

ORDINANCE NO. 2015-024 - PS

**AN ORDINANCE TO AMEND, REPEAL AND REPLACE
ORDINANCE NO. 2006-004, AS AMENDED BY ORDINANCE NO. 2006-027,
AND EXPAND THE PROHIBITION AGAINST SMOKING IN PUBLIC BY
PROSCRIBING THE SMOKING OF E-CIGARETTES**

WHEREAS, in enacting Ordinance No. 2006-004, as amended by Ordinance No. 2006-027, the City Council for the City of Trussville (the "Council") previously has prohibited or restricted the smoking of lighted smoking products in public buildings and public places in order to mitigate the dangers to public health and hazards for nonsmokers resulting from exposure to second hand and side stream smoke; and

WHEREAS, to further enhance public health and the welfare of citizens, visitors and workers in the City of Trussville (the "City"), the Council desires to expand its previously adopted restrictions and prohibitions concerning smoking in order to proscribe the use of e-cigarettes and other electronic oral smoking devices in certain public areas; and

WHEREAS, by enacting this ordinance, the Council desires to amend, repeal, and replace Ordinance No. 2006-004, as amended by Ordinance No. 2006-027, and totally restate herein all of the prohibitions or restrictions against smoking in public locations in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TRUSSVILLE, ALABAMA, that the terms and provisions of this ordinance be enacted and adopted.

SECTION 1. DEFINITIONS.

As used in this chapter the following words and terms shall have the meanings respectively ascribed.

Bar means an establishment that holds a Lounge Liquor License and is devoted primarily to the serving of alcoholic beverages for consumption by guests on the premises. This definition includes, but is not limited to taverns, nightclubs, cocktail lounges and cabarets.

City means the City of Trussville, Alabama.

Council means the City Council of the City of Trussville, Alabama.

Common area means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, interior and/or exterior general public entryway or exit, refreshment area, or restroom.

E-cigarette means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any substance, and the use or inhalation or exhalation of which simulates smoking. The term shall include any

such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or description.

Employee means any person who is employed by an employer for compensation or profit.

Employer means any person, partnership, corporation, association or other entity, that employs one (1) or more persons.

Public building shall mean any enclosed area in a structure or building in the City that is available to and customarily used by or open to the general public. A public building may include, but is not limited to, retail stores, restaurants, banks, office buildings, convention or meeting facilities, hotels, motels, multi-family residential buildings and the structures or parts thereof that are listed in Section 2.

Public place shall mean any non-enclosed area or location that is available to and customarily used by or open to the general public or that is an outdoor public gathering area. A public place shall include, but not be limited to, municipally owned parks, public use lands and non-enclosed structures or facilities where the general public congregates (including but not limited to stadiums, bleacher areas, pavilions, concession areas, playgrounds, outdoor cooking areas, gazebos, tennis courts, pools, playing fields, and track areas).

Restaurant means an eating establishment, including but not limited to coffee shops, cafeterias, and sandwich stands or which gives or offers facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

Restaurant Bar shall mean an area designated and used primarily to serve alcoholic beverages located in a restaurant.

Smoking or smoke shall include the carrying, holding, or possession of any lighted or heated tobacco product in any form that is intended for inhaling, exhaling, or burning, including but not limited to, cigarettes, e-cigarettes, cigars, or pipes. Smoking includes the use of an e-cigarette or any other oral smoking device that in any form or manner creates a vapor and used for inhalation or exhalation.

Workplace means any indoor area under the control of an employer to which employees have access during the course of employment, including, but not limited to work areas, employee lounges, employee restrooms, conference rooms and employee cafeterias. A private residence is not a place of employment.

SECTION 2. PROHIBITED SMOKING AREAS.

Any owner, landlord, proprietor other person in control of a public building in the City may designate said building to be smoke free so that no smoking is permitted in any enclosed area of the premises.

