

ORDINANCE 818

AN ORDINANCE TO AMEND THE CODE OF THE CITY OF SARALAND CHAPTER 14, LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS;

ARTICLE XIV, TOBACCO SMOKE REGULATIONS FOR FOOD AND BEVERAGE ESTABLISHMENTS; SECTION 14-326 THROUGH SECTION 14-330

WHEREAS, Chapter 14, Article XIV, Section 14-326 through Section 14-330 of the Saraland Code currently reads as follows:

Sec. 14-326. - Definitions.

Business agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Employee: Any individual who performs services for an employer in return for wages or profit.

Enclosed: A space, structure, facility or any portion thereof, bounded by walls (with or without windows) continuous from floor to ceiling or deck above and served by heating, ventilating and air conditioning (HVAC) system(s), and through which air can circulate from one portion to another, including, but not limited to offices, rooms, hallways, customer service areas, foyers, common areas, waiting areas, restrooms, lounges, and eating areas.

Food and/or beverage establishment: Any establishment which is required to have a business license from the City of Saraland and which provides food and/or beverage under a permit from the health department and/or an "on premises" liquor license from the alcohol and beverage control (ABC) board.

Smoking: Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or form.

Sec. 14-327. - Designating food and beverage establishments as smoke-free or smoking.

- (a) It shall be the responsibility of the owner of the food and beverage establishment to designate his/her establishment as one of the following: (1) smoke-free or (2) smoking.
- (b) For establishments designated as smoke-free, no smoking by any persons (employees or patrons) at anytime will be allowed in any

part of the enclosed areas of the establishment, except as noted later in this section below.

- (c) For establishments designated as smoke-free, signage shall be posted conspicuously on or adjacent to each and every door to the establishment that is generally accessed by patrons or employees, plainly visible from the exterior of the building to persons entering through the door. Signage shall be no smaller than eight and one-half (8.5) inches by eleven (11) inches, with white lettering on a red or black background, and include the following statements: "This establishment is a SMOKE-FREE facility" with letters no smaller than five-eighths inch tall (approximately sixty-six (66) pts); "Smoking is prohibited throughout this facility at all times" with letters no smaller than one-fourth inch tall (approximately thirty-six (36) pts); and "City of Saraland Ordinance 717" with letters no smaller than one-eighth inch tall (approximately twenty (20) pts).
- (d) For establishments designated as smoking, smoking by patrons shall be allowed throughout all enclosed areas generally occupied by patrons.
- (e) For establishments designated as smoking, signage shall be posted conspicuously on or adjacent to each and every door to the establishment that is generally accessed by patrons or employees, plainly visible from the exterior of the building to persons entering through the door. Signage shall be no smaller than eight and one-half (8.5) inches by eleven (11) inches, with white lettering on a red or black background, and include the following statements: "This establishment is a smoking facility" with letters no smaller than five-eighths inch tall (approximately sixty-six (66) pts); "Smoking is allowed throughout this facility at all times" with letters no smaller than one-fourth inch tall (approximately thirty-six (36) pts); "There is no nonsmoking section" with letters no smaller than one-fourth inch tall (approximately thirty-six (36) pts); and "City of Saraland Ordinance 717" with letters no smaller than one-eighth inch tall (approximately twenty (20) pts).
- (f) For establishments designated as smoking, patrons shall not be offered a choice of a nonsmoking section; if ashtrays are made available/distributed for patrons, they shall be made available/distributed throughout all enclosed areas generally occupied by patrons. Two (2) or more food and beverage establishments operating under separate permits and/or licenses shall not be directly connected by any interior means of access including but not limited to doorways, windows, service bars or service windows, unless each has the same designation (smoke-free or smoking). If smoking is chosen for any but not all of the establishments, each one for which smoking is chosen must have HVAC system(s) which serve only that area, and the HVAC system shall be balanced so as to keep a zero percent pressure

environment in all doorways and windows, and be physically separated in its entirety by walls which extend from floor to ceiling or deck above and any doors to that area must be self closing.

