

AN ORDINANCE TO REGULATE SMOKING
IN CERTAIN PUBLIC PLACES

Sponsored by: Councilpersons Jane Baxter, John Feavy
and Charles Tunstall

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
MOBILE, 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 evidence now indicates smoke is a material annoyance, inconvenience and health hazard to nonsmokers who are present in confined areas; in order to serve public health, safety and welfare, the declared purpose of this Ordinance is to prohibit the smoking of tobacco, or any weed or plant, in public places and places of employment in the City, except in designated smoking areas or facilities exempted from this Ordinance.

II. DEFINITIONS.

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

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

and public transportation. 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 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 physical, mental, emotional, psychological or physiological conditions.

III. Prohibitions.

No person shall smoke in any "public place" or "place of employment" which has been designated as a "No Smoking" area. Such nonsmoking areas shall be identified by clearly, sufficiently and conspicuously posted "No Smoking" signs and/or signs with the international "No Smoking" symbol.

IV. Designation of Smoking 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. Employers have the responsibility of providing smoke-free areas for nonsmokers to the maximum extent possible within existing facilities, but employers are not required to incur any expense or make structural or other physical modifications in providing these areas.

C. Any employer who in good faith develops and promulgates a policy regarding smoking and nonsmoking in the workplace shall be deemed to be in compliance with this Ordinance, provided that a policy which designates an entire workplace as a smoking area shall not be deemed a good faith policy.

D. Within 90 days after the adoption of this ordinance, every employer in the City of Mobile, 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.

E. Restaurants covered by the provisions of this Ordinance shall designate at least twenty (20%) percent, and more if demand dictates, of the total seating capacity for nonsmokers. Said restaurants, also, must inform all patrons that a nonsmoking area is provided.

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

G. No public place shall be designated as a smoking area in its entirety, except areas which are enumerated in Section VI of this Ordinance.

V. Posting of Signs.

A. Signs which designate smoking or nonsmoking areas established by this Ordinance shall be clearly, sufficiently and conspicuously posted in every room, building or other "public place or "place of employment" so covered by this Ordinance.

B. 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 owner, operator, manager or other person having control of such room, building or other place, so long as clarity, sufficiency and conspicuousness are apparent in communicating the intent of this Ordinance.

VI. Exceptions.

The following are exempted from the requirements of this Ordinance:

A. Individual private offices, hotel/motel rooms and banquet rooms rented to guests, assembly areas and meeting places being used for private social functions, private rooms in any health care facility, jails, bars, bowling centers, common areas of shopping centers and stores that deal exclusively in tobacco products and accessories.

B. 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.

C. Any owner, or manager, of a business, or other establishment, subject to this Ordinance may apply to the City Council for an exemption from, or modification of, this Ordinance due to unique or unusual circumstances or conditions.

VII. Enforcement and Appeal.

A. The Executive Directors of the City shall be responsible for compliance with this Ordinance when facilities which are owned, operated or leased by the City are involved. The City Revenue Officer shall provide business license applicants with a copy of this Ordinance upon request. All individuals and businesses which are covered by this Ordinance have the responsibility of obtaining a copy of said Ordinance.

B. The owner, operator or manager of any facility, business or agency within the purview of this Ordinance shall comply herewith. Such owner, operator or manager shall post or cause to be posted all "No Smoking" signs required by this Ordinance. Such owner, operator or manager shall inform persons smoking in restricted areas that they are in violation of the law and not allow service to any person who violates this Ordinance by smoking in a posted "No Smoking" area.

C. It shall be the responsibility of employers to disseminate information concerning the provisions of this Ordinance to employees.

D. 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.

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

VIII. Violation, Penalty.

Any person found guilty of violating the provisions of this Ordinance shall be punished by a fine of not less than

Fifty (\$50) Dollars nor more than Five Hundred (\$500) Dollars, or by imprisonment in the jail or at hard labor or community service for a period not exceeding six (6) months, or by both such fine and imprisonment and/or community service at the discretion of the judge.

IX. 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.

This Ordinance shall become effective 30 days after publication.

Adopted: JUN 7 1988

Richard D. Smiza
City Clerk