

**CITY OF ASHVILLE  
ORDINANCE 2020-004  
TO PROHIBIT SMOKING IN PUBLIC PLACES**

**WHEREAS**, Environmental Tobacco Smoke is a leading public health problem in the City of Ashville, Alabama and throughout the United States; and

**WHEREAS**, 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; and

**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; and

**WHEREAS**, Environmental Tobacco Smoke, which includes both exhaled and side stream smoke from burning cigarettes, causes the deaths of many thousands of Americans each year; and

**WHEREAS**, the harmful effects of Environmental Tobacco Smoke are not confined to smokers but also cause discomfort and illness to many nonsmokers; and

**WHEREAS**, both the Public Health Services National Toxicology Program and the World Health Organizations' International Agency for Research on Cancer identify Environmental Tobacco Smoke as a human Class A carcinogen and state that there is no safe level of exposure; and

**WHEREAS**, the United States Surgeon General, the American Cancer Society, The American Lung Association, and the Alabama Department of Public Health have concluded that involuntary smoking is a cause of disease, including lung cancer, in nonsmokers,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHVILLE, ALABAMA**, as follows:

**SECTION 1.**

The Council recognizes the dangers of exposure to second hand and side stream tobacco smoke and establishes this regulation to protect and improve the public health and welfare.

## **SECTION 2. DEFINITIONS.**

As used in this chapter the following words and terms shall have the meanings respectively ascribed.

**Bar** means an establishment that holds a Lounge Liquor License and is devoted primarily to the serving of alcoholic beverages for consumption by guests on the premises. This definition includes, but is not limited to taverns, nightclubs, cocktail lounges and cabarets.

**Common area** means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, interior and/or exterior general public entryway or exit, refreshment area, or restroom.

**Employee** means any person who is employed by an employer for compensation or profit.

**Employer** means any person, partnership, corporation, association or other entity, that employs one (1) or more persons.

**Public or public place** shall mean any enclosed area that is available to and customarily used by the general public or that is a public meeting area or that is an outdoor public gathering area, and includes areas as described in section 3.

**Restaurant** means an eating establishment, including but not limited to coffee shops, cafeterias, and sandwich stands or which gives or offers facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

**Restaurant Bar** shall mean an area designated and used primarily to serve alcoholic beverages located in a restaurant.

**Smoking or smoke** shall include the carrying, holding, or possession of lighted tobacco products in any form, including but not limited to, the possession of lighted cigarettes, cigars, pipes, or other tobacco products.

**Workplace** means any indoor area under the control of an employer to which employees have access during the course of employment, including, but not limited to work areas, employee lounges, employee restrooms, conference rooms and employee cafeterias. A private residence is not a place of employment.

## **SECTION 3. OFFENSES.**

Any owner of a building or the owner's duly authorized agent may designate said building to be smoke free such that no smoking is permitted in any enclosed area of the premises.

Except as provided in Sections 4 and 5 of this Ordinance, smoking is prohibited in any of the following public places within the City of Asheville.

(1) Any enclosed areas of buildings or facilities that are available to and customarily used by the general public, including but not limited to retail stores, restaurants, banks, office buildings, convention or meeting facilities, hotels, motels and multi-family residential buildings.

(2) Any vehicle of public transportation, including but not limited to trains, buses, taxicabs (while transporting a fare) and limousines;

(3) Elevators;

(4) Common areas located in, but not limited to, commercial and non-commercial multi-tenant buildings, apartment buildings or other multi-family residences sharing common areas;

(5) Libraries, schools or other education facilities, museums, auditoriums and art galleries;

(6) Any health care facility, health clinic or ambulatory care facility, including but not limited to laboratories associated with the rendering of health care treatment, hospitals, rest homes, doctors' offices and dentists' offices;

(7) Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theaters, concert halls, recreation halls, bowling alleys, arenas and swimming pools, but may have a separate room with a separate ventilation system.

(8) Areas of municipally owned parks or public use lands where the general public congregates, including but not limited to bleacher areas, pavilions, concession areas, playgrounds, outdoor cooking areas, gazebos, tennis courts, pools, playing fields, and track areas. Designated smoking areas may be established away from the areas where the public congregates.

#### **SECTION 4. EXCEPTIONS.**

Section 2 and the restrictions imposed therein shall not apply to:

- (1) Areas which are specifically designated as smoking areas in accordance with Section 5 of this Ordinance;
- (2) An entire room or hall that is used for private social functions, provided that the event is under the control of the sponsor of the function and not of the proprietor or person in charge of the establishment or hall excluding city-owned facilities;
- (3) Bars, but not to include restaurant bars unless such establishment satisfies the

conditions in Section 5 of this Ordinance;

- (5) A single-tenant commercial office building, provided that both the landlord and tenant agree to allow smoking;
- (6) A private, enclosed office(s) together with its private reception area(s) within a commercial office building housing more than one business and/or organization, provided that:
  - (a) The landlord of the commercial office building specifically permits smoking in designated areas of the building, not including common areas, which must remain smoke free;
  - (b) And the office(s) together with reception areas are located within an enclosed area of the commercial office building with a 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. Any such smoking area must be physically separated in its entirety by walls that extend from floor to the ceiling above, and have doors that can be closed.
- (7) Performers upon the stage; provided that the smoking is part of a theatrical production;
- (8) A tobacco specialty retail shop;
- (9) Hotel and motel rooms which are rented to guests and designated as smoking rooms by the management and separated from non-smoking rooms by a solid wall with no inner-connected doorways. Smoking and non-smoking rooms may be separated by floors, but every effort should be made to place smoking floors above non-smoking floor levels.
- (10) Private social clubs and veterans' organizations, provided a majority of the board of directors approve to allow smoking and such majority approval is noted in the official minutes of the club or veterans' organization and posted in a prominent interior location;
- (11) Parking lots and parking decks.
- (12) Private residences, except when used as a licensed childcare, adult care or health care facility.
- (13) Limousines under private hire by an individual or corporation;

