

COPY

Sponsor: Mayor Irons and Council President Barnhart

ORDINANCE NO. 2009-24

WHEREAS, the involuntary exposure to environmental tobacco smoke (also known as secondhand smoke) is a leading public health hazard throughout the United States; and

WHEREAS, children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, development abnormalities, and cancer; and

WHEREAS, the United States Surgeon General has concluded that involuntary smoking is a cause of disease, including lung cancer, in non-smokers; and

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

WHEREAS, the simple separation of smokers and non-smokers 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 Florence, Alabama, finds that it is necessary to prohibit smoking in public places;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, ALABAMA, as follows:

Section 1. The provisions regarding smoking set forth below are hereby approved and adopted and shall be included in Chapter 10 of the Code of Florence, Alabama, as Article IV of such chapter:

“ARTICLE IV. SMOKING

Sec. 10-70. 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 one or more persons.

Place of employment means any 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 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, other commercial establishments, restaurants, public and private educational institutions, health care facilities, nursing and convalescent homes, government buildings, public transportation vehicles, parks, arenas, stadiums, and other areas as described in Section 10-74.

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

Sec. 10-71. Penalty.

(a) Any person who willfully smokes in an area where smoking is prohibited under this article; or any business proprietor or person in charge of a public place who fails or refuses to designate smoking and nonsmoking areas or facilities as required in this article; or, who being asked to do so fails or refuses to enforce the designations; or any employer who fails or refuses to adopt and implement a written smoking policy for the workplace which shall reasonably accommodate, insofar as possible as provided in this article, the preferences of smoking and nonsmoking employees 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. Each day any violation of this article shall continue shall constitute a separate offense.

(b) In addition to the fines established by this Section, the city council shall be authorized to suspend or revoke any business license or permit issued by the city for violations of this article involving the licensed premise.

Sec. 10-72. Noncompliance with law.

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

Sec. 10-73. Enforcement.

The provisions of this article are enforceable by any duly sworn police officer employed by the city, the county health officer or his duly authorized representative, or as otherwise allowed by law for prosecution of offenses. Notice of the provisions of this article shall be given to all applicants for a business license in the city.

Sec. 10-74. Offenses.

Except as provided in Section 10-75, smoking or the use of any lighted tobacco product is prohibited in all public places, including, but not limited to, the following:

- (1) Any commercial establishment, including, but not limited to, retail stores, restaurants, banks, office buildings, and offices;
- (2) Any vehicle of public transportation, including but not limited to, local trains, buses, taxicabs, and limousines;
- (3) Any library, school, educational facility, museum, auditorium, or art gallery;
- (4) Any public health care facility, health clinic, or ambulatory care facility, including, but not limited to, laboratories associated with the provision of health care treatment, hospitals, rest homes, doctors' offices, and dentists' offices;
- (5) Any building, facility, or automotive vehicle owned, operated, or controlled by the city;
- (6) Any place of entertainment or recreation, including, but not limited to, ball fields, stadiums, gymnasiums, theaters, concert halls, bingo halls, arenas, swimming pools, or any other area established or constructed for the primary purpose of organized recreational or sporting events;
- (7) Any other enclosed area used by the public or serving as a place of work.

Sec. 10-75. Exceptions.

Section 10-74 and the restrictions imposed therein shall not apply to:

- (1) An entire room or hall which is used for private social functions, provided that the event is under the control of the sponsor of the function and not of the proprietor or person in charge of the establishment or hall;
- (2) Private clubs or organizations to which special membership is required;
- (3) A restaurant or lounge clearly designated by the owner or proprietor as smoking, as provided in Section 10-76. Any restaurant or lounge not clearly designated by the owner or proprietor as smoking as provided in Section 10-76 shall be subject to the prohibition against smoking and the use of lighted tobacco products provided in Section 10-74;
- (4) A private, enclosed office if all persons present consent and if the employer's policy permits smoking in such an area; this exception shall not be construed to permit smoking in the reception areas, lobbies, hallways, and other common areas in offices or commercial facilities;
- (5) Limousines where the driver and all passengers affirmatively consent to smoking in such vehicle;
- (6) Performers upon the stage, provided that the smoking is part of a theatrical production;
- (7) A tobacco specialty retail shop;
- (8) Hotel and motel rooms rented to guests, except for those rooms designated by the hotels and motels as "no-smoking" rooms.