Additionally, smoking is prohibited in any of the following locations in the City:

- (1) Any enclosed areas of a public building or facility; provided that a smoking area(s) may be designated within or outside any such building as provided in Section 4;
- (2) Any vehicle of public transportation, including but not limited to trains, buses, taxicabs (while transporting a fare) and limousines;
- (3) Elevators;
- (4) Common areas located in, but not limited to, commercial and non-commercial multi-tenant buildings, apartment buildings or other multi-family residences sharing common areas;
- (5) Libraries, schools or other education facilities, museums, auditoriums and art galleries;
- (6) Any health care facility, health clinic or ambulatory care facility, including but not limited to laboratories associated with the rendering of health care treatment, hospitals, rest homes, doctors' offices and dentists' offices;
- (7) Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, recreation halls, bowling alleys, arenas and swimming pools;
- (8) Any public place; provided that a designated smoking area(s) may be established in open areas that are located at least fifty (50) feet away from the area where the public congregates; and
- (9) Vehicles owned by the City.

SECTION 3. EXCEPTIONS.

The prohibitions against smoking that are imposed in Section 2 shall not apply to:

- (1) An area(s) inside or outside a public building which is specifically designated as a smoking area in accordance with Section 4 of this ordinance;

- (2) An entire room or hall that is used for private social functions, provided that the event is under the control of the sponsor of the function and not of the proprietor or person in charge of the establishment or hall, excluding City-owned facilities;
- (3) Bars, but not to include restaurant bars if such establishment satisfies the conditions in Section 4 of this ordinance;
- (4) Limousines under private hire by an individual or corporation;
- (5) A single-tenant commercial office building, provided that both the landlord and tenant agree to allow smoking;
- (6) A private, enclosed office(s) together with its private reception area(s) within a commercial office building housing more than one business and/or organization, provided that:
 - a) The landlord of the commercial office building specifically permits smoking in designated areas of the building, not including common areas, which must remain smoke free; and
 - b) The office(s) together with reception area(s) are located within an enclosed area of the commercial office building with a separate HVAC system which services only those areas, or utilizes an appropriate air flow control, exhaust and/or air filtration system designed such that tobacco smoke, chemicals and fumes shall not enter or be returned into the non-smoking areas. Any such smoking area must be physically separated in its entirety by walls that extend from floor to the ceiling above, and have doors that can be closed.
- (7) Performers upon a stage; provided that the smoking is part of a theatrical production;
- (8) A tobacco specialty retail shop or a retail shop that is engaged primarily in the enterprise of marketing and selling e-cigarettes to the public;
- (9) Hotel and motel rooms which are rented to guests and designated as smoking rooms by the management and separated from non-smoking rooms by a solid wall with no inner-connected doorways. Smoking and non-smoking rooms may be separated by floors, but every effort should be made to place smoking floors above non-smoking floor levels;
- (10) Private social clubs and veterans' organizations, provided a majority of the board of directors approve to allow smoking and such majority approval is noted in the official minutes of the club or veterans' organization and posted in a prominent interior location;
- (11) Parking lots and parking decks; and

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

SECTION 4. DESIGNATION OF SMOKING AREAS.

The owner, landlord, proprietor or other person in control of a public building may, but is not required, to designate one (1) or more areas of that building as a smoking area if that person complies with the following requirements:

(1) Buildings Other Than Restaurant Bars. If a smoking area is designated for an establishment in a public building other than a restaurant bar, each smoking area shall:

- a) Be located in an unenclosed area of the premises (out of doors) and located a minimum of twenty-five feet (25') away from the main general public entrance or exit to the building; or
- b) Be located within an enclosed area (indoor) with a separate HVAC system which services only that area or utilizes an appropriate air flow control, exhaust and/or air filtration system designed such that tobacco smoke, chemicals and fumes shall not enter or be returned into the non-smoking area. Any such smoking area must be physically separated in its entirety by walls which extend from floor to the ceiling above, and have doors which shall be closed during any time smoking is permitted in said area.

