

ORDINANCE  
2003-11

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF EUFAULA, ALABAMA, ARTICLE II, SMOKING IN PUBLIC PLACES. SECTION 50-26 IS AMENDED BY ADDING NEW DEFINITIONS; SECTION 50-28 IS AMENDED TO PERMIT SMOKING IN CERTAIN FOOD AND BEVERAGE ESTABLISHMENTS; SECTION 50-29 IS AMENDED TO INCREASE THE PERCENTAGE OF NON-SMOKING ROOMS; SECTION 50-30, PARAGRAPHS 8 AND 9 ARE DELETED; AND NEW PARAGRAHP 8 IS ADDED TO EXEMPT PRIVATE CLUBS; SECTIONS 50-31, (a), (b), AND (c) ARE DELETED AND NEW SECTIONS 1, 2, 3, 4, 5, 6, 7, 8, 9, AND 10 ARE ADDED TO PROVIDE FOR DESIGNATIONS AS SMOKE-FREE OR SMOKING- NO MINORS ALLOWED FOOD AND BEVERAGE ESTABLISHMENTS; SECTION 50-32 (a) AND (b) ARE DELETED; SECTION 50-32 PROVIDING FOR NON RETALIATION IS ADDED; SECTION 50-33, PARAGRAPH (1) IS DELETED; SECTION 50-34 (c) IS ADDED TO PROVIDE FOR CITIZENS ENFORCEMENT; SECTION 50-35 IS AMENDED BY DELETING PARAGRAPHS (a) AND (b) AND NEW PARAGRAPHS 1, 2, 3, AND 4 ARE ADDED PROVIDING FOR ENFORCEMENT; AND SECTION 50-36 IS ADDED PROVIDING AN EFFECTIVE DATE

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

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ARTICLE II. SMOKING IN PUBLIC PLACES

Section 50. 26. Definitions.

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

*Bar or cocktail lounge* means any establishment primarily engaged in the business of selling or dispensing alcoholic or other beverages.

*Business Agent* – 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 person who is employed for compensation or profit.

*Employer* means any person who employs another for compensation or profit.

~~*Restaurant* means any establishment or place within an establishment open to the public that offers food and beverages for consumption on the premises.~~

*Food and/or Beverage Establishment - Any establishment which is required to have a business license from the City of Eufaula and which provides food and/or beverage under a permit from the Health Department and/or an "on premises" liquor license from the Alcohol and Beverage Control (ABC) Board.*

*Health Care Facility* means any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical physiological or psychological conditions.

*Minor - Minor means a person who is not at least 19 years of age.*

*Place of employment* means any enclosed area under the control of a public or private employer that employees normally frequent during the course of employment. A private residence is not a place of employment.

*Public conveyance* means any mass transit vehicle or school bus.

*Public meeting* means 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.

*Public place* means 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.

*Retail store* means 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.

*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.

*Separated bar area means a room that is totally enclosed by solid floor to ceiling wall and is adequately ventilated and equipped with a self closing door(s).*

*Smoking* means the lighting, holding or carrying of or emitting or exhaling the smoke of a pipe, cigar, cigarette or other lighted tobacco product of any kind.

*Sports arena* means any indoor facility primarily used for sports, cultural or similar events.

*Theater* means any indoor facility primarily used for the exhibition of any motion picture, stage drama, musical recital, dance, lecture or other similar performance.

Section 50-27. Construction of article.

(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.

Section 50-28. 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 conveyances.
- (6) Public meetings.
- (7) Retail stores, ~~restaurants~~ food and beverage establishments, 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 walkway and seating arrangements.

Smoking may be allowed in private, enclosed offices even though such offices may be visited in the normal course of business by nonsmoking employees. Notwithstanding this prohibition, smoking may be permitted in a food and beverage establishment that identifies itself as a "Smoking-No Minors Allowed" establishment provided that minors are not permitted to enter any part of the food and beverage establishment premises at any time for any reason except for bona fide emergency situations involving the life, health or safety of the minor or of another person.

(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, theaters, concert halls, bingo halls, arenas and enclosed swimming pools.

(b) Smoking is unlawful in designated no smoking areas of places of employment.

Section 50-29. Motels and hotels.

