

**ORDINANCE NO. 08-2168****AN ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES (AS DEFINED HEREIN), CITY-OWNED FACILITIES, OUTDOOR ARENAS, STADIUMS, AND PLACES OF EMPLOYMENT, AND PROVIDING PENALTIES FOR VIOLATIONS**

**WHEREAS**, environmental tobacco smoke or second-hand smoke is a leading public health concern throughout the United States;

**WHEREAS**, second-hand smoke is composed of sidestream smoke (the smoke released from the burning end of a cigarette) and exhaled mainstream smoke (the smoke exhaled by the smoker);

**WHEREAS**, because sidestream smoke is generated at lower temperatures and under different conditions than mainstream smoke, it contains higher concentrations of many of the toxins found in cigarette smoke;

**WHEREAS**, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing second-hand smoke (sometimes hereinafter referred to as "environmental tobacco smoke") is a cause of disease and illness in otherwise healthy nonsmokers;

**WHEREAS**, second-hand smoke kills 53,000 Americans prematurely each year;

**WHEREAS**, second-hand smoke is a known human Class A carcinogen (cancer-causing agent) and contains at least 250 chemicals that are known to be toxic or carcinogenic including formaldehyde, benzene vinyl chloride, arsenic ammonia, and hydrogen cyanide;

**WHEREAS**, concentrations of many cancer-causing and toxic chemicals are higher in second-hand smoke than in the smoke inhaled by smokers;

**WHEREAS**, there exists conclusive evidence that environmental tobacco smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies and irritations to the eyes, ears, nose and throat of both smokers and nonsmokers;

**WHEREAS**, there also exists conclusive evidence that second-hand smoke causes sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more frequent and severe asthma attacks in children;

**WHEREAS**, there is no risk free level of second-hand smoke exposure and the effects of even brief exposure (minutes to hours) to second-hand smoke can be nearly as large (averaging 80% to 90%) as chronic active smoking;

**WHEREAS**, there are laws, ordinances, and regulations in place which protect workers from other environmental hazards, including Class A carcinogens such as asbestos, arsenic, and benzene, but none which regulate exposure to environmental tobacco smoke;

**WHEREAS**, economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no impact or a positive impact on the economic health of the businesses within the hospitality industry after enactment of smoke-free laws; and

**WHEREAS**, the Surgeon General has concluded that a smoke free environment is the only way to fully protect nonsmokers from the dangers of second-hand smoke.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOOPER, ALABAMA**, that the Council recognizes the dangers of exposure to second-hand smoke and the rights of those who wish to breathe smoke-free air and hereby establishes this Ordinance (to be known as the "Comprehensive Second-hand Smoke Control Ordinance") and the regulations contained herein to protect and improve the public health, safety and welfare:

**SECTION 1. FINDINGS.** The Council does hereby find that:

- A. Environmental tobacco smoke or second-hand smoke is a leading public health concern in the City of Hoover;
- B. The use of lighted smoking products inherently creates a health hazard of second-hand smoke, which affects the public health, indoor environment, and the enjoyment of public places in the City of Hoover; and
- C. Creation of smoke-free public places is sound policy and helps to provide a maximum level of health and safety for citizens of the City of Hoover, Alabama.

**SECTION 2. AMENDMENT TO MUNICIPAL CODE.** Chapter 11 Offenses--Miscellaneous, Article IX Smoking of the *Municipal Code of the City of Hoover, Alabama* is hereby amended as follows. Section 11-171 is hereby deleted in its entirety and replaced with the following.

**Section 11-171. Comprehensive Second-hand Smoke Control Ordinance.**

(a) **DEFINITIONS.** Unless the context clearly indicates a different meaning, the words, terms and phrases used in this Ordinance shall have the following meanings:

**Bar:** An establishment that is devoted primarily 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, and in which the percentage of gross annual receipts of said establishment from the sale of alcohol is greater than or equal to eighty percent (80%). The term "bar" shall include, but is not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

**Enclosed Area:** 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:** An office or institution providing care or treatment of illness, infirmity or diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals, ambulatory care facilities, surgical centers, or other facilities, including weight control clinics, nursing homes, assisted living facilities, adult day care facility, 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.

**Private Club:** A bona fide for profit or non-profit organization or association that requires membership applications to be filled out for membership and accepted. The records required shall be kept manually or electronically and shall indicate the name and address of each member.

