

ORDINANCE NO: 2007-1007

**AN ORDINANCE TO PROHIBIT SMOKING IN PUBLIC PLACES
WITHIN THE CITY LIMITS OF THE CITY OF ORANGE BEACH
AND ITS POLICE JURISDICTION
AND TO PROVIDE PENALTIES FOR THE VIOLATION THEREOF**

WHEREAS, the City of Orange Beach, Alabama, in order to protect the health, safety, and welfare of its citizens and guests, finds it in the public interest to adopt an ordinance of permanent operation to prohibit smoking in public places within the city limits and its police jurisdiction; and

NOW, THEREFORE, be it ordained by the City Council of the City of Orange Beach, Alabama, as follows:

Section 1. Title.

This Ordinance shall be known as the City of Orange Beach Smoke Free Air Ordinance.

Section 2. Findings and Intent.

The City of Orange Beach does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (Nci), "Health Effects of Exposure to Environmental Tobacco Smoke: The Report of the California Environmental Protection Agency, Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (WCI)*, August 1999.)

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS)), "*Environmental Tobacco Smoke: First Listed in the Ninth Report on Carcinogens*," U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005).

A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke free workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced Incidence of Admissions for Myocardial Infarction Associated with Public Smoking Ban: Before and After Study," *British Medical Journal* 328:9 77-980, April 24, 2004).

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental

Protection Agency (Cal EPA), "Health Effects of Exposure to Environmental Tobacco Smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997).

The Americans with Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental Tobacco Smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*, Public Health Services, Centers for Disease Control, 1986.) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. (Environmental Protection Agency (EPA), "Indoor Air Facts No. 5: Environmental Tobacco Smoke," *Washington, D.C.: Environmental Protection Agency (EPA)*, June, 1989).

The Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How Acute and Reversible are the Cardiovascular Risks of Secondhand Smoke?" *British Medical Journal* 328: 980-983, April 24, 2004).

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzias, P.; "Association Between Exposure to Environmental Tobacco Smoke and the Development of Acute Coronary Syndromes: The CARDIO2000 Case-Control Study," *Tobacco Control* 11(3): 220-225, September, 2002).

Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke. ("The High Price of Cigarette Smoking," *Business & Health* 15(8), *Supplement A: 6-9*, August, 1997).

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke free. Creation of smoke free workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L., "The Effect of Ordinances Requiring Smoke Free Restaurants on Restaurant Sales in the United States", *American Journal of Public Health*, 37: 1687-1693, 1997; Colman, R.; Urthonas, C.M., "The Economic Impact of Smoke-Free Workplaces: An Assessment for Nova Scotia, Prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September, 2001).

Smoking is a potential cause of fires; cigarettes and cigar burns and ash stains on merchandise and fixtures causes economic damage to business. ("The High Price of Cigarette Smoking," *Business & Health* 15(8), *Supplement A: 6-9*, August, 1997).

The smoking of tobacco is a form of air pollution, a positive danger to health and a material public nuisance.

ACCORDINGLY, the City Council finds and declares that the purposes of this Ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment, and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

Section 3. Definitions.

The following words and phrases, whenever used in this Ordinance shall be construed as defined in this Section.

"Bar" means an establishment that is devoted primarily to the serving of alcoholic beverages for consumption by guests on the premises and where food sales are incidental to beverage sales. This definition includes, but is not limited to taverns, nightclubs, cocktail lounges, and cabarets.

"Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

"City" means the City of Orange Beach, its corporate limits and police jurisdiction.

"City Council" means the City Council of the City of Orange Beach.

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

"Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

"Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

"Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

"Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, or health care facility.

"Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of

the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

"Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a public place when being used for a function to which the general public is invited. A private residence is not a public place unless it is used as a childcare, adult day care, or health care facility.

"Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area attached to or within the restaurant.

"Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

"Service Line" means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

"Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

"Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

"Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Section 4. Application of Ordinance to City of Orange Beach Facilities.

All City Parks and all enclosed facilities, including buildings and vehicles owned, leased or operated by the City shall be subject to the provisions of this Ordinance.

Section 5. Prohibition of Smoking in Enclosed Public Places.

Smoking shall be prohibited in all enclosed public places within the City, including but not limited to, the following places:

1. Aquariums, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels and motels.
3. Bars.

4. Convention facilities.
5. Educational facilities, both public and private.
6. Elevators.
7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
8. Health care facilities.
9. Licensed childcare and adult day care facilities.
10. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
11. Polling places.
12. Private clubs when being used for a function to which the general public is invited.
13. Public transportation facilities, including buses, taxicabs, limousines, and ticket, boarding, and waiting areas at public transit depots.
14. Restaurants.
15. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
16. Retail stores.
17. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City, or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
18. Service lines.
19. Shopping malls.
20. Sports arenas, including enclosed places in outdoor arenas.

