

**ORDINANCE ELIMINATING SMOKING IN  
WORKPLACES AND ENCLOSED PUBLIC PLACES  
CITY OF CULLMAN, ALABAMA**

**Section 1. Title**

This Ordinance shall be known as the Smoking Pollution Ordinance.

**Section 2. Findings and Purpose**

The City Council does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and have concluded that breathing secondhand smoke is a cause of disease in healthy non-smokers, including heart disease, stroke, respiratory disease, and lung cancer. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including bronchoconstriction and broncho-spasm.

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 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.

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 (3) to recognize that the need to breathe smoke-free shall have priority over the desire to smoke.

### **Section 3. Definitions**

The following words and phrases, whenever used in this Ordinance, shall be constructed as defined in this section:

1. “Bar” means an area which 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 such beverages. A “bar” for the purpose of this definition does not include any establishment where tobacco smoke can filter into any area where smoking is prohibited through a passageway, ventilation system, or any other means. A “bar” for the purposes of this Ordinance shall not include any area where full meals are normally served, but may include the service of appetizers and snacks.

2. “Business” means any sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

3. “Employee” means any person who is employed by any 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.

4. “Employer” means any person, partnership, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one or more individual persons.

5. “Enclosed Area” means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, “office landscaping” or similar structures.

6. “Place of Employment” means 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, employee lounges and rest

rooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a “place of employment” unless it is used as a licensed childcare, adult day care or health care facility.

7. “Public Place” means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health facilities, Laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, day care, or health care facility.

8. “Private Clubs” means a building used primarily by members and their guests, and for private functions not open to the general public, such as but not limited to, Country Clubs, Golf Clubs, Supper Clubs, Benevolent societies, and fraternal organizations.

9. “Public Property” shall mean any location except private residences and private clubs.

10. “Restaurant” means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities, except that the term “restaurant” shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a “bar” as defined in Section 3 (1).

11. “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 merely incidental.

12. “Service Line” means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

13. “Smoking” means inhaling, exhaling, burning or carrying a lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

14. "Sports Arena" means enclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller or 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 events.

15. Recreational areas, city parks, city picnic areas, city pavilions, city ball fields, to include any city owned property not referenced in Section 5, Subsection 12.

16. "Tobacco Vending Machine" means any machine or device designated for or used for vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade checks, or slugs.

#### **Section 4. Application of Ordinance to City-Owned Facilities**

All enclosed facilities owned, leased, or operated by the City of Cullman shall be subject to the provisions of this Ordinance.

#### **Section 5. Prohibition of Smoking in Public Places**

A. Smoking shall be prohibited at all public property within the City of Cullman, including, but not limited to, the following places except those exempt pursuant to Section 11 (A), (B), and (C).

1. Elevators;
2. All enclosed facilities owned by the City of Cullman including the City Jail;
3. Restrooms, lobbies, reception areas, hallways and any other common-use areas;
4. Buses, taxicab, and other means of public transit under the authority of the City of Cullman, and ticket, boarding, and waiting areas of public transit depots;
5. Service lines;
6. Retail stores;

7. All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including but not limited to, attorney's offices except those exempt under Section 11A(7), and other offices, banks, laundromats, hotels, and motels;

8. Restaurants;

9. Public areas of aquariums, galleries, libraries, and museums when open to the public;

10. Any facility which is primarily used for exhibiting any motion picture, stage performance, drama, lecture, musical recital, or other similar performance, except performers when smoking is part of a stage production, outdoor parks, ballfields, swimming pools, and other outdoor recreational areas owned by the City of Cullman;

11. Enclosed sports arenas and convention halls, including bowling facilities and recreational areas;

12. Every room, chamber, place of meeting or public assembly in any facility, including school buildings under the control of any board, council, commission, committee, including joint committees, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress to the extent such place is subject to the jurisdiction of the City;

13. Waiting rooms, hallways, wards, and semi-private rooms of health facilities, including but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices, and dentists' offices;

14. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, child care facilities, adult daycare, or health facilities, and other multiple-unit residential facilities;

15. Polling places;

16. Bingo games.

B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment or facility may declare the entire establishment or facility as a nonsmoking establishment.

