

ORDINANCE NO. 92-115

WHEREAS, the Board of Commissioners has found that numerous studies have determined that tobacco smoke is a major contributor to indoor air pollution, and

WHEREAS, reliable studies have shown that breathing second-hand smoke is a cause of disease, including lung cancer, in healthy nonsmokers. At special risk are elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease, and

WHEREAS, health hazards induced by breathing second-hand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm.

NOW, THEREFORE BE IT ORDAINED by the Board of Commissioners of the City of Dothan, Alabama, as follows:

Section 1. That Chapter 11, Health and Sanitation of the Code of Ordinances of the City of Dothan is hereby amended by adding Article III, Smoking Pollution Control, which shall read as follows:

CHAPTER 11. HEALTH AND SANITATION

ARTICLE III. SMOKING POLLUTION CONTROL

Sec. 11-40. Purpose.

The purpose of this article is (1) to protect the public health and welfare by prohibiting smoking in public places except in designated smoking areas, and by regulating smoking in places of employment, and (2) to strike a reasonable balance between the needs of persons who smoke and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air shall have priority.

Sec. 11-41. Definitions.

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

1. "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.
2. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.

3. "Dining Area" means any enclosed area containing a counter or tables upon which meals are served.
4. "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
5. "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.
6. "Motion Picture Theatre" means any theatre engaged in the business of exhibiting motion pictures.
7. "Non-Profit Entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objects or purposes of the organization and not to private financial gain. A public agency is not a "non-profit entity" within the meaning of this section.
8. "Place of Employment" means 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, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways.
 - a. A private residence is not a "place of employment" unless it is used as a child care or health care facility.
 - b. The dining area of a restaurant is not a "place of employment."
9. "Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, City of Dothan owned facilities, banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theatres and waiting rooms. A private residence is not a "public place."
10. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Section 11-41(1).
11. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

12. "Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
13. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed, plant or other combustible substance in any manner or in any form.
14. "Sport Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition or witness sports events.

Sec. 11-42. Application of Articles to City Owned Facilities:

All enclosed facilities owned by the City of Dothan shall be designated as no smoking except in designated smoking areas.

Sec. 11-43. Prohibition of Smoking in Public Places.

- A. Smoking shall be prohibited in all enclosed public places within the City of Dothan, including, but not limited to, the following places, and with the following exceptions.
 1. Elevators.
 2. Buses, taxicabs, and other means of public transit under the authority of the City of Dothan, and ticket, boarding, and waiting areas of public transit depots; provided, however, that this prohibition does not prevent (a) the establishment of separate waiting areas for smokers and nonsmokers of equal size, or (b) the establishment of a maximum of fifty percent (50%) of a given waiting room as a smoking area.
 3. Restrooms.
 4. Service lines.
 5. Retail stores, except areas in said stores not open to the public and all areas within tobacco stores.
 6. All areas available to and customarily used by the general public in all City of Dothan owned facilities, businesses and non-profit entities patronized by the public, including but not limited to, attorneys offices and other offices, banks, hotels and motels. See Section 11-45, paragraph A (7).
 7. Restaurants (provided, however, that this prohibition does not prevent (a) the designation of a contiguous area within a restaurant that contains a maximum of fifty percent (50%) of the seating capacity of the restaurant as a smoking area or (b) the providing of separate rooms for smokers and nonsmokers so long as the rooms designated for smoking do not contain more than fifty percent (50%) of the seating capacity of the

9. Any building not open to the sky which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance, except when smoking is part of a stage production.
 10. Sports arenas (enclosed) and convention halls, except in designated smoking areas.
 11. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.
 12. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices.
 13. Polling places.
- B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility described in this section may declare that entire establishment or facility as a nonsmoking establishment.
- C. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility described in paragraph A. 5, 6 and 7 may declare the entire establishment or facility as a smoking establishment as long as proper signage as required by Section 11-46 is conspicuously posted at every entrance to such facility.

Sec. 11-44. Regulation of Smoking in Places of Employment.

