

ORDINANCE NO. 1023

AMENDING ORDINANCE 933 TO INCLUDE SMOKING, COMBUSTIBLE AND NONCOMBUSTIBLE TOBACCO PRODUCTS, SMOKELESS TOBACCO AND ELECTRONIC NICOTINE DELIVERY SYSTEMS

BE IT ORDAINED by the City Council of the City of Bay Minette, Alabama, as follows:

ARTICLE I. SMOKING, COMBUSTIBLE AND NON- COMBUSTIBLE TOBACCO PRODUCTS, SMOKELESS TOBACCO AND ELECTRONIC NICOTINE DELIVERY SYSTEMS IN WORK PLACES AND PUBLIC PLACES

Sec. 1-1. Title

This Article shall be known as the City of Bay Minette Smoke Free Air Ordinance.

Sec. 1-2. Findings and Intent

The City of Bay Minette 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 (Nd), "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 (WC), 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: 977-980, 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," Nonsmokers¹ 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 Service, 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.; Toutouzas, 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.; Urbonas, CM., "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: cigarette and cigar butts and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

The smoking of tobacco the use of combustible or non-combustible tobacco products, smokeless tobacco or electronic nicotine delivery systems are forms 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, combustible and non-combustible tobacco products and smokeless tobacco and electronic nicotine delivery systems 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.

Sec. 1-3. Definitions

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

- A. "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 represent twenty-five (25) percent or less of the bar's gross annual receipts. This definition includes, but is 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 City of Bay Minette City Council means City Council of the City of Bay Minette.
- D. "Combustible Tobacco" means tobacco products that are designed to be smoked—other than cigarettes including cigars, cigarillos, little cigars, blunts and bidis or beedis (small, flavored filterless Indian cigarettes). Electronic and/or battery-operated devices designed to deliver an inhaled dose of nicotine or other substances.
- E. "Electronic Nicotine Delivery System" includes any vaporizing device that produces a vapor that delivers nicotine or other substances to the person inhaling from the device to simulate smoking, and includes, but is not limited to, products that may be offered to, purchased by, or marketed to consumers as electronic cigarettes, electronic cigars, electronic cigarillo, electronic hookah, vape pen, vape tool, vaping device included in this subdivision, regardless of whether or not the liquid contains nicotine.
- E. "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.
- F. "Employer" means a person, business, partnership, and association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- G. "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.
- H. "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.
- I. "Liquid Nicotine Container" means a bottle or other container of a liquid product that is intended to be vaporized and inhaled using an electronic nicotine delivery system. The term does not include a container holding liquid that is intended for use in a vapor product if the container is pre-filled and sealed by manufacturer and is not intended to be opened by the consumer.

- J. "Non-Combustible Tobacco Products" are those that do not require burning of the product for consumption. Smokeless tobacco products are non-combustible.
- K. "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.
- L. "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, of 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.
- M. "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.
- N. "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.
- O. "Retail Nicotine Delivery System" Any retail business which offers for sale electronic nicotine delivery systems.
- P. "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.
- Q. "Service Line" means an indoor 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.
- R. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- S. "Smokeless Tobacco" is tobacco that is chewed or snuffed rather than smoked by the user.
- T. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.
- U. "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 1-4. Application of Article to City of Bay Minette Facilities

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

Section 1-5. Prohibition of Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco and Electronic Nicotine Delivery Systems in Enclosed Public Places

Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco and Electronic Nicotine Delivery Systems shall be prohibited in all enclosed public places within the City of Bay Minette, 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 nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
- C. Convention facilities.
- D. Educational facilities, both public and private.
- E. Elevators.
- F. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- G. Health care facilities.
- H. Hotel and motel lobbies.
- I. Licensed childcare and adult day care facilities.
- J. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- K. Polling places.
- L. Private clubs when being used for a function to which the general public is invited.
- M. Public transportation facilities, including buses and taxicabs and ticket, boarding, and waiting areas public transit depots.
- N. Restaurants.
- O. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- P. Retail stores.
- Q. 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 Bay Minette or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Bay Minette.

R. Service lines.

S. Shopping malls.

T. Sports arenas, including enclosed places in outdoor arenas.

Sec. 1-6. Prohibition of Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco and Electronic Nicotine Delivery Systems in Places of Employment

- A. Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco and Electronic Nicotine Delivery Systems shall be prohibited in all enclosed facilities within places of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms and all other enclosed facilities.
- B. This prohibition on Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco or Electronic Nicotine Delivery Systems shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 1-7. Prohibition of Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco and Electronic Nicotine Delivery Systems in Outdoor Arenas and Stadiums

Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco and Electronic Nicotine Delivery Systems shall be prohibited in the confines of Lyle Underwood Stadium at Simmons Field and in the seating areas of all outdoor arenas and stadiums.

