

AN ORDINANCE TO REGULATE SMOKING
IN CERTAIN PUBLIC PLACES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MADISON,
ALABAMA, as follows:

I

PURPOSE

WHEREAS, the United States Surgeon General has long warned smokers that smoking tobacco, or any other weed or plant, is hazardous to their health and has declared "secondary smoke" to be a health hazard to nonsmokers; and

WHEREAS, Secondary smoke to which nonsmokers are exposed has been found to contain carbon monoxide and other toxic substances in concentrations that exceed maximum levels allowed by federal air quality standards according to a study conducted by the office on Smoking and Health, Public Health Service, U.S. Department of Health and Human Services; and

WHEREAS, a study conducted by the U.S. Environmental Protection Agency concluded that approximately five thousand (5,000) nonsmokers die each year from lung cancer caused by involuntary smoking; and

WHEREAS, the City Council of Madison is concerned with the health and safety of its citizens and the risk imposed on nonsmoking citizens by passive exposure to smoke-tainted environments; 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;

NOW, THEREFORE, in order to serve public health, safety and welfare, smoking of tobacco, or any weed or plant, in public places and places of employment in the City of Madison is declared to be a public nuisance and dangerous to the public health and it is the declared purpose of this Ordinance to prohibit such smoking in public places and places of employment in the City, except in designated smoking areas or facilities exempted from this Ordinance.

DEFINITIONS

A. "City" means the City of Madison, Alabama.

B. "Smoke" or "Smoking" shall include carrying or holding of a lighted pipe, cigar, cigarette or smoking material of any kind, or any other lighted smoking equipment; or the lighting or emitting or exhaling the smoke of a pipe, cigar, cigarette or other smoking material of any kind.

C. "Public Place" shall mean any enclosed area to which the public is invited or permitted, including but not limited to retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, waiting areas, restrooms, elevators, government or civic buildings, libraries, indoor recreational facilities, educational facilities, health care facilities, nurseries and public transportation vehicles. A private residence does not constitute a "public place."

D. "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. A private residence does not constitute a "place of employment."

E. "Employee" means any person who is employed by an employer for compensation or profit.

F. "Employer" means any person, partnership, corporation, association or other entity which employs one or more persons.

G. "Restaurant" means any business or eating establishment which derives the largest percent of its gross income from the sale of food items for on premise consumption.

H. "Bar" means any business or cocktail lounge, or other clearly designated room or partitioned area of a restaurant, which derives the largest percent of its gross income from the sale of alcoholic beverages for on premise consumption.

I. "Health Care Facility" means any institution providing individual care or medical treatment of disease, whether for physical, mental, emotional, psychological or physiological conditions,, or any facility primarily engaged in residential care for the aged or infirm.

III

OFFENSES

No person shall smoke in any "public place" or "place of employment" except in designated "Smoking" areas. All areas other than designated "Smoking" areas shall be identified by clearly, sufficiently and conspicuously posted "No Smoking" signs and/or signs with the international "No Smoking" symbol.

IV

EXCEPTIONS

The following are exempted from the requirements of this Ordinance:

A. Areas which are specifically designated as smoking areas in accordance with this ordinance.

B. Banquet rooms, assembly areas and meeting places being used for private social functions, bars, or separate bar area of a restaurant, licensed lounges, common areas of shopping centers and stores that deal exclusively in tobacco products and accessories.

C. Restaurants or eating establishments with a seating capacity of less than twenty (20) persons. Such restaurants or eating establishments shall have the option of designating a nonsmoking section, allowing smoking, or prohibiting smoking throughout the establishment.

D. Any business or other establishment subject to this Ordinance, the owner or manager of which applies to the City Council for an exemption from, or modification of the prohibition of, this Ordinance due to unique or unusual circumstances or conditions, and to which business or other establishment such exemption or modification is granted.

E. Offices, rooms, taxicabs, limousines or other portions of buildings or other places covered by this Ordinance when all present consent to smoking in such place, provided, however, that this exception shall not be construed to permit smoking in the reception areas or lobbies of public places unless designated as smoking areas.

F. Performers upon the stage, provided that the smoking is part of a theatrical production.

DESIGNATION OF SMOKING AND NONSMOKING AREAS

A. Smoking areas may be designated in public places and places of employment, except where smoking is prohibited by other laws, ordinances or regulations.

B. Where smoking areas are designated, each smoking area shall:

- (1) Be set apart or separated from non-smoking areas; and
- (2) Be situated so existing barriers and functioning ventilation systems may be used to minimize the irritating and toxic effects of smoke in adjacent non-smoking areas; and
- (3) Contain ashtrays, containers or other facilities for the extinguishment of smoking materials; and
- (4) Not include service lines or cashier areas; and
- (5) Not including meat or produce counter areas in any store.

