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ARTICLE VI. - SMOKING IN PUBLIC PLACES

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Sec. 14-211. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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 five or more persons.

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 is not a place of employment.

Public or public place means 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 14-214.

Service line means, any indoor line at which one or more persons are waiting for or receiving service of any kind, regardless of whether such service involves the exchange of money.

Smoking or smoke means the carrying, holding, or possessing of lighted smoking materials in any form including, but not limited to, the possession of lighted cigarettes, cigars, pipes, or other tobacco products.

(Code 1980, § 19-71; Ord. No. 70-89, § 1, 12-5-1989)

Cross reference— Definitions generally, § 1-2.

Sec. 14-212. - Violations and penalty.

The following shall be guilty of an offense and shall be subject to punishment by a fine of not less than \$1.00 nor more than \$500.00 for each such offense:

- (1) Any person who willfully smokes in an area where smoking is prohibited under this article;
- (2) Any business proprietor or person in charge of a public place who fails or refuses, five days after warning, to designate smoking and nonsmoking areas as required herein or who, being asked to do so, fails or refuses to enforce the designations; or
- (3) Any employer who fails or refuses to adopt and implement a smoking policy for the workplace which shall reasonably accommodate, insofar as possible as provided in this section, the preferences of smoking and nonsmoking employees.

(Code 1980, § 19-78; Ord. No. 70-89, § 8, 12-5-1989)

State law reference— *Limitations on penalties, Code of Ala. 1975, § 11-45-9.*

Sec. 14-213. - Enforcement of article provisions.

The provisions of this article are enforceable by the county health officer or duly authorized representative.

(Code 1980, § 19-77; Ord. No. 70-89, § 7, 12-5-1989)

Sec. 14-214. - Food and beverage establishments.

(a) *Definitions.* The following definitions apply to this section:

Business agent means an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Employee means any individual who performs services for an employer in return for wages or profit.

Enclosed means a space, structure, facility or any portion thereof, bounded by walls (with or without windows) continuous from floor to ceiling served by heating, ventilation and air conditioning (HVAC) system(s) and through which air can circulate from one portion to another, including, but not limited to offices, rooms, hallways, customer service areas, foyers, common areas, waiting areas, restrooms, lounges, and eating areas.

Food and/or beverage establishment means any establishment which is required to have a business license from the city and which provides food and/or beverages under a permit from the health department and/or an "on premises" retail alcoholic beverage license from the state alcohol beverage control (ABC) board.

HVAC means heating, ventilation and air conditioning system.

Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or form.

(b) *Restrictions.*

- (1) It shall be the responsibility of the owner of the food and beverage establishment to designate his establishment as either smoke-free or smoking.
- (2) 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, except as noted in subsection (b)(8).
- (3) 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 by 11 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 five-eighths of an inch tall (approximately 66 pts); "Smoking is prohibited throughout this facility at all times" with letters no smaller than one-fourth of an inch tall (approximately 36 pts); and "City of Montgomery Ordinance No. 23-2004" with letters no smaller than one-eighth of an inch tall, or 20 pts.
- (4) For establishments designated as smoking, smoking by patrons shall be allowed throughout all enclosed areas generally occupied by patrons. No person under 18 years of age shall be admitted on the premises of an establishment designated as smoking as a patron or employee, and it shall be unlawful for the owner, business agent, manager or other person having control of any such establishment to admit any minor under 18 years of age to the premises as a patron or employee.
- (5) For establishments designated as smoking, signage shall be posted on or adjacent to each and every door to the establishment that is generally accessed by the patrons or employees, plainly visible to persons entering through the door. Signage shall be no smaller than 8.5 inches by 11 inches, with white lettering on a red or black background, and include the following statements: "This establishment is a smoking facility" with letters no smaller than five-eighths-inch tall (approximately 66 pts.); "Smoking is allowed throughout this facility at all times" with letters no smaller than one-fourth of an inch tall (approximately 36 pts.); "there is no non-smoking section" with letters no smaller than one-fourth of an inch tall (approximately 36 pts.); and "City of Montgomery Ordinance No. 23-2004" with letters no smaller than one-eighth of an inch tall, or 20 pts.