A motel operator shall designate at least ~~45 percent~~ 25 percent of his available motel rooms as nonsmoking rooms. No one who requests a nonsmoking room shall be placed in a room designated for smoking without that person's informed consent. New motels built after the effective date of the ordinance from which this section derives shall comply with ~~45 percent~~ 25 percent of the available rooms designated as nonsmoking 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-year~~ six (6)-month period, whichever is the sooner.

Section 50-30. Exceptions.

Section 50-28 and the restrictions imposed therein shall not apply to the following:

(1) Areas which are specifically designated as "Smoking – No Minors allowed" areas food and beverage establishments in accordance with section 50-31.

(2) 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.

(3) A separated bar area of a restaurant food and beverage establishment or a licensed lounge that is in compliance with Section 50-31(7).

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

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

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

(7) A tobacco specialty retail shop.

(8) A city licensed private club whose members either pay a monthly membership fee or whose membership is limited to persons who are bound together in camaraderie by a common purpose; provided, however, that minors are not permitted at any time to be in the presence of members who are smoking. Any such private club shall comply with Section 50-36.

~~(8) Restaurants where seating capacity is 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.~~

~~(9) Any retail store employing 20 people or less.~~

~~Section 50-31. 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 50-28, except in places in which smoking is otherwise prohibited by the fire department or by other statute, ordinance or resolution.~~

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

~~(1) Be situated so existing functioning ventilation systems are used to eliminate the irritating and toxic effects of smoke in adjacent nonsmoking areas;~~

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

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

~~(4) Not include service lines or cashier areas; and~~

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

~~(c) No public place within section 50-28, other than those places enumerated as exceptions under section 5-30, shall be designated as a smoking area in its entirety.~~

Section 50-31. Designating Food and Beverage Establishments as "SMOKE FREE" OR "SMOKING - NO MINORS ALLOWED".

1. It shall be the responsibility of the owner of the Food and Beverage establishment to designate his/her establishment as one of the following: (1) SMOKE-FREE or (2) SMOKING - NO MINORS ALLOWED.

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 permitted in number 8 below.

3. For establishments designated as SMOKE-FREE, signage shall be posted conspicuously on or adjacent to each and every 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 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 Eufaula, Alabama, Ordinance 2003-6" with letters no smaller than 1/8 inch tall (approximately 20 pts).

4. For establishments designated as SMOKING- NO MINORS ALLOWED, smoking by patrons shall be allowed throughout all enclosed areas generally occupied by patrons.

5. For establishments designated as SMOKING - NO MINORS ALLOWED, signage shall be posted conspicuously on or adjacent to each and every 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 SMOKING - NO MINORS ALLOWED facility" with no smaller than 5/8 inch tall (approximately 66 pts); "Smoking is allowed throughout this facility at all times" with letters no smaller than 1/4 inch tall (approximately 36 pts); "There is no nonsmoking section" with letters no smaller than 1/4 inch tall (approximately 36 pts); and "City of Eufaula, Alabama, Ordinance 2003-6 with letters no smaller than 1/8 inch tall (approximately 20 pts).

6. For establishments designated as SMOKING- NO MINORS ALLOWED, patrons shall not be offered a choice of a nonsmoking section; if ashtrays are made available/distributed for patrons, they shall be made available/distributed throughout all enclosed areas generally occupied by patrons.

7. Two or more permitted Food and Beverage establishments, whether owned by the same person or entity or not, operating under separate permits and/or licenses shall not be connected by any interior means of access including doorways, hallways, foyers, kitchens or any other interior thoroughfare unless each has been appropriately designated as (SMOKE-FREE or SMOKING-NO MINORS ALLOWED) and is completely separated with a self closing door from the facility which is designated as "Smoking NO Minors Allowed". For example, a permitted food establishment and a permitted holder of an ABC license may operate in the same building with the food and beverage establishment being designated "Smoke Free" and the lounge designated "Smoking-No Minors allowed if the conditions of this paragraph are complied with.

8. Food and Beverage establishments may offer employees a separate smoking lounge if it is physically separated in its entirety by floor to ceiling walls, is served by a dedicated ventilation system which does not recirculate air from the lounge into any other part of the establishment, has a self-closing door and is available only to employees of the establishment.

