

Council Member Adam Moseley introduced the following Ordinance:

**ORDINANCE NO. 10-005**

**AN ORDINANCE CONCERNING THE USE OF SMOKING TOBACCO  
IN FOOD AND BEVERAGE ESTABLISHMENTS  
AND HOTELS AND MOTELS**

**WHEREAS**, Environmental Tobacco Smoke is a leading public health problem in the City of Alabaster 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 53,000 Americans each year; and

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

**WHEREAS**, Food and Beverage establishments have been shown to be locations of significant exposure to environmental Tobacco smoke by the citizens of the City of Alabaster; 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**, there are laws, ordinances, and regulations in place that 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; 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 Alabaster, Alabama, that the Council recognizes the rights of those who wish to breathe smoke free air and establishes this regulation to protect and improve the public health and welfare by requiring each Food and Beverage establishment to choose to be either a completely SMOKE-FREE facility or a SMOKING facility, and each Hotel and Motel to designate common areas and rooms as SMOKE-FREE or SMOKING areas.

### **Section I. Definitions and Guidelines**

#### **Definitions**

- a. **Business Agent** - An individual who has been designated by the owner, proprietor, or operator of any establishment to be the manager or otherwise in charge of said establishment.
- b. **Common Areas** – Those Enclosed portions of a Hotel or Motel that are not intended as a Lodging Room but are areas common to both smokers and non-smokers, including, but not limited to, a lobby, conference and meeting rooms, laundry rooms, restrooms, vending areas, janitorial closets, common breakfast and restaurant areas.
- c. **Employee** – Any individual who performs services for an employer in return for wages or profit.
- d. **Enclosed** – A space, structure, facility or any portion thereof, bounded by walls (with or without windows) continuous from floor to ceiling or deck above and served by heating, ventilating and air conditioning (HVAC) system(s), and through which air can circulate from one portion to another, including, but not limited to offices, rooms, hallways, customer service areas, foyers, common areas, waiting areas, restrooms, lounges, and eating areas.
- e. **Food and/or Beverage Establishment** – Any establishment which is required to have a business license from the City of Alabaster and which provides food and/or beverage under a permit from the Health Department and/or an “on premises” liquor license from the Alcohol and Beverage Control (ABC) Board.
- f. **Hotel or Motel** – Any establishment which is required to have a business license from the City of Alabaster and which provides nightly, weekly, monthly or extended temporary lodging to travelers and guests.
- g. **Lodging Room** – Any portion of a Hotel or Motel establishment intended for rental as a private sleeping quarters for travelers and guests of the establishment.
- h. **Smoking** – Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or form.

**Section II. Designating Food and Beverage Establishments and Hotels and Motels as (1) SMOKE-FREE or (2) SMOKING**

1. It shall be the responsibility of the Business Agent of every Food and Beverage Establishment to designate the establishment as one of the following: (1) SMOKE-FREE or (2) SMOKING. Said election shall be made at least annually at the time of the renewal of the business license on forms prescribed by the revenue department of the City of Alabaster.

2. For establishments designated as SMOKE-FREE, no smoking by any persons, whether owners, employees or patrons, at any time will be allowed in any areas of the establishment, except as noted in Section II, Number 8 below.

3. For establishments designated as SMOKE-FREE, signage shall be posted conspicuously on or adjacent to each and every door to the establishment that is generally accessed by patrons or employees, plainly visible from the exterior of the building to persons entering through the door. Signage shall be no smaller than 8.5 inches by 11 inches, with white lettering on a red or black 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; "City of Alabaster Ordinance No: 10-005" with letters no smaller than 1/8 inch tall (approximately 20 points).

4. For establishments designated as SMOKING, signage shall be posted conspicuously on or adjacent to each and every door to the establishment that is generally accessed by patrons or employees, plainly visible from the exterior of the building to persons entering through the door. Signage shall be no smaller than 8.5 inches by 11 inches, with white lettering on a red or black background, and include the following statements: "This establishment is a SMOKING facility" with letters no smaller than 5/8 inch tall (approximately 66 points) and "City of Alabaster Ordinance No. 10-005" with letters no smaller than 1/8 inch tall (approximately 20 points).

5. Neither the Owner, proprietor, nor any Business Agent shall post any signs on the interior or exterior of the Premises that are inconsistent with the election made pursuant to Section II, par. 1.

6. Two or more Food and Beverage Establishments operating under separate permits and/or licenses shall not be directly connected by any interior means of access including but not limited to doorways, windows, service bars or service windows, unless each has the same designation (SMOKE-FREE or SMOKING). If SMOKING is chosen for any but not all of the establishments, each one for which SMOKING is chosen must have HVAC system(s) which serve only that area, and the HVAC system shall be balanced so as to keep a 0% pressure environment in all doorways and windows, and be physically separated in its entirety by walls which extend from the floor to ceiling or deck above and any doors to that area must be self closing.