**Pub:** An eating establishment (1) which gives or offers food for sale to the public, guests or employees; (2) in which alcoholic beverages are also served for consumption by guests on the premises; and (3) in which the percentage of gross annual receipts of said establishment from the sale of alcohol is greater than forty percent (40%) but less than eighty percent (80%).

**Public Place:** An enclosed area to which the public is invited or which is available to and customarily used by the public or in which the public is permitted, including, but not limited to, banks, bars and pubs, educational facilities, health care facilities, 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. The term "public place" shall also include all areas described in subsection (c) below. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

**Restaurant:** An eating establishment (including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias), which gives or offers food for sale 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 an establishment in which alcoholic beverages are also served for consumption by guests on the premises and in which the percentage of gross annual receipts of said establishment from the sale of alcohol is equal to or less than forty percent (40%). The term "restaurant" shall include a bar area within the restaurant.

**Retail Tobacco Store:** A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

**Shopping Mall:** An enclosed public walkway or hall area that serves to connect retail or professional establishments.

**Smoke or Smoking:** The act of inhaling, exhaling, burning, carrying, holding or possessing any lighted tobacco product, lighted cigar, lighted cigarette, lighted pipe, or any other lighted smoking equipment or device containing any weed, plant, or other combustible substance in any manner or in any form.

**(b) APPLICATION OF ORDINANCE TO CITY-OWNED FACILITIES AND VEHICLES.** Smoking is prohibited in all enclosed facilities, including buildings and vehicles, owned, leased or operated by the City of Hoover.

**(c) PROHIBITION OF SMOKING IN PUBLIC PLACES.** Except as provided in this Ordinance, smoking shall be prohibited in all enclosed public places within the City of Hoover, including, but not limited to, the following public places:

1. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of Hoover or a political subdivision of the State, to the extent such place is subject to the jurisdiction of the City of Hoover;
2. Retail stores;
3. Shopping malls;
4. Restrooms, lobbies, reception areas, hallways, and other common-use areas, including, but not limited to common areas located in commercial and non-commercial multi-tenant buildings, apartment buildings, other multi-family residences sharing common areas, condominium, manufactured home parks, retirement facilities, nursing homes, or any multiple-unit leased building;
5. Any enclosed areas of buildings or facilities that are available to and customarily used by the general public, including, but not limited to, professional offices, banks, laundromats, hotels, motels, and retail service establishments;
6. Health care facilities, including nursing homes, assisted living facilities, adult day care, and other care facilities;
7. Educational facilities, both public and private;
8. Elevators;
9. Restaurants;

11. Any indoor place of entertainment, athletics or recreation, including but not limited to, gymnasiums, roller skating rinks, ice skating rinks, recreation halls, bowling alleys, swimming pools, health clubs, physical exercise facilities, and sports arenas where persons engage in athletic competition;
12. Facilities primarily used for exhibiting a motion picture, stage drama, lecture, musical recital, or other similar performance;
13. Galleries, libraries, and museums;
14. Polling places;
15. Child care and adult day care facilities;
16. Private clubs, when being used for a function to which the general public is invited;
17. Bars and pubs in which the business licensee thereof has declared said establishment to be "nonsmoking";
18. Public transportation facilities, including buses and taxicabs (while transporting for a fare), under the authority of the City of Hoover, and ticket, boarding, and waiting areas of public transit depots;
19. Bingo facilities; and
20. Any business or facility not currently described in the City of Hoover Business License Code as of the date of enactment of this ordinance, but added by the City Council.

**(d) PROHIBITION OF SMOKING IN OUTDOOR ARENAS, STADIUMS, AND AMPHITHEATERS.** Smoking shall be prohibited in the seating areas of all outdoor arenas, stadiums, and amphitheaters, as well as in the bleachers, grandstands, and spectator viewing areas for use by the public at sporting or other public events. Smoking shall be further prohibited within fifty (50) feet of the seating areas and entrances and exits of all outdoor, arenas, stadiums, and amphitheaters.

**(e) REASONABLE DISTANCE.** Unless otherwise restricted by law, smoking is prohibited within a reasonable distance of ten (10) feet outside the entrances and exits of an enclosed area where smoking is prohibited, so as to ensure that tobacco smoke does not enter the enclosed area.