9. Smoking may be permitted in hotel, motel, inn, bed and breakfast and lodging rooms that are rented to guests designated as "Smoking No Minors Allowed". A room so designated shall have signs posted indicating that smoking – no minors allowed is allowed within.

10. Food and Beverage establishments will be listed in a listing by status (SMOKE-FREE or SMOKING- NO MINORS ALLOWED) to be published annually by the City's Finance Department no later than September 1<sup>st</sup> of each year; the first listing will be done by September 1, 2003; the listing will be available to the public from the City's Finance Department and will also be posted on the City's website.

~~Section 50-32. Restaurants.~~

~~(a) Restaurants with a seating capacity of 50 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 50, the provisions of section 50-31 shall apply.~~

Section 50-32. Non-retaliation

No owner, business agent, manager or other person having control of a Food and Beverage establishment shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action or 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 exercises any right conferred by this ordinance.

Section 50-33. Responsibility of proprietors.

The proprietor or other person having control of any area designated in section 50-28 shall:

~~(1) Provide a seat in a nonsmoking area for any person requesting such a seat, provided that nonsmoking seats are available.~~

(2) (1) Prominently post "Smoking- No Minors Allowed", 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 public place shall clearly and conspicuously post such a sign in every room, building or other area where smoking is regulated by this article.

~~(3)~~ (2) Post signs conspicuously in the lobby of every theater stating that smoking is prohibited within the theater or auditorium. For motion pictures theaters, such information shall be shown upon the screen prior to the showing of each feature motion picture.

Section 50-34. 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. For purposes of this section, compliance with the signage requirement of section 50-33 will constitute compliance with this subsection 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, or a duly authorized representative thereof or as otherwise allowed by law for prosecution of offenses.

(c) Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the Magistrate of the City of Eufaula.

~~Section 50-35. Violations 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) Willful destruction or defacement of a sign posted as required by this article.~~

~~(b) Anyone who violates any provision of this article shall be punished as provided in section 1-6. Each day such violation continues shall constitute a separate offense. All arrests made under this article shall be by citation and summons as provided for in section 1-13.~~

Section 50-35. Violations.

1. It shall be the responsibility of the owner, business agent, manager or other person having control of such Food and Beverage 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 one hundred dollars (\$100.00);

b. In the case of a second violation, within 24 months of the first violation, a fine of not less than One Hundred Dollars (\$100.00) nor more than 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 not less than Five Hundred Dollars (\$500.00) nor more than one thousand dollars (\$1,000.00) for each violation.

2. No provision, clause or sentence of this section of this ordinance shall be interpreted as prohibiting the City of Eufaula from suspending or revoking any license or permit issued by and within the jurisdiction of the City of Eufaula for repeated violations of this ordinance.

3. If the owner, business agent, manager or other person having control of such Food and Beverage 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 person having control shall not 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 one hundred dollars (\$100.00);

b. In the case of a second violation, within 24 months of the first violation, a fine of not less than One Hundred Dollars (\$100.00) nor more than 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 not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00) for each violation,

4. Each calendar day an owner, business agent, manager or other person having control of a Food and Beverage establishment 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.

Section 50-36. Effective Date.

This ordinance 2003-11 shall have an effective enforcement date of September 1, 2003. Prior to September 1, 2003 Food and Beverage establishments legally permitted and or licensed shall designate their status by notifying the City's Finance Department in writing by September 1, 2003 of their election, and annually, thereafter, at the time of renewing their regular, annual business licenses. Food and Beverage establishments shall implement the provisions of this ordinance by September 1, 2003.

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The provisions of this ordinance are severable. If any part of the ordinance is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

All ordinances or parts thereof which conflict with this ordinance are hereby repealed.

This ordinance shall become effective immediately upon its passage and approval by the Mayor, or upon its otherwise becoming a law.

ADOPTED AND APPROVED this \_\_\_ day of \_\_\_\_\_, 2003.

CITY OF EUFAULA, ALABAMA,  
A MUNICIPAL CORPORATION

\_\_\_\_\_  
James L. Martin, City Council President

ATTEST:

\_\_\_\_\_  
Joy White, City Clerk  
(5/14/03)