

ORDINANCE NO. 1993- 10

AN ORDINANCE TO REGULATE SMOKING  
IN CERTAIN PUBLIC PLACES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DAPHNE,  
ALABAMA, AS FOLLOWS:

SECTION I. PURPOSE

Whereas the United States Surgeon General has long warned smokers that smoking tobacco is hazardous to their health, and evidence clearly indicates smoke is a material annoyance; an inconvenience; and a health hazard to nonsmokers; in order to serve public health, safety and welfare and to encourage all citizens in general, to better their health by reducing hazards, the declared purpose of this Ordinance is to prohibit the smoking of tobacco, or any weed or plant, in public places, places of employment in the City and throughout all City owned buildings, except in designated smoking areas or facilities exempted from this Ordinance.

SECTION II. DEFINITIONS.

CITY means the City of Daphne, Alabama.

SMOKE or SMOKING shall include carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment; or the lighting or omitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind.

PUBLIC PLACE shall mean any enclosed area to which the public is invited or permitted, including but not limited to retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting areas, restrooms, elevators, government or civic buildings, educational facilities, health facilities and public transportation. A private

residence does not constitute a "public place".

PLACE OF EMPLOYMENT shall mean any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, restrooms, employee lounges, conference rooms and employee cafeterias. A private residence does not constitute a "place of employment".

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

EMPLOYER means any person, partnership, corporation, association or other private or public entity which employs one or more persons.

RESTAURANT means any business or eating establishment which derives the largest percent of its gross income from the sale of food items for on premise consumption.

BAR means any business or cocktail lounge, or other clearly designated room or partitioned area of a restaurant, which derives the largest percent of its gross income from the sale of alcoholic beverages for on premise consumption.

HEALTH CARE FACILITY means any institution providing individual care or medical treatment of disease, whether physical, mental, emotional, psychological or physiological conditions.

### SECTION III. PROHIBITIONS.

(a) No person shall smoke in any "public place" or "place of employment" which has been designated as a "No Smoking" area. Such nonsmoking areas shall be identified by clearly, sufficiently and

conspicuously posted "No Smoking" signs and/or signs with the international "No Smoking" symbol.

(b) In no case shall any person smoke in any portion of a building owned or leased by the City.

(c) In no case shall any person be allowed to smoke in retail food production and marketing establishments, including grocery stores and supermarkets open to the public.

#### 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) Employers have the responsibility of providing smoke-free areas for nonsmokers to the maximum extent possible within existing facilities, but employers are not required to incur any expense or make structural or other physical modifications in providing these areas.

(c) Any employer who in good faith develops and promulgates a policy regarding smoking and nonsmoking 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.

(d) Restaurants shall designate at least one-half or more if demand dictates, of the total seating capacity for nonsmokers. Said restaurants, also must inform all patrons that a nonsmoking area is provided.

(e) Any facility or area may be designated in its entirety as a nonsmoking area by the owner or manager thereof.

(f) No public place shall be designated as a smoking area in its entirety, except areas which are enumerated in Section VI of the Ordinance.

#### SECTION V. POSTING OF SIGNS.

(a) Signs which designate smoking or nonsmoking areas established by this Ordinance shall be clearly, sufficiently and conspicuously posted in every room, building or other place so covered by this Ordinance.

(b) "No Smoking" signs shall be specifically placed in retail food production and marketing establishments, including grocery stores and supermarkets open to the public, so that they are clearly visible.

(c) The manner of such posting, including the wording, size, color, design and place of posting, whether on walls, doors, tables, counters, stands or elsewhere, shall be at the discretion of the owner, operator, manager or other person having control of such room, building or other place, so long as clarity, sufficiency and conspicuousness are apparent in communication the intent of this Ordinance.

#### SECTION VI. EXCEPTIONS.

The following are exempted from the requirements of this Ordinance:

(a) Individual private offices, hotel rooms and banquet rooms rented to guests, assembly areas and meeting places being used for private social functions (except facilities owned or leased by the City), private hospital rooms, psychiatric facilities, bars and stores that deal exclusively in tobacco products and accessories.

(b) Restaurants or eating establishments with a seating capacity of less than twenty (20) persons. Such restaurants or eating establishments shall have the options of designation a nonsmoking section, allowing smoking, or prohibiting smoking throughout the establishment.

(c) Any owner, or manager of a business, or other establishment, subject to this Ordinance may apply to the City Council for an exemption from, or modification of this Ordinance due to unique or unusual circumstances or conditions.

#### SECTION VII. ENFORCEMENT.

(a) The Mayor or his designee shall be responsible for compliance with this Ordinance when facilities which are owned, operated or leased by the City are involved. The City Revenue Officer shall provide business license applicants with a copy of this Ordinance.

(b) The owner, operator or manager of any facility, business or agency within the purview of this Ordinance shall comply herewith. Such owner, operator or manager shall post or cause to be posted all "No Smoking" signs required by this Ordinance. Such owner, operator or manager shall not allow service to any person who violates this Ordinance by smoking in a posted "No Smoking" area.

(c) It shall be the responsibility of employers to disseminate information concerning the provisions of this Ordinance to employees.

(d) Any person who smokes in a posted "No Smoking" area is in violation of this Ordinance. Also, any person who willfully

destroys or defaces any sign posted in compliance with this Ordinance is in violation of this Ordinance.

(e) The provisions of this Ordinance are enforceable by any duly sworn police or fire officer employed by the City or the Code Enforcement Officer of the City.

SECTION VIII. VIOLATION; PENALTY.

Any person found guilty of violating the provision of this Ordinance shall be punished by a fine of not less than Twenty Five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the jail or at hard labor for a period not exceeding six (6) months, or by both such fine and imprisonment at the discretion of the judge.

SECTION IX. SEVERABILITY.

If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decisions shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION X. This Ordinance, when adopted, specifically overrules and supersedes Ordinance No. 1990-03 of the City of Daphne, Alabama, and any amendments thereto.

ADOPTED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
DAPHNE, ALABAMA, THIS 7th DAY OF June, 1993.

  
E. HARRY BROWN, MAYOR

ATTEST:

  
RUTH MARTIN, CITY CLERK

STATE OF ALABAMA )

COUNTY OF BALDWIN )

I, RUTH MARTIN, City Clerk of the City of Daphne, Alabama, do hereby certify the foregoing to be a true and exact copy of an Ordinance approved and adopted by the City Council of the City of Daphne, Alabama, at its meeting held on the 7th day of June, 1993.

  
RUTH MARTIN, CITY CLERK