

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, convenience, and indoor environment; 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 Jackson, Alabama, finds that it is necessary to prohibit smoking in public places except in areas designated as "smoking" areas.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF JACKSON, ALABAMA, that regulations are hereby established governing smoking in public places as follows:

SECTION 1. Definitions.

(a) "Smoking" or "Smoke" shall include 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;

(b) "Public" or "Public Places" shall mean any enclosed 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 and other commercial establishments, restaurants, public and private educational institutions, health care facilities, nursery and convalescent homes, indoor recreational facilities, theatres, government buildings, public transportation vehicles, elevators, restrooms, and other areas as described in Section 2. A private residence is not a public place;

(c) "Service Line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, regardless whether such service involves the exchange of money;

(d) "Employee" means any person who is employed by an employer for compensation or profit;

(e) "Employer" means any person, partnership, corporation, association, or other entity, that employs five or more persons;

(f) "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, lobbies, reception areas and employee cafeterias.

SECTION 2. Offenses.

Except as provided in Section 3 and 4, smoking is prohibited in any of the following public places:

(a) Any commercial establishment, including but not limited to retail stores, restaurants, banks, office buildings and offices;

(b) Any vehicle of public transportation, including but not limited to local trains, buses, taxicabs and limousines;

- (c) Elevators;
- (d) Restrooms;
- (e) Libraries, schools or other educational facilities, museums, auditoriums and art galleries;
- (f) Any public area of a health care facility, health clinics or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals (with exceptions in patient rooms), rest homes, doctors' offices and dentists' offices;
- (g) Any indoor place of entertainment of recreation, including but not limited to gymnasiums, theatres, concert halls, bingo halls, arenas and enclosed swimming pools;
- (h) Any other enclosed area used by the public or serving as a place or work;
- (i) Hospitals may set aside designated lounge areas for smoking provided they follow the requirements of Section 4, Designation of Smoking Areas. Hospitals shall accommodate non-smokers by prohibiting smoking in all patient rooms, except where all the occupants thereof consent to smoking.

SECTION 3. 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 of this Ordinance;
- (b) 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;
- (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 adjacent hallways, lobbies or reception areas of such offices;
- (f) Performers upon the stage, provided that the smoking is part of a theatrical production;
- (g) A tobacco specialty retail shop;
- (h) Restaurants or eating establishments with a seating capacity of less than 20 persons. Such restaurants or eating establishments shall have the option of designating a non-smoking section, allowing smoking, or prohibiting smoking throughout the establishment.

SECTION 4. Designation of Smoking Areas.

(a) Smoking areas may be designated by proprietors of 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 Jackson or by other statute, ordinance, or resolution.

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

- (1) Be set apart from non-smoking areas; and

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

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

(5) Not include service lines or cashier areas.

(6) 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, shall be designated as a smoking area in its entirety.

(d) Any facility or area may be designated in its entirety as a non-smoking area by the owner or manager thereof.

SECTION 5. Responsibility of Proprietors.

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

(a) Provide a seat in a non-smoking area for any persons requesting such a seat;

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

(c) 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. Regulation of Smoking in the Workplace.

Each employer in the City of Jackson shall implement and maintain a smoking policy for its employees within sixty (60) days after February 26, 1991. The policy shall contain, at a minimum, the following provisions and requirements:

(a) The employer shall accommodate, insofar as possible, the preferences of non-smoking and smoking employees. An employer is not required by this provision to incur any expense of making structural or other physical modification to accommodate the preferences of non-smoking or smoking employees.

(b) 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.

SECTION 7. Enforcement.

The provisions of this Article are enforceable by the County Health Department or a duly authorized representative thereof.

SECTION 8. Penalty.

Any person who willfully smokes in an area where smoking is prohibited under this Ordinance; or,

Any business proprietor or person in charge of a public place who fails or refuses, five days after warning, to designate smoking and non-smoking areas as required herein 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 smoking policy for the workplace which shall reasonably accommodate, insofar as possible as herein provided, the preferences of smoking and non-smoking employees;

Shall be guilty of an "offense" and shall be subject to punishment by a fine of not less than FIVE DOLLARS (\$5.00) nor more than FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) for each such "offense."

SECTION 9. Miscellaneous.

(a) Nothing in this Article excuses non-compliance with any Federal or State law, other City of Jackson ordinance, or any rule or regulation which prohibits smoking.

(b) Validity or Constitutionality. If any portion of this Ordinance shall be held unconstitutional, invalid or unenforceable, such holding shall not affect the remaining portions nor render the remaining portions invalid, and to that end the provisions hereof are declared to be severable.

(c) This Ordinance shall become effective on April 1, 1991, upon its passage and publication as provided by law.

ADOPTED THIS THE 16th DAY OF February, 1991.

Norma Beard
Mayor

ATTEST:

Cathy Bodmer
City Clerk