

## ORDINANCE NO. 461

### **AN ORDINANCE TO PROHIBIT SMOKING IN PUBLIC PLACES AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF**

**WHEREAS**, environmental tobacco smoke is a leading public health problem in the Town of Brookside, Alabama, and throughout the United States; 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, and allergies and irritations to the eyes, ears, nose, and throat of both smokers and non-smokers; and,

**WHEREAS**, environmental tobacco smoke, which includes both exhaled and side stream smoke from burning cigarettes, causes the deaths of many thousands of Americans each year; and,

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

**WHEREAS**, food and beverage establishments have been shown to be locations of significant exposure to environmental tobacco smoke by the citizens of the Town of Brookside; 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**, 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 non-smokers.

**NOW THEREFORE BE IT ORDAINED** by the Town Council of the Town of Brookside, Alabama, while in regular session that it recognizes the dangers of exposure to secondhand and side stream tobacco smoke and establishes this ordinance to protect and improve the public health and welfare.

#### SECTION I. DEFINITIONS.

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

*Bar* means an establishment that is devoted primarily to the serving of alcoholic beverages for consumption by guests on the premises and where food sales represent twenty-five (25) percent or less of the establishment's gross annual receipts. This definition includes but is not limited to taverns, nightclubs, cocktail lounges, and cabarets.

*Town* means the Town of Brookside, 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.

*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* or *public place* shall mean any enclosed area that is available to and customarily used by the general public or that is a public meeting area or that is an outdoor public gathering area, and includes areas as described in Section 2.

*Restaurant* means an eating establishment, including but not limited to coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, 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.

*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.

*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. OFFENSES.**

Any owner of a building or the owner's duly authorized agent may designate said building to be smoke-free such that no smoking is permitted in any enclosed area of the premises.

Except as provided in Sections 3 and 4 of this Ordinance, smoking is prohibited in any of the following public places within the Town of Brookside:

1. Any enclosed areas of buildings or facilities that are available to and customarily used by the general public, including but not limited to retail stores, restaurants, banks, office buildings, convention or meeting facilities, hotels, motels, and multi-family residential buildings;
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 noncommercial multi-tenant buildings, apartment buildings, or other multi-family residences sharing common areas;
5. All real property associated with libraries, schools, or other education facilities, museums, auditoriums, and art galleries;



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, lessee, or other person in charge of a public place may, but is not required to, designate one (1) or more areas as smoking areas as detailed in this Section 4.

1. If a smoking area is designated, each smoking area shall be located:
  - a. In an unenclosed area of the premises (out of doors) and a minimum of thirty (30) feet away from any general public entrance to or exit from the building; or,
  - b. Within an enclosed area (indoors) with a separate UVAC 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 can be closed.
2. In the case of restaurants, smoking is 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;
  - b. The restaurant bar area utilizes 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. Such system(s) must be in operation during all hours when food or beverages are served. 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.
  - c. An initial airflow Test and Balance certificate substantiating compliance shall be provided to the Town of Brookside prior to any establishment operating a restaurant bar with an enclosed (indoor) smoking area. Test and Balance certifications issued

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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 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 Town of Brookside.

3. All such smoking areas must be designated by appropriate signs as provided in Section 5 of this Ordinance which are clearly visible to patrons in or entering the area; and
4. All such smoking areas must contain ashtrays, containers, or other facilities for the extinguishment of smoking materials.

#### **SECTION 5. RESPONSIBILITY OF PROPRIETORS.**

The proprietor or other person having control of any area within Section 2 of this Ordinance shall:

1. Post prominently displayed "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.
2. Post conspicuously displayed signs in the lobby of every theater stating that smoking is prohibited within the theater or auditorium, and in the case of motion picture theatres such information shall be shown upon the screen prior to the showing of each feature motion picture;
3. Instruct persons smoking in violation of this article to cease said smoking or to leave the non-smoking area to a designated smoking area.

#### **SECTION 6. REGULATION OF SMOKING IN THE WORKPLACE.**

Any business may, at the employer's discretion, be designated a non-smoking workplace. Other than the exceptions listed in Section 3, if a business chooses to accommodate smoking employees it must provide a smoking area as defined in Section 4 of this Ordinance. An employer is not required by this provision to incur any expense for making structural or other physical modification to accommodate the preferences of non-smoking or smoking employees.

#### **SECTION 7. ENFORCEMENT.**

The provisions of this chapter are enforceable by any duly sworn police officer, any appropriate representative of the Fire Department employed by the Town, the county health officer or a duly authorized representative thereof, or as otherwise allowed by law for prosecution of offenses.

#### **SECTION 8. FINES AND PUNISHMENT.**

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 to designate smoking and non-smoking areas as required herein or who refuses to enforce the designations, shall be in violation of this Ordinance.

fine not less than twenty five dollars (\$25.00) nor more than the maximum penalty allowed by the State of Alabama for a misdemeanor violation for each such "offense." Each day any violation of this Ordinance shall continue shall constitute a separate offense.

### SECTION 9. SUMMONS AND COMPLAINT

Pursuant to Ala. Code § 11-45-9.1 (1975), as amended, which authorizes municipalities to issue Summons and Complaints in lieu of arrest warrants for violation of certain municipal ordinances:

1. Any law enforcement officer or appropriate representative of the Fire Department employed by the Town may issue a Summons and Complaint to any person charged with violation of this Ordinance No. 2005-21 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 its successors.
3. Any party charged with a first offense in violation of this Ordinance may elect to appear before the Brookside 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 may pay a minimum fine of Twenty Five Dollars (\$25.00), and court costs shall be waived for such first offense.

### SECTION 10. MISCELLANEOUS.

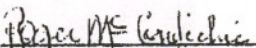
Nothing in this chapter excuses non-compliance with any Federal or State law, other Town ordinances, or any rule or regulation that prohibits smoking.

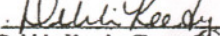
If any portion of this Ordinance shall be held unconstitutional, invalid, or unenforceable, such holding shall not affect the remaining portions of this chapter nor render the remaining portions of this chapter invalid, and to that end the provisions hereof are declared to be severable.

### SECTION 11. EFFECTIVE DATE.

This ordinance shall become effective on the 1<sup>st</sup> day of December, 2008.

ADOPTED AND APPROVED on this the 1st day of December, 2008.

APPROVED:   
Roger McConditichie, Mayor

ATTEST:   
Debbie Keedy, Town Clerk

### CERTIFICATION

I, Debbie Keedy, Town Clerk of the Town of Brookside, Alabama, do hereby certify that the foregoing Ordinance was published on the 2<sup>nd</sup> day of December, 2008 by posting at three conspicuous places located in the corporate limits of the Town of Brookside.