- (g) A facility which is smoke-free but which has a smoking establishment within it may add additional language to the required signage (as noted in this section) after "Smoking is prohibited throughout this facility at all times" stating "except in (name of area)" in matching letters and signage is required for exterior doors only. If all areas/establishments within a facility are smoke-free, then signage shall be required for exterior doors only.
- (h) Food and beverage establishments may offer employees a separate smoking lounge if it is physically separated in its entirety by walls which extend from floor to ceiling or deck above, is served by HVAC system(s) which serve only that area, and the HVAC system shall be balanced so as to keep a nine (9) percent pressure environment in all doorways and windows, has a self-closing door and is available only to employees of the establishment.
- (i) Smoking may be permitted in hotel, motel, inn, bed and breakfast and lodging rooms that are rented to guests designated as "smoking rooms". A facility which offers such rooms for rent to guests may add additional language to the required signage (as previously noted in this section) after "Smoking is prohibited throughout this facility at all times" stating "Lodging rooms are available for guests who smoke" in matching letters.
- (j) Food and beverage establishments will be listed in a listing by status (smoke-free or smoking) to be published annually by the city clerk no later than April 1; the first listing will be done by July 1, 2005; the listing will be available to the public from the city clerk's office and will also be posted on the city's web site.

Sec. 14-328. - Violations.

- (a) It shall be the responsibility of the owner, business agent, manager or other person having control of such food and beverage establishment to ensure compliance with all sections of this article pertaining to his/her place of business. A violator of this article may receive:
 - (1) In the case of a first violation, a fine of one hundred dollars (\$100.00);
 - (2) In the case of a second violation, within twenty-four (24) months of the first violation, a fine of five hundred dollars (\$500.00); and
 - (3) In the case of three (3) or more violations within twenty-four (24) months of the second or current violation, a fine of five hundred dollars (\$500.00) for each violation.

- (b) No provision, clause or sentence of this section of this article shall be interpreted as prohibiting the city from suspending or revoking any license or permit issued by and within the jurisdiction of the city for repeated violations of this article.
- (c) If the owner, business agent, manager or other person having control of such food and beverage establishment attempts to enforce this article and a patron violates it (smokes in a smoke-free establishment), then the owner, business agent, manager or other person having control shall not be deemed to be in violation of this article and the patron shall be subject to a fine as follows:
 - (1) In the case of a first violation, a fine of one hundred dollars (\$100.00);
 - (2) In the case of a second violation, within twenty-four (24) months of the first violation, a fine of five hundred dollars (\$500.00); and,
 - (3) In the case of three (3) or more violations within twenty-four (24) months of the second or current violation, a fine of five hundred dollars (\$500.00) for each violation.
- (d) Each calendar day an owner, business agent, manager or other person having control of a food and beverage establishment operates in violation of any provision of this article shall be deemed a separate violation; each calendar day a patron violates this article (i.e., smokes in a smoke-free establishment) shall be deemed a separate violation.

Sec. 14-329. - Enforcement.

- (a) Authority to enforce this article shall be held by the city, its subsidiary programs or designees.
- (b) An owner, manager, operator, or employee of an establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.
- (c) The city's fire department, or its designee, and the Mobile County Health Department, or its designee, shall, while in an establishment that is undergoing otherwise mandated inspections, or at any other time deemed necessary by these entities, inspect for compliance with this article.
- (d) Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the magistrate or court clerk of the city.
- (e) Any fines or fees collected under this article shall be used for the enforcement of these regulations.

Sec. 14-330. - Non-retaliation.

No owner, business agent, manager or other person having control of a food and beverage establishment shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action or other adverse action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this article or exercises any right conferred by this article.

WHEREAS, Chapter 14, Article XIV of the Saraland Code is hereby amended to read as follows:

Sec. 14-326. - Definitions.

As used herein:

- A. *"Bar"* means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- B. *"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.
- C. *"City"* means the City of Saraland, Alabama.
- 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 which employs one (1) or more persons.
- F. *"Enclosed Area"* means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- G. *"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, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, 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.

- H. *"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", unless it is used as a child care, adult day care or health care facility.
- I. *"Playground"* means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on the City of Saraland grounds.
- J. *"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.
- K. *"Public place"* shall mean any area enclosed or otherwise, to which the public is invited or permitted, including but not limited to 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", unless it is used as a child care, adult day care or health care facility.
- L. *"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 within the restaurant.

- M. "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- N. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- O. "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 or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.
- P. "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.

Sec. 14-327. – Enforcement.

- A. The provisions of this article are enforceable by any duty authorized municipal code enforcement officer, police officer or fire department official, or as otherwise allowed by law.
- B. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

Sec. 14-328. – Violation; penalty.

- A. Any person found guilty of violating the provisions of this article shall be punished with a fine of seventy dollars (\$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.
- B. 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 Article shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.

