

27-040

9199400

AN ORDINANCE REGULATING SMOKING IN THE CITY OF MOBILE, ALABAMA;
AND TO REPEAL PARTS OF ORDINANCE NUMBER 26-059, ADOPTED JUNE 7, 1988,
WHICH IS CODIFIED IN THE HEALTH AND HUMAN SERVICES CHAPTER OF THE
CITY CODE OF MOBILE, (1991) IN ARTICLE IV, ENTITLED "SMOKING".

Sponsored By: Council Member Bess Rich

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBILE, ALABAMA, that Ordinance Number 26-059, adopted June 7, 1988, which is codified in the City Code (1991) in Chapter 27, Article IV. Smoking, Sections 27-61 et seq., is hereby supplemented and amended, as follows:

I. SUPPLEMENT AND AMENDMENTS.

Sec. 27-61. 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;

WHEREAS, evidence now substantiates the fact that smoke is a material annoyance, inconvenience and health hazard to nonsmokers who are present in confined areas, and reliable scientific studies assessed by the U. S. Environmental Protection Agency have found that side stream and second hand tobacco smoke cause the death of at least 53,000 nonsmokers annually in the United States and is the leading cause of premature death and disability among nonsmokers;

WHEREAS, numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution;

WHEREAS, reliable scientific tests, substantiated by numerous Surgeon Generals and the E.P.A. of the United States have shown that side stream and second hand smoke is a serious health hazard to nonsmokers, particularly babies, children, teens, the elderly, and individuals with health problems, including but not limited to those individuals suffering from cardiovascular disease and impaired respiratory functions;

WHEREAS, scientific information has revealed that other health hazards are induced by exposure to tobacco smoke including decreased exercise tolerance, increased allergic reactions, along with numerous forms of cancer, especially lung cancer;

WHEREAS, tobacco smoking is a leading cause of fires, plus cigarette and cigar burns and ash stains on merchandise and fixtures cause economic losses to businesses, not to mention the added labor and personnel expense to "Corporate America" caused by side stream and second hand smoke to employees;

WHEREAS, the National Center for Disease Control has concluded that more than 400,000 United States citizens die each year from tobacco-caused or related diseases and tobacco related illness cost businesses and individuals in the United States \$68 billion dollars per year;

WHEREAS, local news reports say that over 46 million Americans smoke and at least twenty-five (25%) percent of Alabama's population smokes;

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

WHEREAS, numerous U. S. Surgeon Generals have found that nicotine in tobacco products is as addictive as cocaine and heroin;

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, 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.

Sec. 27-62. DEFINITIONS.

As used herein:

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.

City means the City of Mobile, Alabama.

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

Employer means any person, partnership, corporation, association or other entity which employs one (1) or more persons.

Health care facility means any institution providing individual care or medical treatment of disease, whether physical, mental, emotional, psychological or physiological conditions.

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."

Public place shall mean any area, completely enclosed or otherwise, to which the public is invited or permitted, including but not limited to airport facilities, retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, stadiums, sports facilities, waiting areas for any business, establishment, etc., restrooms, elevators, government or civic buildings, educational facilities, medical or health facilities, public transportation, and hotels and motels. A private residence does not constitute a "public place."

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, emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

Sec. 27-63. 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.

Sec. 27-64. VIOLATION: PENALTY.

Any person found guilty of violating any of the provisions of this ordinance shall be punished as prescribed in Chapter 1, Article II, Division 2, City Code of the City of Mobile, Alabama (1991), with a fine of \$70.00 plus

court costs, or by community service for a period not exceeding six (6) months, or by both fine and imprisonment, and/or community service at the discretion of the judge.

Sec. 27-65. SMOKING AND NONSMOKING AREA DESIGNATION.

(a) Smoking areas may be designated in public places and places of employment, except where smoking is prohibited by this ordinance or other laws, regulations or Executive Orders of the Mayor.

(b) No one shall be permitted to smoke in any municipal building or facility whether owned or leased by the City of Mobile, following the effective date of this ordinance. All areas under the control of the City, whether owned or leased, are hereby designated as nonsmoking areas. However, smoking may be permitted in uncarpeted, designated smoking areas in the City's Convention Center and Civic Center when the building, in part or in whole, is leased for a private function where the general public is not invited. A damage deposit may be required in such instances for cleaning and smoke damage repair purposes.

Sec. 27-66. EXCEPTIONS.

The following are exempted from the requirements of this ordinance:

- (1) Private houses, apartments, condominiums, townhouses, patio homes, etc.; individual private offices and/or vehicles which are completely enclosed and occupied by only one employee; private facilities of private social clubs; individual private rooms in any health care or medical facility; bars, and stores that deal exclusively in tobacco products and accessories.
- (2) Restaurants or eating establishments with a seating capacity of less than two (2) persons. However, such restaurants or eating establishments shall have the option of designating a nonsmoking section or disallowing smoking throughout the establishment.
- (3) 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.

Sec. 27-67. REGULATIONS REGARDING POSTING, ETC.

(a) No person shall smoke in any public place or place of employment, as defined in this ordinance, 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.