Sec. 10-76. Restaurants and Lounges.

- (a) It shall be the responsibility of the owner of a restaurant or lounge to designate his/her establishment as either smoking or non-smoking in accordance with Section 10-77.
- (b) For establishments designated as non-smoking, no smoking by any persons (employees or patrons) at anytime will be allowed in any part of the enclosed or unenclosed areas of the establishment. In addition to the foregoing, no smoking will be allowed within 20 feet of any entrance to a non-smoking establishment. Following the effective date of the ordinance adopting this Section, an establishment designated as non-smoking shall not be allowed to convert to a smoking establishment within the same license (calendar) year.
- (c) For establishments designated as smoking, smoking by patrons shall be allowed throughout all areas generally occupied by patrons. The owner of a restaurant or lounge that allows smoking shall post on the outside of the building at every entrance to the establishment a prominent sign alerting the public that smoking is allowed in the establishment. No person under 18 years of age shall be admitted on the premises of a restaurant designated as smoking as a patron or employee unless such person is accompanied by his or her parent or guardian. It shall be unlawful for the owner, business agent, manager, or other person having control of any such restaurant to admit any person under 18 years of age to the premises as a patron or employee unless such person is accompanied by his or her parent or guardian.
- (d) A smoking establishment may be converted to a non-smoking establishment at any time subject to the provisions of this article governing non-smoking establishments.

(e) Smoking may be permitted in hotel, motel, inn, bed and breakfast, and lodging rooms that are designated as "smoking rooms." A facility which offers such rooms for rent to guests may add additional language to the required signage (see Section 10-77, subsection (1)) after "NO SMOKING" stating "lodging rooms are available for guests who smoke" in matching letters and signage.

(f) No public place listed in Section 10-74, except the places listed as exceptions under Section 10-75, shall be designated as a smoking area.

Sec. 10-77. Responsibility of proprietors.

The proprietor or other person having control of any area within Sections 10-74 or 10-75 shall:

(1) Prominently post a sign clearly indicating the words "SMOKING" or "NO SMOKING", 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 public place shall clearly and conspicuously post such sign in every room, building, or other area where smoking is regulated by this article;

(2) Post no smoking signs conspicuously in the entrance and lobby of every restaurant, theatre, auditorium, stadium, ball field, arena, concert hall, bingo hall, gymnasium, etc., stating that smoking is prohibited therein.

(3) Request persons smoking or using tobacco products in violation of this article to stop or to leave.

Sec. 10-78. Regulation of smoking in the workplace.

(a) Each employer in the city shall implement and maintain a written smoking policy for its employees.

(b) The employer may implement a smoking policy which prohibits smoking in any place of employment of the employer.

(c) The employer may implement a smoking policy which allows for smoking in its place of employment; however, in situations where smokers and nonsmokers must work in close proximity and nonsmokers will be exposed to smoke, the preferences of the nonsmokers shall prevail.

(d) An employer is not required by this provision to incur any expense for making structural or other physical modifications to accommodate the preferences of nonsmoking or smoking employees.

(e) 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.

(f) No employer shall discharge or otherwise discriminate against any employee by reason of his insistence of his rights as provided in this Article.

Sec. 10-79. Regulation of smoking in municipal buildings and vehicles.

All smoking is prohibited in the following public places:

(1) All buildings and facilities owned, operated, or controlled by the city or an agency of the city; and

(2) All vehicles owned, or operated by the city."

Section 2. The City Clerk is hereby authorized and directed to publish this ordinance in the *TimesDaily*, and this ordinance shall go into effect thirty (30) days from and after the date of its passage, approval, and publication as provided by law.

ADOPTED this 1ST day of SEPTEMBER, 2009.

Subrell
W. J. ...
Barb ...
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...
 CITY COUNCIL

APPROVED this 1ST day of SEPTEMBER, 2009.

B. E. ...
MAYOR

ADOPTED & APPROVED this 1ST day of SEPTEMBER, 2009.

Robert M. ...
CITY CLERK