

**ORDINANCE NO. 1189**

**ORDINANCE TO PROHIBIT SMOKING IN PUBLIC PLACES AND  
PLACES OF EMPLOYMENT, PROVIDING PENALTIES FOR THE  
VIOLATION THEREOF**

WHEREAS, Environmental Tobacco Smoke is a leading public health problem in the City of Citronelle and throughout the United States; and

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

WHEREAS, there exists conclusive evidence the 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 side stream smoke from burning cigarettes, causes the deaths of thousands of 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, both the Public Health Services National Toxicology Program and the World Health Organizations 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 that 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.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Citronelle, ALABAMA, that the Council recognizes the rights of those who wish to breathe smoke-free air and establishes this regulation to protect and improve the public health and welfare by requiring each public building and place of employment to be SMOKE-FREE:

**Section I- Definitions and Guidelines**

**Bar.** An area that is devoted to the serving of alcoholic beverages for consumption by guests on premises and in which the serving of food and/or beverages is only incidental to the consumption of such beverages.

**Business.** Any sole proprietorship, partnership, joint venture, corporation, or other business entity, including retail establishments where goods or services are sold as well as professional corporations and other entities where professional services are delivered.

**Designated smoking entrance.** An area outside an entrance to a publicly owned building that is neither the main public entrance nor the primary employee entrance and which has been designated by the building manager as a smoking area.

**Employee.** Any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services to a non-profit entity. This definition includes independent contractors.

**Employer.** Any person or entity that employs the services of one or more individuals.

**Enclosed area.** All space between a floor and a ceiling that is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structure.

**Place of employment.** Any enclosed area under the control of a public or private employer which employees normally access during the course of employment, including, but not limited to, work areas, employee lounges and rest rooms, conference and class rooms, cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

**Public place.** Any enclosed area to which the public is invited or in which the public is permitted including, but not limited to, banks, education facilities, health facilities, laundromats, public transportation, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, 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.

**Public transportation.** Any motorized vehicle used to transport people which is held out for hire by the public or used by a public or private elementary or secondary school to transport students.

**Restaurant.** Any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment that gives or offers food for sale to the public, guests or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, whether it sells or serves alcohol for consumption or not.

**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.

**Service line.** Any indoor line or any portion of an indoor line that extends out of doors, at which one or more persons is waiting for or receiving services of any kind, whether or not such services involves the exchange of money.

**Smoking.** Any inhaling, exhaling, burning, or carrying of any lighted pipe, cigar, cigarette, or other tobacco-like product or substance in any manner or in any form.

**Sports facility.** Any sports pavilion, gymnasium, health spa, swimming pool, roller rink, bowling alley, or other enclosed places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

**Tobacco product.** Any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco that may be utilized for smoking, chewing, inhalation, or other means of ingestion.

## **Section II- Designating Public Places and Places of Employment as Smoke-Free**

- (1) For establishments designated as SMOKE-FREE, no smoking by any persons (employees or patrons) at anytime will be allowed in any part of the enclosed areas of the establishment.
- (2) For establishments designated as SMOKE-FREE, signage shall be posted conspicuously on or adjacent to each and every exterior door to the establishment that is generally accessed by patrons or employees, plainly visible to persons entering through the door. Signage shall be no smaller than 8.5 inches, with white lettering on a red or black background, and include the following statements: "This establishment is a SMOKE-FREE facility" with letters no smaller than 5/8 inch tall (approximately 66 pts); "Smoking is prohibited throughout this facility at all times" with letters no smaller than 1/4 inch tall (approximately 36 pts); and City of Citronelle ORDINANCE NO. 1189

(3) Smoking is prohibited in all public places and all places of employment within the city, including, but not limited to the following:

- (a) All elevators.
- (b) Rest rooms, lobbies, reception areas, hallways, and any other areas of common use.
- (c) Buses, taxicabs, and any other means of public transportation.
- (d) Service lines, or within ten feet of a service line that extends out of doors.
- (e) Retail stores.
- (f) All areas available and customarily used by the general public located in a business patronized by the public, including non-profit and public businesses. Affected businesses include, but are not limited to, professional offices, banks, laundromats, hotels and motels.
- (g) All restaurants, taverns, bars, cocktail lounges and bingo parlors.
- (h) Any enclosed facility that is primarily used for exhibiting any motion picture, stage or drama production, lecture, music recital or other similar performance, except for performers when smoking is part of a stage or drama production.
- (i) Sports facilities.
- (j) Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, or committee, including joint committees or agencies of the city, during the time a public meeting is in progress.
- (k) Within publicly owned buildings, or within ten feet of any entrance to a publicly owned building.
- (l) Waiting rooms, hallways, wards, and semi-private rooms of health care facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, and doctor's and dentist's offices.
- (m) Lobbies, hallways, and other enclosed common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

(n) Polling places.

(o) Within a reasonable distance, of not less than ten feet, of any entrance to any enclosed area where smoking is prohibited.

