

ORDINANCE NO. 71-2002

WHEREAS, the use of lighted smoking products inherently creates a health hazard of second hand smoke which affects the public health, indoor environment and the enjoyment of public places;

WHEREAS, the problem of second hand smoke is a continuing nuisance the City Council of the City of Montgomery, Alabama finds it necessary to charge the Codes & Standards Division of the Montgomery Fire Department, with the duty and responsibility of enforcing and responding to complaints of violations of this amended no smoking ordinance;

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

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONTGOMERY, ALABAMA, that it hereby establish regulations governing smoking in public places to read 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 Place" 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, government buildings, public transportation vehicles, elevators, restrooms, and other areas as described in section 2;
- (c) "Service Line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, regardless of 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" means any indoor area under the control of an employer to which employees have access during the course of employment, including, but not limited to work areas, employee lounges, employee restrooms, conference rooms and employee cafeterias. A private residence is not a place of employment.

SECTION 2. Offenses.

Except as provided in Section 3, 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 private, single patient rooms), rest homes, doctors' offices and dentists' offices;
- (g) Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, bingo halls, arenas and enclosed swimming pools;
- (h) Any other enclosed area used by the public or serving as a place of work;
- (i) Hospitals shall accommodate non-smokers by prohibiting smoking in all patient rooms, except where all the occupants thereof consent to smoking. Hospitals may set aside designated lounge areas for smoking.

SECTION 3. Exceptions.

Section 2 and the restrictions imposed therein shall not apply to:

- (a) 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;
- (b) A bar, lounge, or club devoted to serving alcoholic beverages for consumption by guests on the premises and in which the serving of food, such as appetizers or complementary snacks, is only incidental to the consumption of such beverages. A bar, lounge, or club for the purpose of this definition does not include any establishment where tobacco smoke can filter through a passageway, ventilation system, or any other means into any area where smoking is prohibited. A bar, lounge, or club for the purposes of this ordinance shall not include any establishment operating with a restaurant liquor license as defined under Alabama Beverage Control Board Rules and Regulation 20-x-5.05 or any establishment where the business, habitually and principally, is the preparation and serving of meals for the public to consume on the premises.
- (c) Taxicabs and limousines where the driver and all passengers affirmatively consent to smoking in such vehicle;
- (d) A private, enclosed office provided that this exception shall not be construed to permit smoking in the reception areas of lobbies or offices unless designated as smoking areas;
- (e) Performers upon the stage, provided that the smoking is part of a theatrical production;
- (f) A tobacco specialty retail shop;
- (g) Any restaurant between the hours of 12:00 Midnight and 5:00 A.M.;

SECTION 4. 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) Prominently post a "No Smoking" sign referencing Montgomery Municipal Ordinance, No. 71-2002, except those facilities exempted under Section 3 of this ordinance.
- (c) Post signs conspicuously in the lobby of every theater stating that smoking is prohibited within the theater or auditorium, and in the case of motion picture theaters such information shall be shown upon the screen prior to the showing of each feature motion picture;

- (d) 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 5. Regulation of Smoking in the Workplace.

Each employer in the City of Montgomery shall implement and maintain a smoking policy for its employees within sixty (60) days after this Ordinance becomes law. 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 for making structural or other physical modifications 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 6. Enforcement.

The provisions of this Article are enforceable by any citizen, person, or duly authorized representative of the Codes & Standards Division of the Fire Department of the City of Montgomery that observes a violation and makes a complaint of such violation to a Magistrate in Montgomery Municipal Court.

SECTION 7. 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 ONE DOLLAR (\$1.00) nor more than FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) for each such "offense".

SECTION 8. Miscellaneous.

- (a) Nothing in this Article excuses non-compliance with any Federal or State law, other City of Montgomery 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) Effective Date This article shall become effective thirty (30) days from and after the date of its adoption.

BE IT FURTHER ORDAINED that Ordinance No. 70-89 be and is hereby repealed in its entirety.

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)
CITY OF MONTGOMERY)

I, Brenda G. Blalock, City Clerk of the City of Montgomery, Alabama, DO HEREBY CERTIFY that the foregoing is a true and correct copy of an Ordinance that was duly adopted by the Council of the City of Montgomery at its regular meeting held the 19th day of November, 2002.

Given under my hand and the official SEAL of the City of Montgomery, Alabama, this the 20th day of November, 2002.

Brenda Gale Blalock
Brenda Gale Blalock, City Clerk

At proved: 11/20/02

Bobby N. Bright
Bobby N. Bright, Mayor