY COOPERATION.** The City Clerk shall annually request other governmental and educational agencies having facilities within the City of Pell City to establish local operating procedures in cooperation and compliance with this Ordinance. This includes urging all federal, state, and local agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

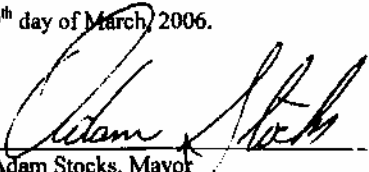
**SECTION 14. OTHER APPLICABLE LAWS.** This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**SECTION 15. LIBERAL CONSTRUCTION.** This Ordinance shall be liberally construed so as to further its purposes.

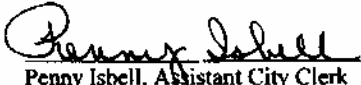
**SECTION 16. SEVERABILITY.** If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 17. EFFECTIVE DATE.** This Ordinance shall become effective upon the expiration of thirty (30) days following its adoption and publication as required by law.


**ADOPTED AND APPROVED** this 9<sup>th</sup> day of March, 2006.

  
Adam Stocks, Mayor

ATTEST:

  
Penny Isbell, Assistant City Clerk

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I, Penny Isbell, Assistant Clerk of the City of Pell City, hereby certify that the above Ordinance was duly adopted by the City Council of the City of Pell City, at a special called council meeting held on the 9th day of March, 2006, and that same has been published in accordance with law in the *St. Clair News Aegis* on the 16th day of March, 2006.

  
Penny Isbell, Assistant City Clerk