

Moved By Councilman Brandon Taylor and Seconded By
Councilman ^{MO} J. Tabbs-Turner on November 2, 2009

ORDINANCE No. 2009-12

AN ORDINANCE REGULATING SMOKING
IN THE CITY OF MARION, ALABAMA

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

SECTION ONE: Purpose.

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including hear disease, stroke, respiratory disease, and lung cancer; *and*

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; *and*

WHEREAS, children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; *and*

WHEREAS, the harmful effects of Environmental Tobacco Smoke are not confined to smokers but also cause severe discomfort and illness to nonsmokers; *and*

WHEREAS, Food and Beverage establishments have been shown to be locations of significant exposure to Environmental Tobacco Smoke by citizens of the City of ~~Alabama~~ ^{Marion}; *and*

WHEREAS, the National Institute on Drug Abuse has found that nicotine in tobacco products is a powerful addictive drug and identifies nicotine addition as the most widespread example of drug dependence in the United States; *and*

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate the exposure of nonsmokers to secondhand smoke; *and*

WHEREAS, nationally recognized and respected retail stores and restaurants have recently begun to take action by prohibiting smoking in their establishments for both public health and business reasons.

NOW, THEREFORE, in order to better serve public health, safety and welfare of the City of Marion, the declared purpose of this ordinance is to prohibit the smoking of tobacco or any weed or plant in public places of employment in the city, except where smoking is not regulated in Section Seven of this Ordinance.

SECTION TWO: Definitions.

The following words, when used in this division, shall have the meanings ascribed to them in this section, except where the contest clearly indicates a different meaning. When not inconsistent with the contest, works used in the present tense include the future tense, words in the plural number. The work "shall" is always mandatory and not merely directly.

1. *Bar* means an establishment that is devoted exclusively to the serving of alcoholic beverages for consumption by guests on the premises, including but not limited to, taverns, nightclubs, cocktail lounges and cabarets.
2. *Business* means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold as well as Professional Corporation and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
3. *City* means the City of Marion, Alabama.

4. *Employee* means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
5. *Employer* means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
6. *Enclosed Area* means all space between a floor or ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
7. *Food and Beverage Establishment* means any establishment, which is required to have a business license from the City of Marion and which provides food and/or beverages under a permit from the Health Department and/or an "on premises" liquor license from the Alcohol and Beverage Control (ABC) Board.
8. *Health Care Facility* means an office or institution providing care or treatment of disease, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospital, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for aging or chronically ill, laboratories, and office of surgeon, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include waiting rooms, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, or health care facility.
9. *HVAC System(s)* means heating, ventilating and air conditioning.
10. *Minor* means an individual who is less than nineteen (19) years of age.
11. *Owner* means and includes the lessee, sub-lessee, assignee, part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, managing agent, officers of the corporation or other person having the right of ownership or possession or the right to sell, rent or lease any real property.
12. *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, whether as participants or spectators.
13. *Public Place* means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, Laundromats, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.
14. *Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
15. *Service Line* means an indoor line in which one (1) or more persons are waiting for or receiving any kind of service, whether or not the service involves the exchange of money.
16. *Shopping Mall* means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
17. *Smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.
18. *Sports Arena* means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

SECTION THREE: Application Or Ordinance To City Owned Facilities.

All enclosed facilities, including buildings and vehicles, leased, or operated by the City of Marion, shall be smoke-free and further subject to the provisions of this Ordinance.

SECTION FOUR: Prohibition Of Smoking In Public Places.

Smoking shall be prohibited in all enclosed public places within the City of Marion, including but not limited to, the following places:

1. Galleries, libraries and museums;
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks and Laundromats;
3. Bingo facilities;
4. Convention facilities;

5. Educational facilities, both public and private;
6. Elevators;
7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical, recital, or other similar performance;
8. Health care facilities;
9. Licensed child care and adult care facilities;
10. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;
11. Polling places;
12. Public transportation facilities, including buses and taxicabs, under the authority of the City of Marion, and ticket, boarding, and waiting areas of public transit depots;
13. Restrooms, lobbies, reception areas, hallways, and other common-use areas;
14. Retail stores;
15. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee, or council of the City or political subdivision of the State, to the extent the place is subject to the jurisdiction of the City;
16. Service lines;
17. Shopping malls;
18. Sports arenas, including enclosed places in outdoor arenas.

SECTION FIVE: Prohibition Of Smoking In Places of Employment.