### **Section III- Violations**

(1) It shall be the responsibility of the owner, business agent, manager or other person having control of such establishment to ensure compliance with all sections of this ordinance pertaining to his/her place of business.

A violator of this ordinance may receive:

- a. In the case of a first violation, a fine of two hundred dollars (\$200.00).
- b. In the case of the second violation, within 24 months of the first violation. A fine of five hundred dollars (\$500.00); and
- c. In the case of three or more violations within 24 months of the second or current violation, a fine of five hundred dollars (\$500.00) for each violation.

(2) The City of Citronelle shall be authorized to suspend or revoke any license or permit issued by or within the jurisdiction of the City of Citronelle for repeated violations of this ordinance, and no provisions, clause or sentence of this section of this ordinance shall be interpreted as prohibiting the City of Citronelle from suspending or revoking any license or permit issued by or within the jurisdiction of the City of Citronelle for repeated violations of this ordinance.

(3) If the owner, business agent, manager, or other persons having control of such establishment attempts to enforce this ordinance and a patron violates it (smokes in a smoke-free establishment), then the owner, business agent, manager or other persons having control shall be deemed to be in violation of this ordinance and the patron shall be subject to a fine as follows:

- a. In the case of a first violation, a fine of two hundred dollars (\$200.00).
- b. In the case of the second violation, within 24 months of the first violation. A fine of five hundred dollars (\$500.00); and

- c. In the case of three or more violations within 24 months of the second or current violation, a fine of five hundred dollars (\$500.00) for each violation.
- (4) Each calendar day an owner, business, agent, manager, or other persons having control of public place or place of employment operates in violation of any provision of this ordinance shall be deemed a separate violation; each calendar day a patron violates this ordinance (i.e. smokes in a SMOKE-FREE establishment) shall be deemed a separate violation.
- (5) Otherwise, any person who shall be deemed to be in violation of this ordinance shall be subject to a fine as follows:
- a. In the case of a first violation, a fine of two hundred dollars (\$200.00).
  - b. In the case of the second violation, within 24 months of the first violation. A fine of five hundred dollars (\$500.00); and
  - c. In the case of three or more violations within 24 months of the second or current violation, a fine of five hundred dollars (\$500.00) for each violation.
- (6) It shall be unlawful for any person to remove, deface, or destroy any sign required by this section.

#### **Section IV- Enforcement**

- (7) Authority to enforce this ordinance shall be held by the City of Citronelle, its Police Department, or its designees.
- (8) An owner, manager, or employee of an establishment regulated by this ordinance shall inform persons violating this ordinance of the appropriate provisions thereof.
- (9) The City of Citronelle's Police Department, or its designee, the City of Citronelle's Inspection Department or its designee shall, while in an establishment that is undergoing otherwise mandated inspections, inspect for compliance with this ordinance.
- (10) Any citizen that desires to register a complaint under this ordinance may initiate enforcement with the magistrate of the City of Citronelle.
- (11) Any fines or fees collected under this ordinance will be used for the enforcement of this ordinance and its regulations.

**Section V- Non-retaliation**

No owner, business agent, manager, or other persons having control of a public place or place of employment, shall discharge, refuse to hire, refuse to serve, or have other adverse action against any employee, applicant, customer, or person because such employee, applicant, customer, or person takes any action in furtherance of the enforcement of this ordinance or exercise any right conferred by this ordinance. Any retaliation is deemed a violation of this ordinance subject to the penalties and fines established in Section III.

**Section VI- Conflict with other Laws, Ordinances, or Regulations**

- (12) Nothing in this ordinance shall be deemed to amend or repeal any applicable fire, health, or other law, ordinance or regulation so as to permit smoking in areas where it is prohibited by such fire, health, or other law, ordinance, or regulation.
- (13) Nothing in this ordinance shall be deemed to preempt the further more restrictive limitation of smoking in the City of Citronelle by any regulatory body within the limits of its authority and jurisdiction.

**Section VII- Summons and Complaint**

Pursuant to 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:

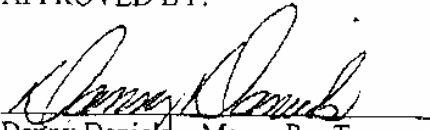
- (1) Any law enforcement officer or appropriate representative employed by the City of Citronelle, Alabama may issue a Summons and Complaint to any person charged with violation of this Ordinance Number 1189 and release such person from custody upon his or her written promise to appear in court at the 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 Number 1189 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 may pay a minimum of Two-hundred Dollars (\$200.00) and court costs shall be waived for such first offense.

**Section VIII- Effective date**

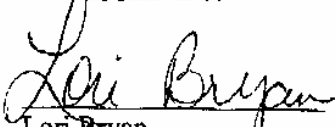
This ordinance shall become effective the 1<sup>st</sup> day of March, 2006.

**APPROVED and ADOPTED** this the 8<sup>th</sup> day of December, 2005.

APPROVED BY:

  
Dariny Daniels - Mayor Pro Tem

ATTESTED BY:

  
Lori Bryan  
City Clerk