- (6) For establishments designated as smoking, patrons shall not be offered a choice of a nonsmoking section.
 - (7) Two or more food and beverage establishments within the same building or facility operating under separate permits and/or licenses shall not be connected by any interior means of access including but not limited to doorways, windows, service bars, or service windows unless each has and all have the same designation (smoking or smoke-free). If smoking is chosen for any, but not all such establishments, each one for which smoking is chosen must have separate HVAC system(s) which serve only that area, and be physically separated in its entirety by walls which extend from floor to ceiling above, and any door to that smoking area must be self-closing.
 - (8) A building or other like facility (not an establishment) which is smoke-free but which has a smoking establishment within it may add additional language to the required signage after "smoking is prohibited throughout this facility at all times" stating "except in (name of area)" in matching letters, and signage is required for exterior doors only which are affixed to the proper floor to ceiling walls which are on 100 percent separate HVAC systems with a minimum of a 36-inch, maximum 72-inch opening for ingress and egress of servers and customers. If all areas/establishments within a facility are smoke-free, then signs shall be required for exterior doors only.
 - (9) Smoking may be permitted in hotel, motel, inn, bed and breakfast, and lodging rooms that are rented to guests designated as "smoking rooms." A facility which offers such rooms for rent to guests may add additional language to the required signage after "smoking is prohibited throughout this facility at all times" stating "lodging rooms are available for guests who smoke" in matching letters and signage.
 - (10) Food and beverage establishments will be listed by status (smoke-free or smoking) in a listing to be published annually by the city's finance department no later than August 1, 2004; the first listing will be done by March 1, 2005; the listing will be available to the public from the city's finance department and will also be posted on the city's website.
 - (11) Food and beverage establishments may offer employees a separate smoking lounge if it is physically separated in its entirety by walls which extend from floor to ceiling above, and served by a HVAC system that shall be balanced to keep a zero pressure environment in all doorways and all windows, and only serves that area which has self-closing doors and is available only to the employees of that establishment.
- (c) *Violations.*
- (1) It shall be the responsibility of the owner, business agent, manager or other person having control of such food and beverage establishments to ensure compliance with all subsections of this section pertaining to his place of business. A violator of this section may receive:
 - a. In the case of a first violation, a fine of \$100.00;
 - b. In the case of the second violation, within 24 months of the first violation, a fine of \$500.00; and
 - c. In the case of a three or more violations within 24 months of the second or current violation, a fine of \$500.00 for each violation.
 - (2) The city shall be authorized to suspend or revoke any license or permit issued by or within the jurisdiction of the city for repeated violations of this section, and no provision, clause or sentence of this section shall be interpreted as prohibiting the city from suspending or revoking any license or permit issued by or within the jurisdiction of the city for repeated violations of the section.
 - (3) If the owner, business agent, manager, or other persons having control of such food and beverage establishment attempts to enforce this section and a patron violates it (smokes in a smoke-free establishment), then the owner, business agent, manager or other persons having control shall not be deemed to be in violation of this section and the patron shall be subject to a fine as follows:
 - a. In the case of a first violation, a fine of \$100.00;
 - b. In the case of a second violation, within 24 months of the first violation, a fine of \$500.00; and,
 - c. In the case of three or more violations within 24 months of the second or current violation, a fine of \$500.00 for each violation.
 - (4) Each calendar day an owner, business agent, manager, or other persons having control of a food and beverage establishment operates in violation of any provision of this section shall be deemed a separate violation; each calendar day a patron violates this section (i.e., smokes in a smoke-free establishment) shall be deemed a separate violation.
- (d) *Enforcement.* Authority to enforce this section shall be held by the city, or its designees. An owner,

manager, operator, or employee of an establishment regulated by this section shall inform persons violating this section of the appropriate provisions thereof. The fire department, or its designee, the health department or its designee shall, while in an establishment that is undergoing otherwise mandated inspections, inspect for compliance with this section. Any citizen that desires to register a complaint under this section may initiate enforcement with the magistrate of the city. Any fines or fees collected under this section will be used for the enforcement of this section and its regulations.

- (e) *Nonretaliation.* No owner, business agent, manager, or other persons having control of a food and beverage establishment, 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 section or exercise any right conferred by this section.

(Ord. No. 23-2004, §§ 1—5, 3-2-2004)

Sec. 14-215. - Smoking in the workplace.

Each employer in the city shall implement and maintain a smoking policy for its employees within 60 days after December 12, 1989. The policy shall contain, at a minimum, the following provisions and requirements:

- (1) The employer shall accommodate, insofar as possible, the preferences of nonsmoking and smoking employees. An employer is not required by this subsection to incur any expense for making structural or other physical modifications to accommodate the preferences of nonsmoking or smoking employees.
- (2) The smoking policy shall be announced within three weeks of adoption to all employees working in the place of employment and posted conspicuously in all workplaces under the employer's control.

(Code 1980, § 19-76; Ord. No. 70-89, § 6, 12-5-1989)

Sec. 14-216. - Other laws.

Nothing in this article excuses noncompliance with any federal or state law, other city ordinance, or any rule or regulation which prohibits smoking.

(Code 1980, § 19-79(a); Ord. No. 70-89, § 9(a), 12-5-1989)

Secs. 14-217—14-250. - Reserved.