- a. Smoking shall be prohibited in all enclosed facilities within places of employment with exception to Section Seven. This includes common work areas, auditorium, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restroom, vehicles, and all other enclosed facilities.
- b. This prohibition of smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

SECTION SIX: Regulation Of Smoking In Places Of Employment.

- a. It shall be the duty of the owner, operator and/or manager of any facility, business, corporation, partnership, agency, or vehicle within the purview of this Ordinance to comply herewith. Such owner, operator or manager shall post or cause to be posted, all "no smoking" and "designated smoking" area signs required by this Ordinance, within (30) days after the effective date of this Ordinance.
- b. Such owner, operator, or manager shall inform persons smoking in restricted areas that they are in violation of the law and shall promptly report such violators to the proper authorities.
- c. It shall be the responsibility and duty of the owner, operator and/or manager of any facility, business, corporation, partnership or agency which employs two (2) or more employees to disseminate information.

SECTION SEVEN: Where Smoking Is Not Regulated.

Notwithstanding any other provisions of this Ordinance, to the contrary, the following areas shall be exempt from the provisions of Section Four and Section Five:

1. Private residences, apartments, and condominiums, except when used as a licensed child care, adult day care, or health care facility;
2. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
3. Private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance;

4. Individual private offices and/or individual private vehicles which are completely enclosed and occupied by only one employee;
5. Private facilities of private social clubs not open to general public;
6. An entire room, hall, building, or structure when such room, hall, building, or structure is used for private functions, such as weddings, banquets, and testimonial dinners, attendance at which is by invitation only, and where seating arrangements are under the control of the sponsor of the function and not of the owner or person in charge of the place. This does not apply to city owned property;
7. Outdoor areas of places of employment.
8. Hotels and Motels.
9. Bars

SECTION EIGHT: Reasonable Distance.

Smoking is prohibited within reasonable distance of forty-five (45) feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

SECTION NINE: Designation Of Food And Beverage Establishments AS Smoke-Free or Smoking.

(a) It shall be the responsibility of the owner of the Food and Beverage establishment to designate his/her establishment as one (1) of the following:

1. SMOKE-FREE or
2. SMOKING.

(b) For establishment 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 noted in Section 9(h) below.

(c) 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 from the exterior of the building 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:

1. "This establishment is a SMOKE-FREE facility" with letters no smaller than 5/8 inch tall (approximately 66 pts);
2. "Smoking is prohibited throughout this facility at all times" with letters no smaller than 1/4 inch tall (approximately 36 pts); and
3. "City of Marion Ordinance" with letters no smaller than 1/8 inch tall (approximately 20 pts).

(d) For establishments designated as SMOKING, smoking by patrons shall be allowed throughout all enclosed areas generally occupied by patrons.

(e) For establishments designated as SMOKING, 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 from the exterior of the building 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:

1. "This establishment is a SMOKE facility" with letters no smaller than 5/8 inch tall (approximately 66 pts);
2. "Smoking is allowed throughout this facility at all times" with letters no smaller than 1/4 inch tall (approximately 36 pts);
3. "There is no nonsmoking section" with letters no smaller than 1/4 inch tall (approximately 36 pts); and
4. "City of Marion Ordinance" with letters no smaller than 1/8 inch tall (approximately 20 pts).

(f) For establishments designated as SMOKING, patrons shall not be offered a choice of a nonsmoking section; if ashtrays are made available and distributed for patrons, they shall be made available and distributed throughout all enclosed areas generally occupied by patrons.

(g) Two (2) or more Food and Beverage establishments operating under separate permits and/or licenses shall not be directly connected by any interior means of access, including but not limited to doorways, windows, service bars and service windows, unless each had the same designation (SMOKE-FREE or SMOKING). If SMOKING is chosen for any but not all establishments, each one for which SMOKING is chosen, must have HVAC system(s) which serve only that area, and the HVAC system shall be balanced so as to keep a 0% pressure environment in all doorways and windows, and be physically separated in its entirety by walls which extend from floor to ceiling or deck above and any doors to that area must be self closing.

(h) A facility which is SMOKE-FREE, but which has a SMOKING establishment within it, may add additional language to the required signage (see Section 9(c)) after:

1. "Smoking is prohibited throughout this facility at all times" stating except in (name of area)" in matching letters and signage is required for exterior doors only.
2. If all areas/establishments within a facility are SMOKE-FREE, then signage shall be required for exterior doors only.