- A. It shall be the responsibility of employers to provide smoke-free areas for nonsmoking employees within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.
- B. Within 90 days of the effective date of this article, each employer having an enclosed place of employment located within the City shall adopt, implement, make known and maintain a written smoking policy which shall contain at a minimum the following requirements:
1. Any employee in a place of employment shall have the right to designate his or her work area as a nonsmoking area and to post the same

with an appropriate sign or signs, to be provided by the employer. If, due to the proximity of smokers, size of the work area, poor ventilation or other factors, such designation does not reduce the effects of smoke to the satisfaction of the employee, the employer shall make additional accommodation by expanding the size of the work area subject to the prohibition against smoking or implementing other measures reasonably designed to eliminate the effects of smoke on the employee.

2. Smoking shall be prohibited in all common work areas in a place of employment, unless every person who works in that area agrees in writing that a smoking area will be designated.
 3. Prohibition of smoking in auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities and restrooms.
 4. Provision and maintenance of separate and contiguous nonsmoking areas of not less than fifty percent (50%) of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges or provision and maintenance of separate and equal sized cafeterias, lunchrooms and employee lounges for smokers and nonsmokers.
 5. Employers have the right to designate smoking areas within their facilities so long as it does not infringe on the rights of non-smokers.
 6. In any dispute arising under the smoking policy, the health concerns of the nonsmoker shall be given precedence.
- C. The smoking policy shall be communicated to all employees within three (3) weeks to its adoption.
- D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.
- E. Notwithstanding any other provision of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.

Sec. 11-45. Where Smoking Not Regulated

- A. Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:
1. Bars.
 2. Private residences, except when used as a child care or health care facility.
 3. Hotel and motel rooms rented to guest.
 4. Retail tobacco stores and tobacco processors.
 5. Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while these places are being used for private functions.

6. A designated smoking area will be established for inmates in the City Jail.
 7. A private, enclosed office, if all persons present consent and further provided that this exception shall not be construed to permit smoking in the reception areas of lobbies or offices. (Except City owned facilities.)
- B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

Sec. 11-46. Posting of Signs

- A. "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch (1") in height or the international "No Smoking" symbol (consisting of pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is regulated by this article, by the owner, operator, manager or other person having control of such building or other place.
- B. Every theatre owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theatre or auditorium, and in the case of motion picture theatres, such information shall be shown upon the screen for at least five (5) seconds prior to the showing of each feature motion picture.
- C. Every restaurant shall have posted at every entrance a conspicuous sign clearly stating that a nonsmoking section is available, and every patron shall be asked as to his or her preference.
- D. All facilities described in paragraph 11-43 (c) shall have posted at every entrance a conspicuous sign clearly stating that this establishment has smoking sections only available.

Sec. 11-47. Enforcement.

- A. The provisions of this article are enforceable by any duly sworn police officer employed by the City of Dothan, the County Health Officer or a duly authorized representative thereof, or as otherwise allowed by law for prosecution of offenses.
- B. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Department of Health.
- C. The Fire Department or the Health Department shall require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager, operator or other person having control of such establishment that all requirements of this article have been complied with.

- D. Any owner, manager, operator or employee of any establishment regulated by this article may inform any person violating this article of the appropriate provisions thereof.
- E. Notwithstanding any other provision of this article, a private citizen may bring legal action to enforce this article.

Sec. 11-48. Violations and Penalties.

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this article to fail to comply with any of its provisions. The owner, manager or operator of a restaurant shall not be deemed in violation of Sec. 11-46 (c) if the host or hostess of the restaurant fails to ask the seating preference of patrons, but shall be deemed in violation thereof if the restaurant has no stated policy requiring that patrons be asked their preference.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this article.
- C. Any person who violates any provision of this article is subject to summons by the Department of Health and/or a Dothan Police Officer to appear in Municipal Court to answer the charges punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - 2. A fine not exceeding two hundred dollars (\$200) and/or 80 hours of community service with a charitable organization, designated by the court, for a second violation of this article within one (1) year.

Sec. 11-49. Nonretaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this article.

Sec. 11-50. Exemptions.

- A. Any owner, operator or manager of a business or other establishment subject to this article may apply to the City of Dothan for an exemption or modification to any provision of this article due to unusual circumstances or conditions. Exemptions may be granted on a showing of financial impracticability.
- B. Such exemption shall be granted only if the City Commission finds from the evidence presented by the applicant for exemption at a public hearing that it is financially impracticable for the applicant to comply with this article.
- C. The applicant for an exemption shall be required to pay a reasonable fee to cover the costs of the hearing.