(2) Restaurant Bars. In the case of restaurants, smoking may be permitted in an indoor restaurant bar under the following conditions:

- a) The restaurant bar area is physically separated in its entirety by walls which extend from floor to ceiling above, except for the sharing of a common ingress/egress between the smoking and non-smoking area, and have doors which shall be closed during any time smoking is permitted in said area; or
- b) The owner, landlord, proprietor or person in charge of the restaurant either must (i) operate a separate HVAC system which services only the smoking area, or (ii) utilize an appropriate air flow control, exhaust and/or air filtration system designed such that tobacco smoke, chemicals and fumes shall not enter or be returned into the non-smoking area. Such system(s) must be in operation during all hours of operation. With respect to the system(s) described in subparts (i) and (ii), the air handling system serving the restaurant bar area must be wired in series with the air handling fan control of the restaurant dining area. Further, an initial airflow test and balance certificate substantiating compliance with these system requirements shall be provided to the City within thirty (30) days after the effective date of this ordinance by any establishment operating a

restaurant bar with an enclosed (indoor) smoking area. Test and balance certifications issued within twelve (12) months of the effective date of this ordinance may be accepted in lieu of a new certification, provided there have been no changes to the air handling system or interior structure; thereafter, airflow test and balance certificates shall be required when changes are made to the air handling system or interior structure, or in the event of non-compliance with this Section 4 of this ordinance. During any non-compliant period, the restaurant, together with its bar, will remain smoke free pending the presentation of a new airflow test and balance certificate to the City.

- (3) Other Requirements. In addition to any other requirement in this Section, any designated smoking area must (i) be clearly marked by appropriate signs that are visible to patrons in or entering that area and, and (ii) contain ashtrays, containers or other facilities for the extinguishment of smoking materials.

SECTION 5. RESPONSIBILITY OF PROPRIETORS.

The owner, landlord, proprietor or other person having control of a public building shall

- (1) In any part of a building in which smoking is prohibited, prominently post "NO SMOKING" signs, which may include the international "NO SMOKING" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it;
- (2) Post signs conspicuously in the lobby of every theatre or auditorium stating that smoking is prohibited within the theatre or auditorium, and, in the case of a motion picture theatre, also show that information upon the screen prior to the showing of each feature motion picture; and
- (3) Request persons who are smoking in violation of this ordinance to stop, or to leave the nonsmoking area and, if applicable, smoke only the designated smoking area of the building.

SECTION 6. REGULATION OF SMOKING IN THE WORKPLACE.

Any business may, at the employer's discretion, be designated a non-smoking workplace. An employer is not required by this ordinance to incur any expense for making structural or other physical modification to a building to accommodate the preferences of either nonsmoking or smoking employees.

If a business chooses to accommodate smoking employees in the workplace, it may designate a smoking area and shall comply with the regulations for such area set forth in Section 4 of this ordinance.

SECTION 7. OFFENCES, FINES AND PUNISHMENT.

It shall be an unlawful offence for any person, firm or corporation to violate any of the terms and provisions of this ordinance. These offences shall include, but not be limited, to the following:

- (1) a person willfully smoking in an area where smoking is prohibited; and
- (2) a proprietor or other person in charge of a public building at which smoking and nonsmoking areas have been designated refusing to enforce those designations.

Any person, firm or corporation who violates this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of the following amount, plus costs of court if applicable:

First Offense - \$25.00 with court costs waived;
Second Offense - \$100.00 plus court costs; and
Third & Each Successive Offense - \$500.00 plus court costs.

Each day or occurrence any violation of this ordinance shall continue or occur shall constitute a separate offence.

SECTION 8. ENFORCEMENT/SUMMONS AND COMPLAINT

The provisions and violations of this ordinance are enforceable by any duly sworn police officer or appropriate representative of the Fire Department who is employed by the City, the county health officer or a duly authorized representative thereof, or as otherwise allowed by law for prosecution of offences.