2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 14-329. – Application of Article to City of Saraland Owned Facilities.

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

Sec. 14-330. – Prohibition of Smoking in Enclosed Public Places.

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

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities; Smoking may be permitted in designated outdoor 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.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.

- J. Health care facilities; to include all private and semi-private rooms in nursing homes.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Polling places.
- N. Public transportation vehicles, including buses and taxicabs, under the authority of the City of Saraland, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- O. Restaurants.
- P. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- Q. Retail stores.
- R. 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 of Saraland or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Saraland.
- S. Service lines.
- T. Shopping malls.
- U. Sports arenas, including enclosed places in outdoor arenas.
- V. Theaters and other facilities used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 14-331. – Prohibition of Smoking in Outdoor Areas.

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of 15 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

- B. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 15 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- C. In, and within 15 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City of Saraland.
- D. In all outdoor service lines.
- E. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least 15 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.
- F. In, and within 15 feet of, outdoor playgrounds.

Sec. 14-332. – Exceptions.

The following are exempted from the requirements of this article:

- A. Private houses, apartments, condominiums, townhouses, patio homes, except when used as a childcare, adult day care, or health care facility; private facilities of private social clubs; and stores that deal exclusively in tobacco products and accessories.
- B. Not more than twenty percent (20%) of hotel and motel rooms rented to guests and designated as smoking rooms. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Outdoor areas of places of employment may be designated as smoking sections. Smoking areas should be designated by appropriate signs, clearly visible to patrons in or entering the area and should contain ashtrays, containers or other facilities for extinguishment of smoking materials, and should not be closer than 15 feet to entrance of building.

Sec. 14-333. – Regulations regarding posting, etc.

- A. "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

Article, by the owner, operator, manager, or other person in control of that place. The absence of such a "no smoking" or "designated smoking area" sign as required by this article shall be a violation of this article.

- B. 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 article 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 article.
- C. Any person who smokes in a posted "no smoking" area is in violation of this article.
- D. No person shall willfully destroy, remove or deface any sign posted in compliance with this article, any such prohibited conduct is a violation of this article.
- E. With the exception of the areas enumerated in section 14-332, no public place, as defined in this article, 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. 14-334. – 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 article 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 article.
- 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 two (2) or more employees to disseminate information concerning the provisions of this article to said employees.
- D. Every owner, manager and employer in the city except those exempted by this article, shall adopt, implement and maintain a written smoking policy.

- E. 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 non-smoking in the workplace shall be deemed to be in compliance with this provision of this article.

Sec. 14-335. – 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.

Sec. 14-336. – Other Applicable Laws.

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

Sec. 14-337. – Liberal Construction.

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

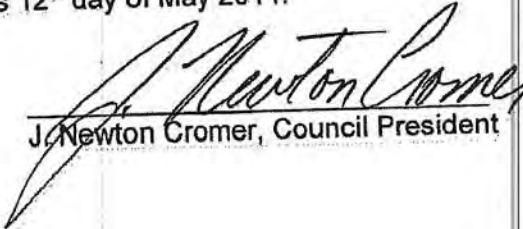
Sec. 14-338. – Severability.

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


Sec. 14-339. – Effective Date.

This Article shall be effective thirty (30) days from and after the date of its adoption.

ADOPTED and APPROVED this 12th day of May 2011.


J. Newton Cromer, Council President

Attest:



Denise Jernigan, City Clerk

I, the undersigned qualified and acting Clerk of the City of Saraland, Alabama, do hereby certify that the above and foregoing is a true copy of an Ordinance lawfully passed and adopted by the City Council of the City named therein, at a regular meeting of such Council held on the 12th day of May 2011, and that such Ordinance is of record in the Minute Book of the City.

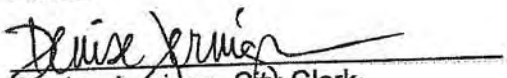
IN WITNESS WHEREOF, I have hereunto set my hand and official seal of the City on this the 12th day of May 2011.


Denise Jernigan, City Clerk

APPROVED this 19th day of May 2011.


Dr. Howard Rubenstein, Mayor

Attest:


Denise Jernigan, City Clerk

Smoke-free SARALAND

**In all enclosed public and work places,
including restaurants and bars.**

**Because everyone deserves to
breathe clean, smoke-free air!**



Aug. 15

Just Breathe
Smoke Free Mobile County

Just Breathe Mobile.org

