

ORDINANCE NO. 4512

AN ORDINANCE TO AMEND §95.05 REGULATION OF SMOKING IN CERTAIN PUBLIC PLACES OF THE CODE OF FAYETTEVILLE AND TO ENACT A REPLACEMENT §95.05 REGULATION OF SMOKING IN MOST PUBLIC PLACES AND PLACES OF EMPLOYMENT

**WHEREAS**, the Fayetteville City Council has determined that further restrictions of smoking in enclosed public places and work places are needed to protect the health and safety of citizens and to ensure the right of nonsmokers to breathe smoke free air; and

**WHEREAS**, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand 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; and

**WHEREAS**, 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.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, hereby repeals **§95.05 Regulation of smoking in certain public places** of the Fayetteville Code in its entirety and enacts the following new **§95.05 Regulation of smoking in most public places and places of employment** of the Fayetteville Code to replace it:

**“Sec. 95.05. Regulation of smoking in most public places and places of employment.**

context clearly indicates or requires a different meaning.

(A) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the

*Bar.* An establishment, whether termed a private club or public establishment, that is devoted primarily to the sale and service of



alcoholic beverages for on-premises consumption and where the service of food, if any, is incidental to the consumption of such beverages.

*Restaurant.* An eating establishment, including but not limited to dining establishments, private clubs, coffee shops, cafeterias, sandwich shops, private and public cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as non-residential 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.

*Enclosed area.* All space partially enclosed 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.

*Manager.* The owner, lessee, or other person in charge of a public place.

*Place of employment.* An enclosed 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, hallways, classrooms, and employee cafeterias. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility. A "bar" and a "retail tobacco store" are not places of employment for purposes of this Section. An enclosed private office that is not regularly entered or occupied by a nonsmoking employee is not a place of employment for purposes of this section.

*Public place.*

- (1) Any enclosed indoor area that is used by the public or private club members and guests, except designated hotel and motel guest rooms.
- (2) Any swimming pool owned or operated by the city.

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

*Smoking.* Holding a lighted pipe, cigar, or cigarette of any kind, or lighting, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

(B) *Prohibition of Smoking in public places and places of employment*

Smoking is prohibited in all public places, places of employment, and city vehicles unless specifically exempted in subsection (C).

(C) *Exemptions.*

The following types of establishments are exempted from the smoking prohibition of this ordinance:

- (1) Bars
- (2) Retail tobacco stores

(D) *Duties of Managers.*

- (1) The manager of a place within which smoking is prohibited by this ordinance shall place "No Smoking" or "Smoke Free" signage at the major entrance and other appropriate places within the establishment.
- (2) The manager of a public place in which smoking is prohibited or restricted shall not knowingly permit or fail to make reasonable efforts to prevent smoking in any area where smoking is prohibited.

(E) *Enforcement.*

- (1) City police shall enforce this section pursuant to their normal police power.
- (2) If a manager knowingly permits or fails to make reasonable efforts to prevent smoking by the establishment's customers or employees where prohibited by this section, the manager shall be guilty of a violation and a fine or not more than \$100.00 per occurrence.
- (3) A person who smokes in an area where smoking is prohibited by provisions of this section shall be guilty of a violation punishable by a fine not exceeding fifty (\$50.00) dollars per occurrence.
- (4) In addition to the fines established by this Section, multiple violations of this Section 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 for the premises on which the violation occurred.

(F) *Jurisdiction.*

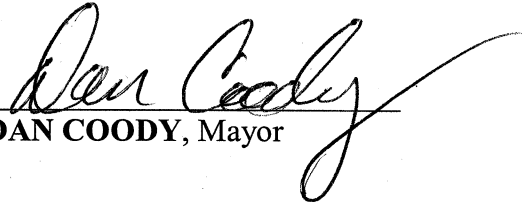
This section is not applicable nor enforceable in federal, state or county buildings including all facilities owned or operated by the University of Arkansas.

(G) *Effective date.*

This ordinance shall take effect on February 1, 2004.

**PASSED** and **APPROVED** this the 2<sup>nd</sup> day of September, 2003.

APPROVED:

By:   
**DAN COODY, Mayor**

ATTEST:

By:   
**SONDRA SMITH, City Clerk**