### **Section 6. Prohibition of Smoking in Place of Employment**

A. It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications.

B. Within 90 days of the effective date of this Ordinance, each employer having an enclosed place of employment located within the City shall adopt, implement, make known, and maintain a written smoking policy which shall contain the following requirements:

“Smoking shall be prohibited in all enclosed facilities within a place of employment solely accessible by employees of the facility. This includes common work areas, auditoriums, classrooms, conference and meeting rooms used during employee meetings, private offices (provided that the private office is not open to the public, the public is not invited, and the office is not intended for occupancy by employees during the course of their employment), elevators, hallways, medical facilities, employee cafeterias, employee lounges, stairs, rest rooms, vehicles, and all other enclosed facilities or structures whose primary use is by employees of the facility.”

C. The smoking policy shall be communicated to all employees within three (3) weeks of its adoption.

D. All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

## **Section 7. Tobacco Products in Vending Machines**

It shall be unlawful and an offense against the City of Cullman 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. Nothing in this provision shall in any way prohibit or restrain tobacco product vending machines in adult entertainment establishments.

## **Section 8. Limitation of Minor's Access to Tobacco Products**

Retail establishments shall only place tobacco products for sale behind the sales counter accessible only to employees and away from easy access by minors.

## **Section 9. Tobacco Sampling**

No free sample of any tobacco product may be given away on public property.

## **Section 10. Reasonable Distance to be Observed from All Entryways Where Smoking is Prohibited.**

In order to prevent second hand smoke from entering a public place and place of employment where smoking is prohibited, every person who is smoking shall smoke a reasonable distance from all entranceways, passageways, operable windows, or ventilation systems of any enclosed area where smoking is prohibited but not less than fifteen (15) feet, so as to ensure smoke does not enter the smoke free establishment or area. Any person who fails to comply with this provision after an oral request to cease smoking by the owner, operator, manager or other person having control of the smoke free establishment or enclosed area shall be in violation of this Ordinance.

## **Section 11. Where Smoking Not Regulated**

A. Notwithstanding any other provisions of this Ordinance to the contrary, the following areas shall not be subject to the smoking restrictions of this Ordinance.

1. Bars which meet the requirements of Section 3(1) of this Ordinance;

2. Private residences, except when used as a childcare, adult daycare, or health care facility;
3. Hotel and motel rooms that are rented to guests and are designates as smoking rooms;
4. Retail tobacco stores;
5. Restaurants, hotel and motel conference or meeting rooms and public and private assembly rooms while these places are being used for private functions;
6. Golf courses and private clubs;
7. Private clubs;
8. Private or business vehicles, except those used for public transportation.

B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

C. Notwithstanding any other provision of this Ordinance, any owner, operator, manager, or other person who controls any establishment described in this Ordinance may declare that establishment as a smoking establishment by posting at each entrance a sign signifying the business as a smoking facility. The sign shall be clearly, sufficiently, and conspicuously posted at ever entrance and in each room of the facility informing the public they may be subject to tobacco smoke. The sign shall include the following: "Smoking is Allowed" with a symbol of a lit cigarette.

## **Section 12. Posting of Signs**

A. Every public place where this Ordinance regulates smoking shall have posted at every entrance and if a restaurant, every dining room a conspicuous sign clearly stating that smoking is prohibited or allowed and said sign shall meet the minimum requirements as set out in Section 12 B and 12C below.

#### B. Non-Smoking Establishments:

For establishments designated as SMOKE-FREE, signage shall be posted conspicuously on or adjacent to each and every exterior door to the establishment that is generally accessed by patrons or employees, plainly visible to persons entering through the door and in every dining room, if a restaurant. Signage shall be no smaller than 8.5 inches by 11 inches with red or black lettering on a white background and include the following statements: “ This establishment is a SMOKE-FREE facility” with letters no smaller than 5/8 inch tall (approximately 66 points); “Smoking is prohibited throughout this facility at all times” with letters no smaller than 1/4 inch tall (approximately 36 points); and City of Cullman ORDINANCE NO. 2005 - 19 ” with letters no smaller than 1/8 inch tall (20 points) and the no smoking international symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, and “The Surgeon General has determined that second hand smoke is hazardous to your health” with letters no smaller than 1/4 inch tall (approximately 36 points)..