Sec. 1-8. Reasonable Distance

Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco and Electronic Nicotine Delivery Systems are prohibited within a reasonable distance often (10) feet outside an enclosed area where smoking is prohibited, so as to ensure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or other means.

The owner, operator, manager or other persons in control of an establishment may declare that smoking, combustible and non-combustible tobacco products, smokeless tobacco and electronic nicotine delivery systems are prohibited within a greater distance outside an enclosed area where smoking, combustible and non-combustible tobacco products, smokeless tobacco and electronic nicotine delivery systems are prohibited. If smoking, combustible and non-combustible tobacco products, smokeless tobacco and electronic nicotine delivery systems are prohibited outside the building within a greater distance than ten (10) feet, a conspicuous sign shall be posted at every entrance stating that Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco and Electronic Nicotine Delivery Systems are prohibited within a specific distance (in feet) from the building. Smoking, combustible and non-combustible tobacco products, smokeless tobacco and electronic nicotine delivery systems shall be prohibited in any place in which a sign conforming to the requirements of this section is posted.

Sec. 1-9. Where Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco and Electronic Nicotine Delivery Systems Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 1-5 and 1-6:

- A. Private Residences, except when used as a licensed childcare, adult day care, or health care facility.
- B. Bars
- C. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of 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 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.
- D. Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
- E. Retail Electronic Nicotine Delivery Systems Stores; providing that vapors from the Electronic Nicotine Delivery System from the Retailer does not infiltrate into areas where Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco and Electronic Nicotine Delivery Systems are prohibited under the provisions of this Article.
- F. Private and semi-private 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 that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Article.
- G. Private clubs, except when being used for a function to which the general public is invited.
- H. Outdoor areas of places of employment except those covered by the provisions of Sections 1-7 and 1-8.

Sec. 1-10. Declaration of Establishment as Nonsmoking

Notwithstanding any other provision of this Article, 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 requirements of Section 8-11 is posted.

Sec. 1-11. Posting of Signs: Responsibility of Proprietors

- A. Every public place and place of employment where Smoking, Combustible and Non-Combustible Tobacco Products, Smokeless Tobacco and Electronic Nicotine Delivery Systems are prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- B. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.
- C. The owner, operator, manager or other person having control of any area where smoking is

prohibited by this Article shall request any person smoking in violation of this Article to stop.

Sec. 1-12. Nonretaliation: Nonwaiver of Rights

- A. An employee who works in a setting where an employer allows smoking, combustible and non-combustible tobacco products, smokeless tobacco and electronic nicotine delivery systems does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 1-13. Enforcement

- A. This Article shall be enforced by the Mayor or his duly authorized designees or representatives.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Bay Minette.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Code Enforcement Officer or by sworn Police Officers of the City of Bay Minette.
- D. An owner, manager, operator, or employee, of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
- E. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- F. In addition to the remedies provided by the provisions of this Section, the Mayor or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 1-14. Violations and Penalties

- A. A person who smokes or uses combustible and non-combustible tobacco products, smokeless tobacco or electronic nicotine delivery systems in an area where smoking, combustible and non-combustible tobacco products, smokeless tobacco or electronic nicotine delivery systems are prohibited by the provisions of this Article shall be guilty of a misdemeanor, punishable by a fine not exceeding fifty dollars (\$50.00).
- 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:

Section 1-11 -D shall be guilty of a misdemeanor, 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. In addition to the fines established by this Section, violation of Section 1-11-D 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.

D. Violation of this Article 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.

E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 1-15. Other Applicable Laws

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

Sec. 1-16. Miscellaneous

A business or property owner may prohibit smoking even in buildings or places where smoking is allowed under this Ordinance.

Sec. 1-17 Liberal Construction

This Article shall not liberally be construed so as to further its purpose.

Sec. 1-18 Repealer

Any ordinance or resolution heretofore adopted by the Council which is in conflict with this Ordinance is hereby repealed to the extent of such conflict.

Sec. 1-19. 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. 1-20. Effective Date

This Article shall be effective immediately from and after adoption and its publication as required by law.

ADOPTED AND APPROVED by the City Council of the City of Bay Minette, Alabama on this the 3rd day of April, 2023.


Robert A. Wills, Mayor

ATTEST:

Rita Diedtrich, City Clerk