

AN ORDINANCE PROVIDING SMOKING REGULATIONS IN
PUBLIC PLACES AND PLACES OF EMPLOYMENT WITHIN
THE CITY OF AUBURN

BE IT RESOLVED by the Council of the City of Auburn, Alabama, that it hereby establishes regulations governing smoking in public places to read as follows:

SECTION I. Definitions.

- (a) "City" means the City of Auburn, Alabama
- (b) "Smoking" or "Smoke" shall include the carrying, holding, or possession of lighted smoking materials in any form, including but not limited to, the possession of lighted cigarettes, cigars, pipes, or other tobacco products;
- (c) "Public" or "Public Place" shall mean any enclosed area that is used by the general public, or that is a place of business or employment, or that is a public meeting area, and includes, but is not limited to: stores, offices and other commercial establishments, restaurants, public and private educational institutions, health care facilities, nursery and convalescent homes, government buildings, public transportation vehicles, elevators, restrooms, and other areas as described in Section II;
- (d) "Service Line" means any indoor line at which one or more persons are waiting for or receiving service of any kinds, regardless of whether such service involves the exchange of money;
- (e) "Employer" means any person, partnership, corporation, association or other entity, that employs five or more persons;
- (f) "Employee" means any person who is employed by an employer for compensation or profit.
- (g) "Place of Employment" 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 does not constitute a place of employment.

SECTION II. Prohibitions.

Except as provided in Section III and IV, smoking is prohibited in any of the following public places:

(a) Any commercial establishment, including but not limited to retail stores, restaurants, banks, office buildings and offices;

(b) Any vehicle of public transportation, including but not limited to buses, taxicabs and limousines;

(c) Elevators;

(d) Restrooms;

(e) Libraries, schools or other educational facilities, museums, auditoriums and art galleries;

(f) Any public area of a health care facility, health clinics or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals rest homes, doctors' offices and dentists' offices;

(g) Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theatres, concert halls, and arenas;

(h) Any other enclosed area used by the public or serving as a place of work;

SECTION III. Exceptions.

Section II and the restrictions imposed therein shall not apply to:

(a) Areas which are specifically designated as smoking areas in accordance with Section IV of this Ordinance;

(b) An entire room or hall which is used for private social functions;

(c) A separated bar area of a restaurant; or a licensed lounge;

(d) Taxicabs and limousines where the driver and all passengers affirmatively consent to smoking in such vehicle;

(e) Individual private offices, provided that this exception shall not be construed to permit smoking in the reception areas of lobbies or offices unless designated as smoking areas;

(g) Performers upon the stage, provided that the smoking is part of a theatrical production;

(h) A tobacco speciality retail shop;

(i) Any restaurant between the hours of 12:00 Midnight and 5:00 A.M.;

(j) Hotel or motel rooms;

(k) Any public place which in its entirety is too small to allow any practical separation of smokers and non-smokers, as determined by the Lee County Health Department.

SECTION IV. Designation of Smoking Areas.

(a) Smoking areas may be designated in public places and places of employment, except where smoking is prohibited by other laws, ordinances or regulations.

(b) No public place, other than those places enumerated as exceptions in Section III, shall be designated as a smoking area in its entirety.

(c) Where smoking areas are designated, each smoking area shall:

(1) Be set apart from non-smoking areas;
and

(2) Be situated so existing barriers and functioning ventilation systems are used to minimize the irritating and toxic effects of smoke in adjacent non-smoking areas; and

(3) Be designated by appropriate signs which are clearly visible to patrons in or entering the area via the front entrance to the premises;

(4) Contain ashtrays, containers or other facilities for the extinguishment of smoking materials; and

(5) Not include service lines or cashier areas.

(6) Not include meat or produce counter areas in any store.

SECTION V. Responsibility of Proprietors.

The proprietor or other person having control of any area within Section II shall:

(a) Provide a seat in a non-smoking area for any persons requesting such a seat;

(b) Prominently post "SMOKING" or "NO SMOKING" signs, whichever may be appropriate, or the international "NO SMOKING" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it. The proprietor or other person having control of such building or public place shall clearly and conspicuously post such sign in every room, building or other area where smoking is regulated by this Ordinance;

(c) Post signs conspicuously in the lobby of every theatre stating that smoking is prohibited within the theatre or auditorium.

(d) Request persons smoking in violation of this Ordinance to stop, or to leave the non-smoking area and move to a designated smoking area.

SECTION VI. Regulation of Smoking in the Workplace.

Within 90 days after adoption of this Ordinance, every employer in the City of Auburn, except those exempted by this Ordinance, shall adopt, implement and maintain a written smoking policy. The policy shall contain, at a minimum, the provision that the employer shall accommodate, insofar as possible, the preferences of non-smoking and smoking employees. An employer is not required by this provision to incur any expense for making structural or other physical modifications to accommodate the preferences of non-smoking or smoking employees.

(a) Any employer who in good faith develops and promulgates a policy regarding smoking and non-smoking

in the workplace shall be deemed to be in compliance with this Ordinance, provided that a policy which designates an entire workplace as a smoking area shall not be deemed a good faith policy.

SECTION VII. Enforcement.

The provisions of this Article are enforceable by the Lee County Health Officer or a duly authorized representative thereof.

SECTION VIII. Penalty.

Any person who willfully smokes in an area where smoking is prohibited under this Ordinance; or,

Any business proprietor or person in charge of a public place who fails or refuses, five days after warning, to designate smoking and non-smoking areas as required herein or who, being asked to do so, fails or refuses to enforce the designations, or

Any employer who fails or refuses to adopt and implement a smoking policy for the workplace which shall reasonably accommodate, insofar as possible as herein provided, the preferences of smoking and non-smoking employees:

Shall be guilty of an "offense" and shall be subject to punishment by a fine of not less the TEN DOLLARS (\$10.00) nor more than FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) for each such "offense."

SECTION IX. Miscellaneous.

(a) Nothing in this Article excuses non-compliance with any Federal or State law, other City of Auburn ordinance, or any rule or regulation which prohibits smoking.

(b) Validity or Constitutionality. If any portion of this Ordinance shall be held unconstitutional, invalid or unenforceable, such holding shall not affect the remaining portions nor render the remaining portions invalid, and to that end the provisions hereof are declared to be severable.

(c) This Ordinance shall become effective the
10th day of July, 19 92.

ADOPTED AND APPROVED by the City Council of the
City of Auburn, Alabama this the 21st day of April 1992.

James M. Simpson
MAYOR

ATTEST:

David J. Watson
CITY MANAGER