#### C. Smoking Establishments:

For establishments designated as SMOKING, signage shall be posted on or adjacent to each and every door to the establishment that is generally accessed by the patrons or employees, plainly visible to persons entering through the door. Signage shall be no smaller than 8.5 inches by 11 inches with red or black lettering on a white background and include the following statements: “Smoking Allowed” with letters no smaller than 1/4 inch tall (approximately 36 points) and the international smoking symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle) and “The Surgeon General has determined that second hand smoke is hazardous to your health” with letters no smaller than 1/4 inch tall (approximately 36 points); and “City of Cullman Ordinance 2005 - 19 ” with letters no smaller than 1/8 inch tall (approximately 20 points”.

D. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager or other person having control of such area.

E. Each establishment shall have signage as above described on the premises not later than 90 days from the effective date of this Ordinance.

### **Sec. 13. Employment of Minors**

No persons under the age of nineteen (19) years shall be employed at any smoking establishment except those persons who have had the disability of non-age removed and those persons that are employed by the establishment on the date this Ordinance becomes effective.

### **Sec. 14. Enforcement**

A. Enforcement of this Ordinance shall be implemented by any duly sworn police officer employed by the City of Cullman, the County Health Officer, or his or her duly authorized representative, or as otherwise allowed by law.

B. Notice of this provisions set forth in this Ordinance shall be given to all applicants for a business license in the City of Cullman.

C. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Cullman Police Department.

D. The Health Department or the Fire Department shall require, while an establishment is undergoing otherwise mandated inspections, a "self-certification" from the owner, manager, operator, or other person having control of such establishment that all requirements of this Ordinance have been complied with.

E. Any owner, operator, or employee of any establishment regulated by this Ordinance may inform persons violating this Ordinance of the appropriate provisions thereof.

### **Sec. 15. Non-Retaliation**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke free environment afforded by this Ordinance.

## **Sec. 16. Violations and Penalties**

A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under this Ordinance to fail to comply with any of its provisions.

B. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Ordinance.

C. Any person who violates any provision of this Ordinance shall be guilty of an infraction, punishable by:

1. A fine not exceeding Two Hundred Fifty Dollars (\$250.00) for a first violation.

2. A fine not exceeding Five Hundred Dollars (\$500.00) for a second violation of this Ordinance within one (1) year.

3. A fine not exceeding Seven Hundred Fifty Dollars (\$750.00) for each additional violation of this Ordinance within one (1) year.

4. Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action to enforce this Ordinance.

## **Sec. 17. Other Applicable Laws**

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

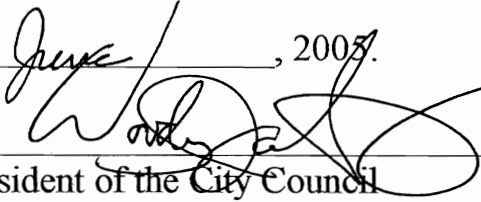
## **Sec. 18. Severability**

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

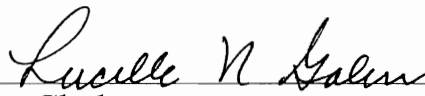
**Sec. 19. Effective Date**

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

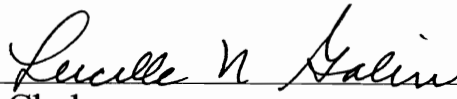
ADOPTED this the 13<sup>th</sup> day of June, 2005.

  
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President of the City Council

ATTEST:

  
\_\_\_\_\_  
City Clerk

Transmitted to the Mayor this the 13<sup>th</sup> day of June, 2005.

  
\_\_\_\_\_  
City Clerk

APPROVED by the Mayor this the 13<sup>th</sup> day of June, 2005.

  
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Mayor