**(f) EXEMPTIONS - WHERE SMOKING IS NOT REGULATED.**

1. Private residences, except when used as a child care, 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-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated on an annual basis during the business licensing process. The status of rooms as smoking or nonsmoking may not be changed during such annual period, except to add additional nonsmoking 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 Ordinance.
3. Retail tobacco stores; provided that smoke from these places does not infiltrate areas where smoking is prohibited under the provisions of this Ordinance and provided that such entity does not employ and/or utilize the services of any individual eighteen (18) years of age or younger in any capacity in such store.
4. Pubs in which the owner thereof has declared said establishment in its entirety to be "smoking" provided that any individual eighteen (18) years of age or younger is not employed or utilized for work in any capacity in such pub. A pub owner may choose to avail himself/herself of either this section or section 5.
5. That area of a pub which is declared by the owner of said pub to be "smoking" **and:** (a) which said area is completely physically separated in its entirety from the remaining "nonsmoking" area of said pub by smoke resistant vertical or horizontal construction or by other mechanical means which restricts the movement of smoke outside of the enclosed area and may contain smoke resistant doors which can be closed; **and** (b) which said area has its own separate HVAC system which services only that area or utilizes an appropriate air flow control, exhaust, and/or air filtration system designed such that tobacco smoke, chemicals, and fumes shall not enter or be returned into the non-smoking areas. Such system must be in operation during all hours when food or beverages are served.

A written rational analysis supporting the types of smoke control systems to be employed, their methods of operation, the systems supporting them and the methods of construction to be utilized in such restaurant shall accompany any submitted construction documents and shall be approved by the Building Official of the City of Hoover prior to installation.

owner/pub does not employ and/or utilize the services of any individual eighteen (18) years of age or younger in any capacity in such pub.

6. That area of a restaurant which is declared by the owner of said restaurant to be "smoking" **and:** (a) which said area is completely physically separated in its entirety from the remaining "nonsmoking" area of said restaurant by smoke resistant vertical or horizontal construction or by other mechanical means which restricts the movement of smoke outside of the enclosed area and may contain smoke resistant doors which can be closed; **and** (b) which said area has its own separate HVAC system which services only that area or utilizes an appropriate air flow control, exhaust, and/or air filtration system designed such that tobacco smoke, chemicals, and fumes shall not enter or be returned into the non-smoking areas. Such system must be in operation during all hours when food or beverages are served.

A written rational analysis supporting the types of smoke control systems to be employed, their methods of operation, the systems supporting them and the methods of construction to be utilized in such restaurant shall accompany any submitted construction documents and shall be approved by the Building Official of the City of Hoover prior to installation.

7. Bars, in which the owner thereof has declared said establishment in its entirety to be "smoking" and provided that any individual eighteen (18) years of age or younger is not employed or utilized for work in any capacity in such bar. A bar owner may choose to avail himself/herself of either this section or section 8.
8. That area of a bar which is declared by the owner of said bar to be "smoking" **and:** (a) which said area is completely physically separated in its entirety from the remaining "nonsmoking" area of said bar by smoke resistant vertical or horizontal construction or by other mechanical means which restricts the movement of smoke outside of the enclosed area and may contain smoke resistant doors which can be closed; **and** (b) which said area has its own separate HVAC system which services only that area or utilizes an appropriate air flow control, exhaust, and/or air filtration system designed such that tobacco smoke, chemicals, and fumes shall not enter or be returned into the non-smoking areas. Such system must be in operation during all hours when food or beverages are served.

A written rational analysis supporting the types of smoke control systems to be employed, their methods of operation, the systems supporting them and the methods of construction to be utilized in such restaurant shall accompany any

Official of the City of Hoover prior to installation.

A bar owner may choose to avail himself/herself of either this section or section 7. This exemption may be used by a bar owner provided that such owner/bar does not employ and/or utilize the services of any individual eighteen (18) years of age or younger in any capacity in such bar.

9. Private clubs, provided that a majority of the board of directors approve to allow smoking and such majority approval is noted in the official minutes of the club and posted in a prominent interior location, except when such private club is being utilized for a function to which the general public is invited.
10. Limousines under private hire.
11. Private offices, places of employment and businesses not open to the general public.

**(g) DECLARATION OF ESTABLISHMENT AS NONSMOKING.** Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of a business, restaurant, bar, pub, private club, establishment, facility, sports arena, or outdoor area may declare that entire premises as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of section (h) herein is posted.

