

ORDINANCE NO. 1693

**AN ORDINANCE TO PROHIBIT SMOKING IN ENCLOSED  
AREAS WITHIN GOVERNMENT BUILDINGS, LICENSED  
BUSINESSES AND NONPROFIT ORGANIZATIONS IN THE  
CITY OF MOUNTAIN BROOK, ALABAMA**

WITREAS, the City Council of the City of Mountain Brook, Alabama has found that numerous studies show that tobacco smoke may be a major contributor to indoor air pollution and that breathing secondhand smoke may be a cause of disease, including lung cancer, in nonsmokers, and

WHEREAS, the City Council of the City of Mountain Brook, Alabama is concerned about the health hazards induced by breathing secondhand smoke which include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchospasm.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Mountain Brook, Alabama, as follows:

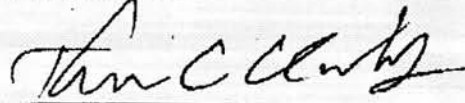
1. As used in this ordinance, the following words and phrases shall have the following meanings:
  - (1) **GOVERNMENT BUILDING:** Any building operated or occupied by state, county or city government, or any agencies thereof, or any other separate corporate instrumentality or unit of state, county or city government.
  - (2) **LICENSED BUSINESS:** An organization or entity required to obtain a license from the City of Mountain Brook in order to engage in business or conduct business in the City.
  - (2) **NONPROFIT ORGANIZATION:** An organization or entity which is recognized by the United States Internal Revenue Service as a tax-exempt, non-profit organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
  - (3) **RETAIL TOBACCO STORE:** A retail store whose primary business is the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
  - (4) **PRIVATE CLUB:** A premise operated by an organization which is not available to and not customarily used by the general public and entry and privileges thereto are established by regulations of that organization.
  - (5) **PRIVATE FUNCTION:** The rental of a ballroom, restaurant, private club, or other facility for the sole purpose of entertaining, private parties, events or other social functions.
  - (6) **SMOKING:** The burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains tobacco.
  
2. Except as otherwise provided in this subsection, no person shall smoke in an enclosed area within a government building, licensed business or nonprofit organization. This prohibition does not apply to any of the following:
  - (1) Permanently designated smoking rooms in any hotel or motel that pays hotel or motel taxes;
  - (2) Any establishment licensed by the City of Mountain Brook to sell alcoholic beverages for consumption by patrons on the premises, for which, in the usual course of business,

alcoholic beverage sales constitute more than forty per cent (40%) of total revenues; provided, however, that said exemption shall only apply after 4:00 p.m. on any business day.

- (3) Retail tobacco stores;
  - (4) Private functions;
  - (5) Private clubs.
3. Notwithstanding any of the foregoing, nothing shall preclude any business establishment from designating an area in said establishment for smoking if said area is clearly identified, fully separated and apart from all nonsmoking areas, enclosed, and designed so as to ensure that all other areas of said business remain completely free of the byproducts of smoking.
  4. An organization or entity subject to an exception to this ordinance may choose to become subject to the provisions of this ordinance. Upon applying for a license from the city, an entity subject to an exception to this ordinance shall indicate whether or not they choose to be subject to the ordinance.
  5. The owner, operator, manager, or other person in charge of a government building, licensed business or nonprofit organization shall clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, near all entrances where smoking is prohibited by this ordinance. In any establishment where smoking is allowed under this Ordinance, signs indicated that smoking is permitted and the particular circumstances in which it is permitted shall be clearly and conspicuously posted near each entrance used by the public.
  6. The person in charge of a government building, licensed business or nonprofit organization shall not knowingly permit, cause, suffer or allow any person to violate the provisions of this ordinance in that place. It shall be an affirmative defense to an alleged violation of this subsection that the person having control of a place has asked that the lighted cigarette, cigar, pipe or other tobacco product be extinguished and asked the person to leave the establishment if that person has failed or refused to extinguish the lighted cigarette, cigar, pipe or other tobacco products.
  7. A person who smokes in an area where smoking is prohibited by the provisions of this ordinance shall be guilty of an ordinance violation, punishable by a fine of at least twenty-five dollars (\$25.00), but not to exceed one hundred dollars (\$100.00).
  8. The owner, operator, manager, or other person in charge of a government building, licensed business or nonprofit organization who fails to comply with the provisions of this Article shall be guilty of an ordinance violation, punishable by:
    - (1) A fine not exceeding one hundred dollars (\$100) for a first violation;
    - (2) fine not exceeding two hundred dollars (\$200) for a second violation within a one (1) year period;
    - (3) A fine not exceeding five hundred dollars (\$500) for a third or subsequent violations within a one (1) year period.
  9. Each day on which a violation of this Ordinance occurs shall be a separate and distinct violation.

10. Jurisdiction for violations of this ordinance shall be with the municipal court. A charge of a violation shall be treated in the same manner as a traffic citation. Any law enforcement officer may issue a citation pursuant to this section.
11. **Repealer.** All ordinances or parts of ordinances heretofore adopted by the City Council of the City of Mountain Brook, Alabama that are inconsistent with the provisions of this ordinance are hereby expressly repealed.
12. **Severability.** If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.
13. **Effective Date.** This ordinance shall become effective January 1, 2006.

ADOPTED: This 28 day of Nov, 2005.



Thomas C. Clark, Jr., Council President

ADOPTED: This 28 day of Nov, 2005.



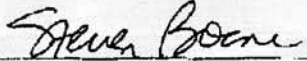
Lawrence T. Oden, Mayor

**CERTIFICATION**

I, Steven Boone, City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of a resolution adopted by the City Council of the City of Mountain Brook at its meeting held on November 28, 2005, as same appears in the minutes of record of said meeting, and published by posting copies thereof on November 29, 2005, at the following public places, which copies remained posted for five (5) days as provided by law:

City Hall, 56 Church Street  
Gilchrist Pharmacy, 2850 Cahaba Road  
The Invitarion Place, 3150 Overton Road

Joc Muggs Newsstand, 2837 Cahaba Road  
Figgly Wiggly Food Store 4, 93 Euclid Avenue

  
Steven Boone, City Clerk