As permitted in Section 11-45-9.1 of the Code of Alabama, 1975, as amended, which authorizes municipalities to issue Summons and Complaints in lieu of arrest warrants for violation of certain municipal ordinances, the following procedures may be utilized in enforcing violations of this ordinance:

- (1) The enforcing representative may issue a Summons and Complaint to any person charged with a violation of this ordinance and release such person from custody upon his or her written promise to appear in court at the designated time and place as evidenced by his or her signature on the Summons and Complaint;
- (2) The form of the approved Summons and Complaint shall be the Uniform Non-Traffic Citation and Complaint form, State of Alabama Unified Judicial System ARJA-20, 07/1994 or the City of Trussville Non-Traffic Citation and Complaint.
- (3) Any party charged with an offence in violation of this ordinance may elect to appear before the Municipal Court Magistrate within the time specified in the Summons and

Complaint, and upon entering a plea of guilty and executing a Notice of Waiver of Rights form, pay the appropriate fine and any assessable court costs.

SECTION 9. MISCELLANEOUS.

Nothing in this ordinance excuses noncompliance with any Federal or State law, other City Ordinances, or any rule or regulation that prohibits smoking.

If any portion of this ordinance shall be held unconstitutional, invalid or unenforceable, such holding shall not affect the remaining portions thereof nor render them invalid, and to that end the provisions hereof are declared to be severable.

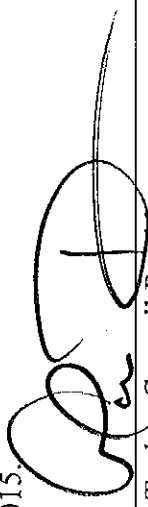
SECTION 10. REPEALER.

All ordinances or parts of ordinances heretofore adopted by the Council which are inconsistent or conflict with the provisions of this Ordinance are hereby expressly repealed, including, but not limited to, Ordinance No. 2006-004, as amended by Ordinance No. 2006-027.

SECTION 11. EFFECTIVE DATE.

This ordinance shall become effective upon its adoption and publication as provided by law.

ADOPTED this the 27th day of October, 2015.

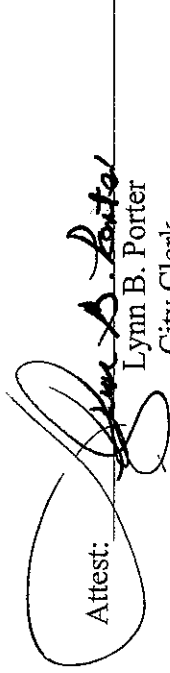


Alan Taylor, Council President

APPROVED this the 27th day of October, 2015.



Eugene A. Melton, Mayor
City of Trussville

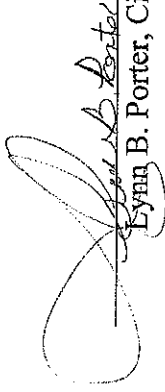
Attest: 

Lynn B. Porter
City Clerk

CERTIFICATION:

I, Lynn B. Porter, as City Clerk of the City of Trussville, Alabama, hereby certify that the above and foregoing copy of Ordinance No. 2215-224th is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Trussville on the 27th day of October 2015 as same appears in the official records of said City.

Posted at Trussville City Hall, Trussville Public Library, and Trussville Community Center this the 27th day of October, 2015.


Lynn B. Porter, City Clerk

City of Trussville



Mayor: Eugene A. Melton
City Clerk: Lynn B. Porter
City Attorneys:

Carl E. Johnson, Jr.
Burgin H. Kent
Whit Colvin

Councilmembers:
Anthony Montalto, Council President
Buddy Choat
Perry Cook
Brain Plant
Alan Taylor

CERTIFICATION

I, Lynn Porter, City Clerk of the City of Trussville, Alabama do hereby certify

that the following is a true and correct copy of Ordinance Number 2015-024-PS

of the City of Trussville, Alabama, adopted on October 27, 2015, and posted in the following places:

Trussville Municipal Building

Trussville Public Library

Trussville Civic Center

on November 25, 2015, and effective five days thereafter.

Given under my hand and seal this 25th day of November 2015.



Lynn Porter, City Clerk
City of Trussville, Alabama