

ORDINANCE NO: 2009 - 453

AN ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES WITHIN THE CITY LIMITS OF THE CITY OF TALLASSEE, ALABAMA, AND ITS POLICE JURISDICTION, PROVIDING FOR THE ENFORCEMENT THEREOF, AND TO PROVIDE PENALTIES FOR THE VIOLATION THEREOF.

Section 1. Title

This Ordinance shall be known as the "Tallassee Smoke Free Air Ordinance of 2009".

Section 2. Definitions

The following words and phrases, when ever used in this Ordinance, 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, lounges, and cabarets;
- b. "Business" means a sole proprietorship, partnership, joint venture, corporation, limited liability company 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 were legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs;
- c. "City" means City of Tallassee, Alabama;
- d. "City Council" means City Council of the City of Tallassee, Alabama;
- e. "Employee" means a person who is employed by an Employer in consideration of direct or indirect monetary wages or compensation, and a person who volunteers his or her services for a non-profit entity;
- f. "Employer" means a person, business, partnership, association, corporation, limited liability company or other legal entity, including a municipal corporation, trust, or non-profit entity, that employs the services of one or more individual persons;
- g. "Enclosed Area" means all spaces 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;

- h. "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 definition shall include all waiting rooms, hall ways, private rooms, semi-private rooms and wards within health care facilities;
- I. "Place of Employment" means an area under the control of a public or private Employer where employees normally frequent during the course of their 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;
- j. "Private Club" means an organization, regardless of the type of business entity utilized, 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; whose 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; which organization has established bylaws and/or a constitution to govern its activities; and which organization has been granted an exemption from the payment of federal income tax as a club under 25 U.S.C. Section 501;
- k. "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, health care facilities, hotel and motel lobbies, 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;
- l. "Restaurant" means any 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;

- m. "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;
- n. "Service Line" means any 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;
- o. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments;
- p. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form; and
- q. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, skating parks, ball fields, 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 3. Application of Ordinance to City of Tallassee Facilities

All City Parks and all enclosed facilities, including buildings, leased, or owned by City shall be subject to the provisions of this Article. In addition, no smoking shall be allowing in any vehicle owned, leased or provided by City.

Section 4. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed Public Places in the City of Tallassee, 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 nonprofit entities patronized by the public, including, but not limited to, professional offices, banks, laundromats, hotels, and motels.
- c. Bars;

- d. Convention facilities;
- e. Educational facilities, both public and private;
- f. Elevators;
- g. Facilities primarily used for exhibiting a motion picture, stage drama, lecture, musical recital, or other similar performance.
- h. Health care facilities;
- i. Hotel and motel lobbies;
- j. Licensed child care and adult day 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. Polling places;
- m. Private Clubs when being used for a function to which the general public is invited;
- n. Public transportation facilities, including buses and taxicabs, under the authority of the City of Tallassee, and ticket, boarding, and waiting area of pubic transit depots;
- o. Restaurants;
- p. Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- q. Retail Stores;
- r. 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 of Tallassee or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the city;
- s. Service Lines.
- t. Shopping Malls; and
- u. Sports Arenas, including enclosed places in outdoor arenas.

Section 5. Prohibition of Smoking in Places of Employment

- a. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. 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 this Ordinance and to all prospective employees upon their application for employment.

Section 6. Prohibition of Smoking in Outdoor Arenas, Sports Arenas, and Stadiums and City Managed Parks

- a. Smoking is prohibited in all seating areas of all public outdoor arenas, sports arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands used by spectators at sporting and other public events.
- b. Smoking is prohibited in all public parks, picnic areas, play grounds, walking trails, and sport areas which are served by City or maintained by City's Park and Recreation Board.

Section 7. Reasonable Distance

- a. Smoking is hereby prohibited within ten (10) feet outside an enclosed area where smoking is prohibited so as to ensure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or other means.
- b. The owner, operator, manager, or other person in control of an establishment may declare that smoking is prohibited within a greater distance outside an enclosed area where smoking is prohibited. If smoking is prohibited outside the building within a distance greater than ten (10) feet, a conspicuous sign shall be posted at every entrance stating that smoking is prohibited within a specific distance (in feet) from the building. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this Ordinance is posted.

Section 8. Where Smoking Not Regulated

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Section 4 and 5 hereof:

- a. Private residences, except when used as a licensed child care, 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 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 area where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking and nonsmoking may not be changed, except to add additional nonsmoking rooms;
- c. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under provisions of this Ordinance;
- d. Private and semiprivate 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 provisions of this Ordinance;
- e. Private Clubs that have no employees, except when being used for a function which the general public is invited; and
- f. Outdoor areas of employment, except those covered by the provisions of Section 6 and 7 hereof.