## **SECTION 5. DESIGNATION OF SMOKING AREAS.**

The owner, lessee or other person in charge of a public place may, but is not required, to designate one (1) or more areas as smoking areas as detailed in this Section 5:

If a smoking area is designated, each smoking area shall:

- (1) Be located in an unenclosed area of the premises (out of doors) and located a minimum of twenty-five feet (25') away from the main general public entrance or exit to the building; or
- (2) Be located within an enclosed area (indoor) with a 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 area. Any such smoking area must be physically separated in its entirety by walls which extend from floor to the ceiling above, and have doors which shall be closed during any time smoking is permitted in said area; or
- (3) In the case of restaurants, smoking is permitted in an indoor restaurant bar under the following conditions:
  - (a) The restaurant bar area is physically separated in its entirety by walls which extend from floor to ceiling above, except for the sharing of a common ingress/egress between the smoking and non-smoking area, and have doors which shall be closed during any time smoking is permitted in said area; and
  - (b) Operates a separate HVAC system which services only the smoking area, or
  - (c) 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 area. Such system(s) must be in operation during all hours of operation.
  - (d) As it relates to items b) and c) above, the air handling system serving the restaurant bar area must be wired in series with the air handling fan control of the restaurant dining area.
- (4) All such smoking areas must be designated by appropriate signs as provided in Section 5 of this Ordinance which are clearly visible to patrons in or entering the area; and
- (4) Contain ashtrays, containers or other facilities for the extinguishment of smoking materials.

**SECTION 6. RESPONSIBILITY OF PROPRIETORS.**

The proprietor or other person having control of any area within Section 3 of this Ordinance shall:

(1) Prominently post "SMOKING" or "NO SMOKING" signs, whichever may be appropriate, or the international "NO SMOKING" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a bar across it.

(2) Post signs conspicuously in the lobby of every theatre stating that smoking is prohibited within the theatre or auditorium, and in the case of motion picture theatres such information shall be shown upon the screen prior to the showing of each feature motion picture;

(3) Request persons smoking in violation of this article to stop, or to leave the nonsmoking area to a designated smoking area.

**SECTION 7. REGULATION OF SMOKING IN THE WORKPLACE.**

Any business may, at the employer's discretion, be designated a non-smoking workplace.

Other than the exceptions listed in Section 4, if a business chooses to accommodate smoking employees it must provide a smoking area as defined in Section 5 of this Ordinance. An employer is not required by this provision to incur any expense for making structural or other physical modification to accommodate the preferences of nonsmoking or smoking employees.

**SECTION 8. ENFORCEMENT.**

The provisions of this chapter are enforceable by any duly sworn police officer employed by the City of Ashville, Alabama, the county health officer or a duly authorized representative thereof, or as otherwise allowed by law for prosecution of offenses.

**SECTION 9. FINES AND PUNISHMENT.**

Any person who willfully smokes in an area where smoking is prohibited under this chapter; or,

Any business proprietor or person in charge of a public place who fails or refuses to designate smoking and nonsmoking areas as required herein: or, who refuses to enforce the designations shall be in violation of this Ordinance.

It shall be unlawful to violate any of the terms and provisions of this ordinance. Any person, firm or corporation violating any of the said terms and provisions of this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not less than twenty five dollars (\$25.00) nor more than the maximum penalty allowed by the State of Alabama for a

misdemeanor violation for each such "offense". Each day any violation of this ordinance shall continue shall constitute a separate offense.

#### **SECTION 10. SUMMONS AND COMPLAINT**

Pursuant to Section 11-45-9.1 of the Code of Alabama, 1975, as amended, which authorizes municipalities to issue Summons and Complaints in lieu of arrest warrants for violation of certain municipal ordinances:

(1) Any law enforcement officer employed by the City of Ashville, Alabama may issue a Summons and Complaint to any person charged with violation of this Ordinance and release such person from custody upon his or her written promise to appear in court at the designated time and place as evidenced by his or her signature on the Summons and Complaint;

(2) The form of the approved Summons and Complaint shall be the Uniform Non-Traffic Citation and Complaint form.

(3) Any party charged with a first offense in violation of this Ordinance may elect to appear before the Municipal Court Magistrate within the time specified in the Summons and Complaint, and upon entering a plea of guilty and executing a Notice of Waiver of Rights form may pay a minimum fine of Twenty Five Dollars (\$25.00) and court costs shall be waived for such first offense.

#### **SECTION 11. MISCELLANEOUS.**

Nothing in this chapter excuses noncompliance with any Federal or State law, other City of Ashville, Alabama Ordinances, or any rule or regulation that prohibits smoking.


If any portion of this ordinance shall be held unconstitutional, invalid or unenforceable, such holding shall not affect the remaining portions of this chapter nor render the remaining portions of this chapter invalid, and to that end the provisions hereof are declared to be severable.

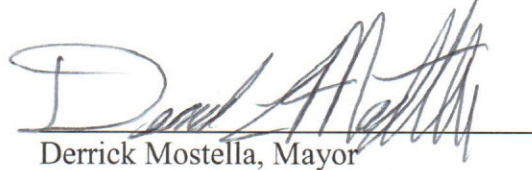
#### **SECTION 12. EFFECTIVE DATE.**

This ordinance shall become effective upon its adoption and publication as provided by law.

ADOPTED this the 80<sup>th</sup> day of April, 2020.

THE CITY OF ASHVILLE, ALABAMA





Derrick Mostella, Mayor  
City of Ashville

Attest: Chrystal St. John  
Chrystal St. John  
City Clerk