(b) Signs which designate an area as a "no smoking" area or "designated smoking area", as required by this ordinance, shall be clearly, sufficiently and conspicuously posted in every room of every facility, building, business, corporation, partnership, vehicle or other public place or place of employment so regulated by this ordinance. The absence of such a "no smoking" or "designated smoking area" sign as required by this ordinance shall be a violation of this ordinance and shall subject the owner or manager of the facility, building, business, corporation, partnership, vehicle or other public place or place of employment to Municipal Court prosecution pursuant to Chapter 1, Article II, Division 2 of the the City Code of the City of Mobile, Alabama (1991).

(c) 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 and giving notice to the public of the respective designation in every room of every facility, building, business, corporation, partnership, vehicle, or other public place or place of employment so regulated by this ordinance.

(d) Any person who smokes in a posted "no smoking" area is in violation of this ordinance.

(e) No person shall willfully destroy, remove or deface any sign posted in compliance with this ordinance, any such prohibited conduct is a violation of this ordinance.

(f) Any facility, business, corporation, partnership, agency or area may be posted and designated in its entirety as a nonsmoking area by the owner or manager thereof.

(g) With the exception of the areas enumerated in Section 27-66, no public place, as defined in this ordinance, shall be designated as a smoking area in its entirety, or allow smoking to be conducted in any place other than clearly posted designated smoking areas.

Sec. 27-68. DUTY OF OWNER, MANAGER, EMPLOYER, ETC. OF FACILITY, ETC.

(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.

(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 of the law 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 an excess of two (2) employees to disseminate information concerning the provisions of this ordinance to said employees.

(d) Owners, managers and employers of public places and places of employment within the City, and its police jurisdiction, have the responsibility of providing smokefree areas for nonsmokers to the maximum extent possible within existing facilities, but such individuals are not required to make any structural or other physical modifications in providing these areas, except as specifically required by this ordinance.

(e) Every owner, manager and employer in the city 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 individuals along with a statement that smoking is prohibited except in clearly posted "designated smoking" areas.

(f) Any owner, manager or employer of any public place or place of employment within the City, or its police jurisdiction, 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 provision of this ordinance, provided that a policy which designates an entire workplace as a smoking area shall not be deemed a good faith policy.

Sec. 27-69. RESTAURANT REGULATIONS.

(a) Restaurants covered by the provisions of this ordinance shall designate at least seventy-five (75%) percent of the total seating capacity of the facility for the use of nonsmokers. Such restaurants, also, must inform all patrons that a nonsmoking area is provided.

(b) Any restaurant, facility or eating establishment may be designated in its entirety as a nonsmoking area by the owner or manager thereof.

(c) No restaurant or eating establishment, regulated by this law, may be designated as a smoking area in its entirety.

Sec. 27-70. HOTEL AND MOTEL REGULATIONS.

Smoking is prohibited in hotels and motels in the city, and its police jurisdiction, except:

(a) That portion of any hotel or motel lobby clearly designated for smoking, provided that no hotel or motel shall designate more than twenty-five (25%) percent of any lobby for smoking, and provided further that no hotel or motel shall permit smoking in any room used for exhibit space;

(b) That portion of any hotel and motel which has been properly designated by hotel and motel management as a "smoking room" in the private rooms section of the hotel or motel, and provided further that the percentage of guest rooms of the property designated as smoking rooms at any hotel or motel shall be limited to a maximum of sixty-five (65%) percent of the total number of private rooms in the hotel or motel following the effective date of this ordinance. In other words, at least thirty-five (35%) percent of the total number of private rooms in any hotel or motel in the city or its police jurisdiction, following the effective date of this ordinance, shall be no smoking rooms.

Sec. 27-71. PUBLIC RESTROOMS.

(a) Smoking is prohibited in all public restrooms in the City, and its police jurisdiction, whether or not the owner or manager of the facility has properly posted this area, "public place" or "place of employment" as a "No Smoking" area.

(b) It shall be unlawful, and a violation of this ordinance, for any owner or manager of a public place or place of employment, as defined in this ordinance, to fail to properly post all public restrooms under his, or her, maintenance and control as a "No Smoking" area in accordance with the provisions of this ordinance.

Sec. 27-72. COMMON AREA OF MALLS.

Notwithstanding any other provision of this ordinance, smoking is prohibited in the common area and corridors of all malls within the City and its police jurisdiction.

Sec. 27-73. TOBACCO PRODUCTS IN VENDING MACHINES.

It shall be unlawful and an offense against this City for any business owner or manager of any retail establishment within the jurisdiction of this City, to allow the existence of a vending machine containing tobacco products in any area where minors are allowed. Nothing in this provision shall in any way prohibit or restrain tobacco product vending machines in adult entertainment establishments.

II. REPEALER.

All City Code Sections and Ordinances or parts of City Code Sections and Ordinances in conflict with the provisions of this ordinance, are hereby repealed.

III. SEVERABILITY.

If any section, sentence, paragraph, clause, phrase or word of this ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holding of invalidity shall not affect the remaining portions of this ordinance, and it shall be construed to have been the intent of the City Council of the City of Mobile to pass this ordinance without such unconstitutional, invalid, or inoperative part therein, and the remainder of this ordinance shall be deemed and held to be valid as if such parts had not been included therein.

IV. EFFECT OF ORDINANCE.

This Ordinance shall be in full force and effect from and after its adoption and publication as required by law, which shall be completed on or before July 1, 1994. Additionally, this Ordinance shall be in full force and effect within the City of Mobile and its police jurisdiction.

ADOPTED

JUN 21 1994


City Clerk