Section 6. Prohibition of Smoking in Places of Employment.

Smoking shall be prohibited in all enclosed facilities within places of employment, rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed facilities.

This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

Section 7. Prohibition of Smoking in Outdoor Arenas and Stadiums.

Smoking shall be prohibited in the confines of the City's Sportsplex, Tennis Center, Recreation Center, Golf Center, and any other City sports facilities. Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters.

Section 8. Reasonable Distance.

Smoking is prohibited within a reasonable distance of ten (10) feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or other means.

The owner, operator, manager or other person in control of an establishment may declare that smoking is prohibited within a greater distance outside an enclosed area where smoking is prohibited. If smoking is prohibited outside the building within a greater distance than ten (10) feet, a conspicuous sign shall be posted at every entrance stating that smoking is prohibited within a specific distance (in feet) from the building. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this Ordinance is posted.

Section 9. Where Smoking Not Regulated.

Notwithstanding any other provisions of this Ordinance to the contrary, the following areas shall be exempt from the provisions of the above sections of this Ordinance listing the areas where smoking is prohibited:

1. Private residences, except when used as a licensed childcare, adult day care, or health care facility.
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty (20%) percent of the rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from those rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
3. Retail tobacco stores; provided, however, that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
4. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided, however, that smoking from those places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
5. Private clubs, except when being used for a function to which the general public is invited.
6. Outdoor areas of places of employment except those covered by the provisions of the above sections concerning prohibition of smoking in outdoor arenas and stadiums and reasonable distance.
7. All beaches, whether public or private.
8. Outdoor areas of restaurants, including but not limited to, decks, verandas, porches and any other non-covered or enclosed serving areas.

Section 10. Declaration of Establishment as Nonsmoking.

Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may

declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the provisions of this Ordinance is posted.

Section 11. Posting of Signs; Responsibility of Proprietors.

1. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place.
2. Every public place and place of employment where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
3. All ashtrays shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.
4. The owner, operator, manager, or other person having control of any area where smoking is prohibited by this Ordinance shall request any person smoking in violation of this Ordinance to stop.

Section 12. Nonretaliation; Nonwaiver of Rights.

An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Section 13. Enforcement.

1. This Ordinance shall be enforced by the Mayor or his duly authorized designees or representatives.
2. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City.
3. Any citizen who desire to register a complaint under this Ordinance may initiate enforcement with the Mayor or his designees.
4. The Mayor or his designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.
5. An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.
6. Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action to enforce this Ordinance.
7. In addition to the remedies provided by the provisions of this Ordinance, the Mayor or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or place of employment to comply with the provisions of this Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 14. Violations and Penalties.

1. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of a misdemeanor, punishable by a fine not exceeding fifty (\$50.00) dollars.
2. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Ordinance shall be guilty of a misdemeanor, punishable by:
 - a. A fine not exceeding one hundred (\$100.00) dollars for a first violation
 - b. A fine not exceeding two hundred (\$200.00) dollars for a second violation within one (1) year
 - c. A fine not exceeding five hundred (\$500.00) dollars for each additional violation within one (1) year.
3. In addition to the fines established herein, violation of this Ordinance by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
4. Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by the Mayor or by his duly authorized designees by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.
5. Each day on which the violation of this Ordinance occurs shall be considered a separate and distinct violation.

Section 15. Public Education.

The Mayor or his designees may engage in a continuing program to explain and clarify the purposes and requirements of this Ordinance to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance.

Section 16. Governmental Agency Cooperation.

The Mayor shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Ordinance. This includes urging all Federal, State, County, City and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Section 17. Other Applicable Laws.

This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 18. Liberal Construction.

This Ordinance shall be liberally construed so as to further its purposes.


Section 19 Severability.

If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

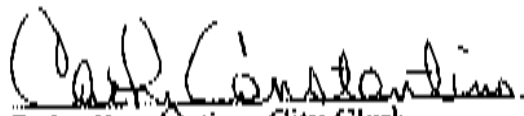
Section 20 Effective Date.

This Ordinance shall be effective 90 days after the date of adoption and publication as required by law.

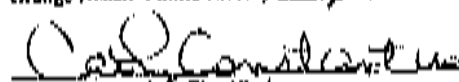
ADOPTED this 1st day of May, 2007.


Pete Blalock, Mayor

ATTEST:


Cathy Constantino, City Clerk

The City Clerk of the City of Orange Beach, Alabama hereby certifies that the foregoing Ordinance 2007-1007 was posted on 5/9/07 in the following three (3) public places:
Orange Beach City Hall _____
Orange Beach Post Office _____
Orange Beach Public Library _____


Cathy Constantino, City Clerk