(i) Food and Beverage establishments may offer employees a separate smoking lounge if it;

1. is physically separated in its entirety by walls which extend from floor to ceiling or deck above is served by HVAC system(s) which serve only that area, and the HVAC system shall be balanced so as to keep a 9% pressure environment in all doorways and windows,
2. has a self-closing door and is available only to employees of the establishment.

(j) Food and Beverage establishments will be listed in a listing status (SMOKE-FREE or SMOKING) to be published annually by the Health Department.

SECTION TEN: Posting Of Signs.

(a) "No Smoking" signs or the International "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place.

(b) Every public place and place of employment where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.

(d) Section Ten shall not apply to Section Nine.

SECTION ELEVEN: Violations And Penalties.

(a) A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance, shall be guilty of an infraction, punishable by:

1. A fine not exceeding FIFTY DOLLARS (\$50.00) for first violation;
2. A fine not exceeding ONE-HUNDRED DOLLARS (\$100.00) for second violation within one (1) year; -
3. A fine not exceeding TWO-HUNDRED DOLLARS (\$200.00) for each additional violation within one (1) year.

(b) A person who owns, manages, operates, or otherwise controls a public place, place of employment, or a Food and Beverage establishment and who fails to comply with the provisions of this Ordinance shall be guilty of an infraction, punishable by:

1. A fine not exceeding ONE-HUNDRED DOLLARS (\$100.00) for first violation;
2. A fine not exceeding TWO-HUNDRED DOLLARS (\$200.00) for second violation within one (1) year;
3. A fine not exceeding FIVE-HUNDRED DOLLARS (\$500.00) for each additional violation within one (1) year.

(c) In addition to the fines established by this Section, violation of this Ordinance by a person who owns, manages, operates, or otherwise controls a public place, place of employment, or a Food and Beverage establishment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Each calendar day an owner, business agent, manager or other person having control over a public place, place of employment, or 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 (*i.e., smokes in a SMOKE-FREE establishment*) shall be deemed a separate violation.

SECTION TWELVE: Enforcement.

The provisions of this Ordinance are enforceable by any duly authorized municipal code enforcement officer, police officer or fire department official, or as otherwise allowed by law.

1. Authority to enforce this Ordinance shall be held by the City of Marion, its subsidiary program or designees.
2. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Marion.
3. Any citizen who desires to register a complaint under this Article may initiate enforcement with the City of Marion.
4. The City of Marion's Fire Department, or its designee, the Perry County Health Department, or its designee shall, while in an establishment that is undergoing otherwise mandated inspections, or at any other time deemed necessary by these entities, inspect for compliance with this ordinance.
5. An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provision thereof.

SECTION THIRTEEN: Non-Retaliation.

No owner, business agent, manager or other person having control over a public place, place of employment, or 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 by this ordinance.

SECTION FOURTEEN: Conflict With Other Ordinances, Laws or Regulations.

(a) Nothing in this Ordinance shall be deemed to amend or repeal any applicable fire, health or other law, ordinance or regulation so as to permit smoking in areas where it is prohibited by such fire, health or other law, ordinance or regulation.

(b) Nothing in this Ordinance shall be deemed to preempt the further limitation of smoking in the City of Marion by any local regulatory body within the limits of its authority and jurisdiction.

SECTION FIFTEEN: Severability.

If any provision, clause, sentence, paragraph or word of this ordinance or the application thereof to any person, entity or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provisions or application and to this end the provisions of this ordinance are declared severable.

SECTION SIXTEEN: Notification.

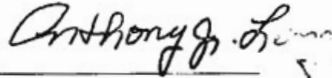
Food and Beverage establishments legally permitted and/or licensed shall designate their status by notifying the City Clerk in writing by January 1, 2010 and annually, thereafter, at the time of renewing their regular, annual business license. Food and Beverage establishments shall implement the provisions of this ordinance by January 1, 2010. Should an establishment opt to change its status prior to the regular annual renewal date for its business license, it will be required to purchase another business license at the same cost as the more recent regular annual one, in addition to any and all regular annual purchases.

SECTION SEVENTEEN: Effective Date.

This Ordinance goes into effect upon publication and by January 1, 2010 all Food and Beverage establishments shall be designated as a Smoking or Smoke-Free establishment, in full and complete compliance with this Ordinance.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARION, ALABAMA,

On this the 2nd day of November, 2009.



Anthony J. Long

ATTEST:


Carolyn Thomas, City Clerk