**(h) POSTING OF SIGNS.**

1. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed within a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place where smoking is prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place. Compliance with subsection (h)(2) below is sufficient to meet this obligation.
2. Every public place where smoking is prohibited by this Ordinance shall have posted at every public 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. Every public place where smoking is permitted under the terms of this Ordinance shall have posted at every public entrance a conspicuous sign clearly



**(i) ENFORCEMENT.**

1. The provisions of this Ordinance are enforceable by any municipal code enforcement officer of the City of Hoover, Alabama, the county health officer or a duly authorized representative thereof or as otherwise allowed by law for prosecution of offenses.
2. Notwithstanding, citations under this section may be issued pursuant to Section 11-45-9.1 of the Code of Alabama (1975) which authorizes municipalities to issue Summons and Complaints in lieu of arrest warrants for violations of certain municipal ordinances. Such citations may be issued by a municipal code enforcement officer of the City of Hoover.
3. Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by the City of Hoover by restraining order, preliminary and/or permanent injunction, or other means provided for by law.

**(j) 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 violation, punishable by a fine not exceeding fifty dollars (\$50.00).
2. A person who owns, leases, manages, operates or otherwise controls a public place and (i) who fails to comply with the provisions of this Ordinance or (ii) who refuses to enforce such designations by requesting that persons smoking in violation of this article stop or leave the nonsmoking area, shall be guilty of a violation, punishable by:
  - a. A fine not exceeding one hundred dollars (\$100.00) for a first violation;
  - b. A fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year of the first violation; and
  - c. A fine not exceeding five hundred dollars (\$500.00) for each additional violation within one (1) year of the first violation.
3. In addition to the fines established by this Section, a violation of this Ordinance by a person who owns, manages, operates, or otherwise controls a public place may result in the revocation of any permit or license.

issued by the City of Hoover to the person or corporation for the premises on which the violation occurred. The revocation of a business license shall be effectuated in accordance with Chapter 8, Article II, Section 8-37 of this Municipal Code.

4. It shall be considered unlawful to violate any of the terms and provisions of this Ordinance. Each day upon which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

(k) **OTHER APPLICABLE LAWS.** This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**SECTION 3. AMENDMENT TO MUNICIPAL CODE.** Chapter 11 Offenses--Miscellaneous, Article XII Tobacco Use by Minors of the *Municipal Code of the City of Hoover, Alabama* is hereby amended by adding the following as Section 11-225.

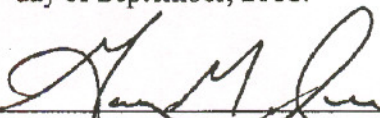
**Section 11-225. Placement of Tobacco Products for Sale.** It shall be unlawful and an offense under this section for any business owner or manager of any retail establishment within the jurisdiction of this city to permit the existence of tobacco products for sale in any area of the establishment that is accessible to minors. All such tobacco products shall be kept for sale in an area of the establishment that is inaccessible to minors. Any person violating this provision shall be punished in accordance with the provisions of section 1-5, *Municipal Code of the City of Hoover, Alabama*.

**SECTION 4. LIBERAL CONSTRUCTION.** This Ordinance shall be liberally construed so as to further its purposes.

**SECTION 5. 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. The City Council hereby declares that it would have adopted each section, subsection, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.


**SECTION 6. EFFECTIVE DATE.** This Ordinance shall become effective January 2, 2009.

**ADOPTED AND APPROVED** this 2<sup>nd</sup> day of September, 2008.

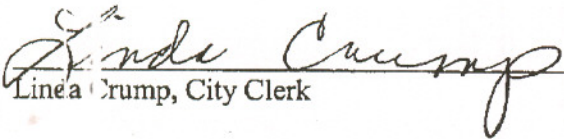


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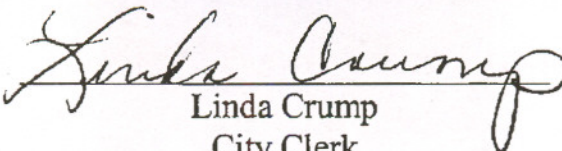
  
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Tony Ieteles, Mayor

ATTEST:

  
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Linda Crump, City Clerk

**CERTIFICATION**

I, Linda H. Crump, City Clerk for the City of Hoover, Alabama, hereby certify the attached is a true and correct copy of **Ordinance No. 08-2168** which was adopted by the City Council of the City of Hoover, Alabama, on the 2<sup>nd</sup> day of September, 2008.

  
Linda Crump  
City Clerk