C. Restaurants covered by the provisions of this Ordinance shall designate at least twenty-five (25%) percent, and more if demand dictates, of the total seating capacity for nonsmokers. Said restaurants, also, must inform all patrons, through properly posted notices, that a nonsmoking area is provided.

D. Any facility or area may be designated in its entirety as a nonsmoking area by the owner or manager thereof.

E. No public place shall be designated as a smoking area in its entirety, except areas which are enumerated in Section ~~VI~~^{IV} of this Ordinance.

VI

RESPONSIBILITIES OF PROPRIETORS

The proprietor or other person having control of any area where smoking is prohibited pursuant to this Ordinance shall:

A. Post "Smoking" or "No Smoking" signs as appropriate or the international "No Smoking" symbol, which clearly, sufficiently and conspicuously designate smoking or nonsmoking areas established by this Ordinance in every building or other "public place" or "place of employment" so covered by this Ordinance. The manner of such

posting, including the wording, size, color, design and place of posting, whether on walls, doors, tables, counters, stands or elsewhere, shall be at the discretion of the proprietor having control of such building or other place, so long as clarity, sufficiency and conspicuousness are apparent in communicating the intent of this Ordinance;

B. Provide a seat in a non-smoking area for all persons requesting such a seat;

C. Inform persons smoking in violation of this Ordinance of the violation and not allow service to any person who violates this Ordinance by smoking in a "No Smoking" area; and

D. Obtain a copy of this Ordinance and comply with the provisions hereof.

VII

REGULATION OF SMOKING IN THE WORKPLACE

A. Employers have the responsibility of providing smoke-free areas for nonsmokers to the maximum extent possible within existing facilities, provided, however, that employers are not required to incur any expense (other than expense associated with proper posting of such areas) or to make structural or other physical modifications in providing these areas.

B. Within 60 days after the adoption of this Ordinance, every employer in the City of Madison, except those exempted by this Ordinance, shall adopt, implement and maintain a written smoking policy. The smoking policy shall contain at a minimum, a statement providing that the employer shall attempt to reach a reasonable accommodation, insofar as possible, between the preferences of smoking and nonsmoking employees. The smoking policy shall be announced within fourteen (14) days of adoption to all employees working in the place of employment and posted conspicuously in all workplaces under the employers control.

C. No employer shall discharge or otherwise discriminate against any employee by reason of his/her insistence upon his/her rights to a reasonable accommodation as provided by this Ordinance.

VIII

VIOLATION; ENFORCEMENT

A. Any person who smokes in a posted "No Smoking" area is in violation of this Ordinance. Also, any person who willfully destroys or defaces any sign posted in compliance with this Ordinance is in violation of this Ordinance.

B. Any business proprietor or person in charge of a public place who fails or refuses to designate smoking and non-smoking areas as required herein; or who being asked to do so fails or refuses to enforce such designations is in violation of this Ordinance.

C. 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 herein provided, the preferences of smoking and non-smoking employees is in violation of this Ordinance.

D. The provisions of this Ordinance are enforceable by any duly sworn police officer employed by the City, the Fire Chief or his duly authorized representative, or as otherwise allowed by law.

IX

PENALTY

Any person found guilty of violating the provisions of this Ordinance shall be punished by a fine of not less than FIFTY AND NO/100 (\$50.00) DOLLARS nor more than FIVE HUNDRED AND NO/100 (\$500.00) DOLLARS. Each day any violation of this Ordinance shall continue shall constitute a separate offense.

X

COMPLIANCE WITH OTHER LAWS OR ORDINANCES

Nothing in this Ordinance excuses non-compliance with any Federal or State law, other City of Madison Ordinances, or any rule or regulation which prohibits smoking.

XI

SEVERABILITY

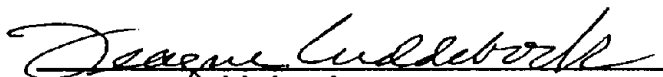
If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decisions shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

XI

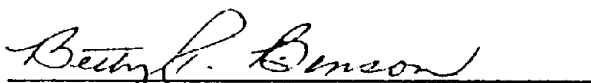
EFFECTIVE DATE

This Ordinance shall become effective 30 days after final passage and adoption thereof by the City Council of the City of Madison, Alabama, and upon its publication as required by law.

READ, ADOPTED AND APPROVED on this the 27 day of February 1990.


Teague Cuddeback
Mayor and Presiding Officer
of the City of Madison, Alabama

ATTEST:


Betty W. Benson
City Clerk, CMC