

ORDINANCE
1990-25

AN ORDINANCE AMENDING ORDINANCE 1990-15

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

WHEREAS, studies by the Surgeon General of the United States, the National Academy of Sciences, and other health organizations have linked passive exposure to tobacco smoke (second-hand smoke) to a variety of negative health conditions in nonsmokers; and

WHEREAS, the possession of lighted smoking materials in public places is a nuisance and is hazardous to the public health, safety, comfort, convenience, and indoor environment; and)

~~(WHEREAS, the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of non-smokers to environmental tobacco smoke, and)~~

WHEREAS, the City Council of the City of Eufaula, Alabama seeks to strike a reasonable balance between the rights of smokers and nonsmokers by regulating smoking in certain public places and places of employment;

Section 1. Definitions.

(a) "Bar" or "Cocktail Lounge". Any establishment primarily engaged in the business of selling or dispensing alcoholic or other beverages.

(b) "Health care facility". Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions.

(c) "Person". Any individual, firm, partnership, association, corporation, company or organization of any kind.

(d) "Place of employment". Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. A private residence is not a place of employment.

(e) "Public conveyance". Any mass transit vehicle or school bus.

(f) "Public meeting". Any meeting or assembly held in any room or chamber wherein public, civic or governmental business is conducted and which is open to the public either as participants or spectators.

(g) "Public place". Any enclosed area to which the public is invited or in which the public is permitted, not including the offices or work areas not entered by the public in the normal course of business or use of the premises. A private residence is not a public place.

(h) "Restaurant". Any establishment, or place within an establishment, open to the public that offers food and beverages for consumption on the premises.

(i) "Retail store". Any establishment whose primary purpose is to sell or offer for sale to consumers, not for resale, any goods, services, wares, merchandise, articles or food for consumption off the premises.

(j) "Smoking". The lighting, holding or carrying of, or emitting or exhaling the smoke of, a pipe, cigar or cigarette of any kind.

(k) "Sports arena". Any indoor facility primarily used for sports, cultural or similar events.

(l) "Theater". Any indoor facility primarily used for the exhibition of any motion picture, stage drama, musical recital, dance, lecture or other similar performance.

(m) "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;

(n) "Employee" means any person who employs another for compensation or profit;

(o) "Employer" means any person who is employed for compensation or profit;

Section 2. Prohibition.

(a) Smoking is unlawful in the following public places during the hours in which they are open to the public:

- (1) Art galleries, libraries, museums and similar cultural facilities;
- (2) Classrooms, schools, lecture halls and other educational facilities;
- (3) Elevators and restrooms;

- (4) Health care facilities, not including the inpatient sleeping quarters of any facility; each such facility shall make a reasonable effort to assign patients to sleeping rooms according to the patient's smoking or non-smoking preference; provided, however, that the owner or other person with authority to manage and control such facility may designate separate rooms or areas in which smoking is permitted, using existing physical barriers and ventilation systems to the greatest extent possible to minimize the smoke in adjacent no-smoking areas;
 - (5) Public conveyance;
 - (6) Public meetings;
 - (7) Retail stores, restaurants, banks, municipal buildings, office buildings and offices, provided, however, that smoking may be permitted in those areas of enclosed shopping centers or malls that are external to the retail stores and are used by customers as a route of travel from one store to another and consist primarily of walkways and seating arrangements; and smoking maybe allowed in private, enclosed offices even though such offices may be visited in the normal course of business by non-smoking employees;
 - (8) Theaters and sports arenas, provided, however, that smoking may be permitted in the area that serves as a lobby if physically separate from the spectator area.
 - (9) Any indoor place of entertainment or recreation, including but not limited to, gymnasiums, theatres, concert halls, bingo halls, arenas, and enclosed swimming pools.
- (b) Smoking is unlawful in designated no-smoking areas of places of employment(, ~~as set forth in Section 6~~).

Section 3. Motels/Hotels

A motel operator shall designate at least 15% of his available motel rooms as non-smoking rooms. No one who requests a non-smoking room shall be placed in a room designated for smoking without that person's informed consent. New motels built after the effective date of this ordinance shall comply with 15% of the available rooms designated as non-smoking rooms. Existing motels shall have a phase-in period for compliance. Those existing motels shall comply either at the time of their next

remodeling project or within a five (5) year period, whichever is the sooner.

Section (3) 4. Exceptions.

Section 2 and the restrictions imposed therein shall not apply to:

(a) Areas which are specifically designated as smoking areas in accordance with Section (4) 5 of this Ordinance;

(b) An entire room or hall which is privately owned and used for private social functions where the seating arrangements are under control of the sponsor of the function and not that of the person in charge of the room or hall.

(c) A separated bar area of a restaurant; or a licensed lounge;

(d) Taxicabs and limousines where the driver and all passengers affirmatively consent to smoking in such vehicle;

(e) A private, enclosed office provided that this exception shall not be construed to permit smoking in the reception areas of offices unless designated as smoking areas;

(f) Performers upon the stage, provided that the smoking is part of a theatrical production;

(g) A tobacco specialty retail shop;

(h) Restaurants where seating capacity is fifty (50) or less; however these restaurants shall either have to be smoke free, or post a notice at the entry to the business that non-smoking areas are not provided.

(i) Any retail store employing 20 people or less.

Section (4) 5. Designation of Smoking Areas.