Section 9. Declaration of Establishment of Nonsmoking

Notwithstanding any other provisions of this Ordinance to the contrary, 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 10(a) is posted.

Section 10. Posting of Signs: Responsible Proprietors

- 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 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 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 or by the owner, operator, manager, or other person having control of the area.
- d. The owner, operator, manager, or other person having control of any area where smoking is prohibited by this Ordinance or by such owner, operator, manager or other person having control of such area shall request any person smoking in violation of this Ordinance to stop.

Section 11. Non-retaliation: Non-waiver of Rights

- a. No person 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.
- b. Any 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.

Section 12. Enforcement

- a. This Ordinance is enforceable by any duly sworn police officer employed by City, City's Code Enforcement Officer or a duly authorized representative thereof, or as otherwise allowed by law for prosecution of these offenses. Provisions of this Ordinance relating to structures and signage shall be enforced by City's Building Official.
- b. Notice of the provisions of this Ordinance shall be given to anyone who applied to City for the issuance of a business license.
- c. An owner, manager, or Employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance as to the appropriate provisions thereof.
- d. Notwithstanding any other provision of this Ordinance, an Employee or private citizen may bring legal action to enforce this Ordinance.
- e. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the City of Tallassee Police Department, City's Code Enforcement Officer, or City's Fire Chief.
- f. The Elmore County Health Department, Tallapoosa County Health Department, Macon County Health Department, Tallassee Fire

Department, City's Building Official or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.

- g. In addition to the remedies provided for herein, the Police Chief, Fire Chief, Building Official, 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 Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
- h. Any fines or fees collected under this Ordinance by City shall be used for the enforcement of these regulations on in any other manner deemed appropriate by the Council

Section 13. Violations and Penalties

- a. Any person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding fifty dollars (\$50.00), plus all applicable costs.
- b. Any person who owns, manages, operates, or otherwise controls a Public Place or Place of Employment who violates any provision of this Ordinance shall be guilty of a misdemeanor and, upon conviction thereof, be punished by payment of all applicable court costs and:
 - 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; and
 - 3. A fine not exceeding five hundred dollars (\$500.00) for each additional violation within any one (1) year period.
- 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 business license issued to the licensee for the premises on which the violation occurred.
- d. Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by the Elmore County Health Department, Tallapoosa County Health Department, Macon County Health Department, or the Mayor by restraining order, preliminary and permanent injunction, or other means provided by law, and the Counties and/or the City may take action to recover the costs of the nuisance abatement.

- e. Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

Section14. Public Education

The Mayor or his or her designee shall engage in a continuing program (a) to explain and clarify the purposes and requirements of this Ordinance to citizens affected by it and (b) 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 Ordinance.

Section 15. Other Applicable Laws

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

Section 16. Liberal Construction

This Ordinance shall be liberally construed so as to further its beneficent purposes.

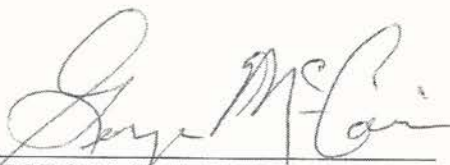
Section17. Severability

If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstance shall be held invalid by a court of competent jurisdiction, that invalidity shall not affect the remaining 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.

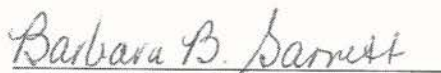
Section18. Effective Date

This Ordinance shall be effective ninety (90) days from and after the date of adoption and publication as required by law.

ADOPTED AND APPROVED this the 14th day of September 2009.


GEORGE MCCAIN - Mayor


ATTEST:


BARBARA B. GARNETT
City Clerk

CERTIFICATE AS TO PASSAGE

I, the undersigned City Clerk of the City of Tallassee, Alabama, do hereby certify that the above and foregoing ordinance was duly adopted and approved by the City Council of the City of Tallassee, Alabama, at a regular meeting of the same held on the 14th day of September 2009.

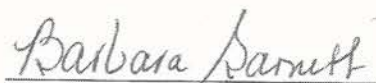
Certified this 14th day of September 2009.


BARBARA GARNETT, City Clerk
City of Tallassee, Alabama

CERTIFICATE AS TO PUBLICATION

I, the undersigned City Clerk of the City of Tallassee, Alabama, do hereby certify that the above and foregoing Ordinance has been published in the Tallassee Tribune, Tallassee, Alabama, as required by law.

Published: September 17, 2009.


BARBARA GARNETT, City Clerk
City of Tallassee, Alabama