

ORDINANCE NO. 1348

**AN ORDINANCE TO PROHIBIT TOBACCO VENDING MACHINES
IN THE CITY OF MOUNTAIN BROOK**

Whereas, the United States Surgeon General has long warned people that smoking tobacco is hazardous to their health; and

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 illnesses cost businesses and individuals in the United States billions of dollars every year; and

Whereas, local news reports say that more than fifty million Americans smoke and at least twenty-five per cent of Alabama's population smokes; and

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; and

Whereas, it has been estimated that ninety per cent of adults who now smoke started smoking between the ages of nine and eighteen years; and

Whereas, it has been estimated that three million minors smoke daily in the United States, and over seventy-five per cent buy their own cigarettes; and

Whereas, minors have access to cigarettes and other tobacco products as a result of the availability of cigarette vending machines, and scientific studies have shown that minors buy tobacco products from cigarette vending machines; and

Whereas, the United States Surgeon General has consistently favored the elimination of cigarette vending machines for public health reasons; and

Whereas, the American Cancer Society, the American Lung Association, the American Heart Association, the American Medical Association and the Alabama Medical Association, representing the overwhelming view of recognized professional medical associations, support the elimination of cigarette vending machines for public health reasons; and

Whereas, no other dangerous product or drug, cancer-causing product or drug or addictive product or drug is sold through vending machines; and

Whereas, no other product or drug which minors are prohibited from purchasing is sold through vending machines; and

Whereas, it is the purpose and intent of this ordinance to improve the public health, safety and welfare of the residents of the City of Mountain Brook by reducing the opportunity for minors to obtain illegally tobacco products by prohibiting from the City of Mountain Brook tobacco and tobacco accessory vending machines, and to promote the health and welfare of all people in the City of Mountain Brook against health hazards and harmful effects of using addictive tobacco products.

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

Section 1. DEFINITIONS.

For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein for each such term, phrase and word. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

"City" means the City of Mountain Brook, Alabama.

"Employee" means any person who is employed by an employer in the consideration for direct or indirect monetary wages or profit and any person who volunteers his or her services for a nonprofit entity.

"Employer" means any person who employs one or more persons.

"Minor" means an individual who is less than nineteen years of age.

"Owner" means and includes the owner, lessee, sublessee, assignee, part owner and joint owner of any real property, the managing agent of any real property, officers of a corporation which owns any real property, partners of a partnership which owns any real property, or a principal, member or other party in interest of an association or limited liability company which owns any real property, and any person associated with any other entity which owns any real property.

"Person" means any individual, person, firm, partnership, association, corporation, company or organization of any kind.

"Tobacco Accessories" means any cigarette papers or wrappers, pipes, holders of smoking materials of any type, cigarette rolling machines and any other items designed primarily for the smoking or ingestion of tobacco products.

"Tobacco Products" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, smoking tobacco and smokeless tobacco.

"Tobacco vending machines" means any machine or device designed or used for the sale of cigarettes, cigars, tobacco or other tobacco products upon the insertion of coins, tokens, paper bills or credit cards.

Section 2. SALE OF CIGARETTES AND OTHER TOBACCO PRODUCTS FROM VENDING MACHINES PROHIBITED.

a. No person shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises of any tobacco vending machine used or intended to be used for the purpose of selling or disposing of any tobacco products or tobacco accessories.

b. Any tobacco vending machine in use on the effective date of this ordinance shall be removed from the City or converted to a permissible use prior to September 1, 1999.

Section 3. VIOLATIVE TOBACCO VENDING MACHINES.

Any tobacco vending machine not removed from the premises or converted to a permissible use within the time limit set forth in Section 2(b) shall be deemed to be a public nuisance and may be abated by the City in a civil action or other appropriate legal proceedings.

Section 4. VIOLATION; PENALTY.

Any person, firm or corporation violating any provisions of this ordinance shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished as stated below. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

first offense	\$250.00
second and subsequent offenses	\$500.00

In addition to the fines set out above, for the third and any subsequent violations of this ordinance, the City Council shall conduct a public hearing at which the person who has violated this ordinance shall be examined as to his fitness to continue to do business within the City. At the conclusion of said public hearing, the City Council may revoke all business licenses held by such persons.

Section 5. MISCELLANEOUS

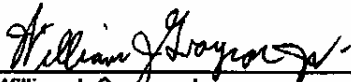
a. *Construction with Other Laws.* Nothing in this ordinance shall excuse non-compliance with any state or federal law or any other local law or ordinance or any rule or regulation which prohibits tobacco vending machines within the City.

b. **Severability.** The provisions of this ordinance are severable. If any part of this ordinance is determined by a court of law to be invalid, unenforceable or unconstitutional, such determination shall not affect any other part of this ordinance.

Section 6. ORDINANCES REPEALED.


All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

ADOPTED: This 8th day of March, 1999.



William J. Grayson, Jr.
Council President

APPROVED: This 8th day of March, 1999.

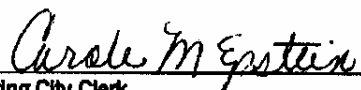


Lawrence T. Oden
Mayor

CERTIFICATION

I, Carole M. Epstein, Acting City Clerk of the City of Mountain Brook, Alabama, hereby certify the above to be a true and correct copy of an ordinance adopted by the City Council of the City of Mountain Brook, Alabama, at its meeting held on March 8, 1999, as same appears in the minutes of record of said meeting, and published by posting copies thereof on March 9, 1999, at the following public places, which copies remained posted for five (5) days as required by law:

City Hall, 56 Church Street
Gilchrist Pharmacy, 2805 Cahaba Road
Eckerd Drugs, 2020 Cahaba Road
CVS Pharmacy, 49 Church Street



Acting City Clerk