(a) Smoking areas may be designated by proprietors or other persons in charge of a public place as designated in Section 2, except in places in which smoking is otherwise prohibited by the Fire Department of the City of Eufaula or by other statute, ordinance, or resolution. ~~(A motel operator shall have the option of designating not more than 50% of his available motel rooms as smoking rooms. No one who requests a non smoking room shall be placed in a room designated for smoking without that person's informed consent.)~~

(b) Where smoking areas are designated, each smoking area shall:

~~(1) Be totally separate and set apart by full physical barriers from non-smoking areas; and~~

((2)) (1) Be situated so existing ~~(barriers or newly constructed barriers and)~~ functioning ventilation systems are used to eliminate the irritating and toxic effects of smoke in adjacent non-smoking areas; and

~~(3))~~ (2) Be designated by appropriate signs which are clearly visible to patrons in or entering the area via the front entrance to the premises; and

~~(4))~~ (3) Contain ashtrays, containers or other facilities for the extinguishment of smoking materials; and

~~(5))~~ (4) Not include service lines or cashier areas.

~~(6))~~ (5) Not include meat or produce counter areas in any store.

(c) No public place within Section 2, other than those places enumerated as exceptions under Section ~~(3)~~ 4, shall be designated as a smoking area in its entirety.

Section 6. Restaurants

(a) Restaurants with a seating capacity of fifty or less shall either have to be smoke free, or post a notice at the entry to the business that non-smoking areas are not provided

(b) In restaurants having a seating capacity of more than fifty the provisions of Section 5., Designation of Smoking Areas, shall apply.

Section ~~(5)~~ 7. Responsibility of Proprietors.

The proprietor or other person having control of any area with Section 2 shall:

(a) Provide a seat in a non-smoking area for any persons requesting such a seat, provided that non-smoking seats are available;

(b) Prominently post "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. The proprietor or other person having control of such building or

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public place shall clearly and conspicuously post such a sign in every room building or other area where smoking is regulated by this Ordinance;

(c) Post signs conspicuously in the lobby of every theatre 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 prior to the showing of each feature motion picture;

~~(d) Request persons smoking in violation of this Ordinance to stop, or to leave the non-smoking area and move to a designated smoking area.)~~

~~(Section 6. Places of Employment, written smoking policy.~~

~~(a) Within 6 months after the effective date of this ordinance, every employer in the City of Eufaula covered by the ordinance shall adopt, implement and maintain a written smoking policy which shall contain, at the minimum, the following provisions:~~

~~(1) A statement providing that the employer shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of smoking and non-smoking employees, if a satisfactory accommodation cannot be reached, the preferences of non-smoking employees shall prevail;~~

~~(2) A statement providing that smoking may be permitted in private, enclosed offices even though such offices may be visited in the normal course of business by non-smoking employees;~~

~~(3) A statement prohibiting smoking in auditoriums, classrooms, elevators, medical facilities, conference rooms and rooms containing photo-copying or other office equipment used in common by employees;~~

~~(4) A procedure to resolve employee disputes and objections arising under the smoking policy;~~

~~(5) A statement providing for protection from retaliatory adverse personnel action to employees exercising rights granted under the smoking policy.~~

~~(b) Employers shall supply a written copy of the smoking policy to all current employees within 3 weeks of the date of its adoption and to all future employees at the time of their entry into employment. Employers shall also furnish the City Clerk with a copy of said smoking policy as called for in~~

~~Section 6 at the time same is delivered to the employees.~~

~~(c) Employers shall post the smoking policy conspicuously in the place of employment.)~~

~~(Section 7. Renewal of business licenses, issuance of new license.~~

~~(a) No existing business license can be renewed and no new business license can be issued after January 1, 1991, until a copy of said smoking policy is on file with the City Clerk.)~~

Section 8. Enforcement.

(a) The owner or other person having the authority to manage and control any public place or place of employment, or a designated agent of such owner or manager, shall inform persons smoking in restricted areas that they are in violation of the law. ~~(Wilful refusal to provide no smoking areas as called for under this ordinance and wilful refusal of such manager or owner to inform persons smoking in restricted areas that they are in violation of the law may be used as grounds for revoking the business license of said establishment.)~~ For purposes of this section, compliance with the signage requirement of Section 7 will constitute compliance with this requirement of informing persons smoking in restricted areas.

(b) The provisions of this Article are enforceable by any duly sworn police officer employed by the City of Eufaula, ~~the County Health Officer~~ or a duly authorized representative thereof, or as otherwise allowed by law for prosecution of offenses.

Section 9 Violation and Penalty.

(a) The following acts constitute violations of this article:

- (1) Smoking in a posted no-smoking area;
- (2) Failure to post a no-smoking sign as required by this article;

~~(3) Wilful failure to inform any person who violates this article, when such duty to inform arises as set forth in Section 7 or Section 8,)~~

~~(4)~~ (3) Willful destruction or defacement of a sign posted as required by this article;

~~(5)~~ ~~(4)~~ Failure to adopt a smoking policy as set forth in Section 6.

(b) Anyone who violates any provision of this article shall be liable for a civil penalty and shall be punished as provided in Section 1-14, Code of Ordinances, City of Eufaula, Alabama. Each day such violation continues shall constitute a separate offense. All arrests made under this ordinance shall be by citation and summons as provided for in Ordinance 1989-5.

Section 10 General Provisions; effective date

(a) Nothing in this article shall be construed to permit smoking where it is otherwise prohibited by law or regulations.


(b) Nothing in this article shall be construed to preclude any owner or other person having the authority to manage and control any public place or place of employment from prohibiting smoking to a greater extent than is provided by this article.

(c) If any provisions of this article, or the application thereof to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are hereby declared to be severable.

~~(d) This ordinance shall be effective thirty (30) days from the day it becomes law.~~

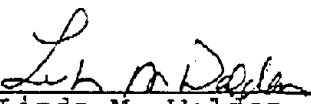
ADOPTED AND APPROVED this 3rd day of December, 1990.

CITY OF EUFAULA, ALABAMA,
A MUNICIPAL CORPORATION



Charles Blackmon, Council President

ATTEST:



Linda M. Walden, City Clerk