7. It shall be the responsibility of the Business Agent of every Hotel or Motel to designate the Common Areas of the establishment as one of the following: (1) SMOKE-FREE or (2) SMOKING. Signage shall be posted on the exterior entrances to the Hotel or Motel pursuant to Section II, par 3 and 5. Regardless of the choice elected for the common areas, the Business Agent may designate certain Lodging Rooms that are rented to guests designated as "smoking rooms". A SMOKE-FREE facility which offers such rooms for rent to guests must post on or by the entrance door of each Lodging Room that the room is either designated as a smoking room or is designated as a non-smoking room in signage of no less than 3 inches in height by or above or below the lodging room number. The signage shall clearly indicate the smoking rule for the

Lodging Room, but the design shall otherwise be the Business Agent's choice to match interior décor.

8. Food and Beverage Establishments will be listed in a listing by status (SMOKE-FREE or SMOKING) to be published annually by the City's Revenue Department no later than March 1; the first listing will be done by July 1, 2011; and listing will be available to the public from the City's Revenue Department and will also be posted on the City's website.

### **Section III. Violations and Penalties**

1. It shall be the responsibility of the owner, business agent, manager on duty, or other person having control of such Food and Beverage Establishment or Hotel and Motel to ensure compliance with all sections of this ordinance pertaining to his/her place of business concerning the posting of required and prohibited signage.

2. It shall be a violation of this Ordinance for the Business Agent and/or for the manager on duty to permit or continue to permit any violations of this Ordinance such as, permitting smoking in a SMOKE-FREE establishment, failing to post required signage, maintaining prohibited signage, when such violation is reasonably observable or otherwise made known to such person.

3. Each calendar day an owner, business agent, manager or other person having control of a Food and Beverage Establishment or Hotel and Motel operates in violation of any provision of this ordinance shall be deemed a separate violation.

4. It shall be a violation of this Ordinance for any person to smoke tobacco in any area designated as SMOKE-FREE. Each time a person violates this ordinance (i.e., smokes in a SMOKE-FREE establishment) shall be deemed a separate violation.

5. It shall be a violation of this Ordinance for any person to smoke tobacco within twenty-five feet (25') of any door or entrance to a SMOKE-FREE establishment.

6. A violator of this ordinance shall, in addition to the costs of court, be penalized as follows:

a. In the case of first violation, a fine of one hundred dollars (\$100.00);

b. In the case of a second violation, within 24 months of the first violation, a fine of five hundred dollars (\$500.00); and,

c. In the case of three or more violations within 24 months of the second violation, a fine of five hundred dollars (\$500.00) for each violation together with a maximum of ten days in the city jail.

7. No provision, clause or sentence of this section of this ordinance shall be interpreted as prohibiting the City of Alabaster from suspending or revoking any license or permit issued by and within the jurisdiction of the City of Alabaster for repeated violations of this ordinance.

8. If the owner, business agent, manager, or other person having control of such Food and Beverage establishment attempts to enforce this ordinance and a patron violates it (smokes in a SMOKE-FREE establishment), then the owner, business agent, manager or other person having control shall not be deemed to be in violation of this ordinance.

**Section IV. Enforcement**

1. Authority to enforce this ordinance shall be held by the City of Alabaster, its subsidiary programs, departments or designees.
2. An owner, manager, or employee of an establishment regulated by this ordinance shall inform persons violating this ordinance of the appropriate provisions thereof.
3. The City of Alabaster's Fire Department, Police Department, or its designee, and the Shelby County Health Department, or its designee, while in an establishment that is undergoing otherwise mandated inspections, or at any other time deemed necessary by these entities, inspect for compliance with this ordinance.
4. Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the Magistrate of the City of Alabaster by swearing out a warrant against the violator.

**Section V. Conflict with Other Laws, Ordinances Or Regulations**

1. Nothing in this ordinance shall be deemed to amend or repeal any applicable fire, health or other law, ordinance, or regulation so as to permit smoking in areas where it is prohibited by such fire, health or other law, ordinance or regulation.
2. Nothing in this ordinance shall be deemed to preempt the further limitation of smoking in the City of Alabaster by any local regulatory body within the limits of its authority and jurisdiction.
3. Nothing herein shall be deemed to alter or amend any other City ordinances dealing with the use of tobacco products on City Property.

**Section VI. Severability**

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

**Section VII. Effective Date**

The Revenue Department of the City of Alabaster is hereby designated the custodian of records of the annual election of the establishments hereunder. Food and Beverage and Hotel or Motel establishments legally permitted and/or licensed shall designate their status by notifying the City's Revenue Department in writing by January 1, 2011, and annually, thereafter, at the time of renewing their regular, annual business license. Food and Beverage and Hotel or Motel establishments shall implement the provisions of this ordinance by March 1, 2011.

**ADOPTED AND APPROVED THIS 4 DAY OF NOVEMBER 2010.**

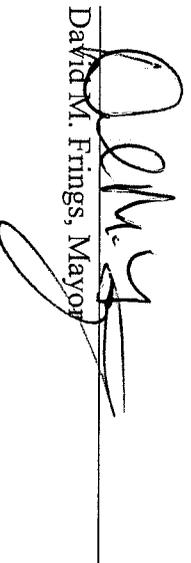
ATTEST:

CITY OF ALABASTER, ALABAMA

  
Marsha Massey, City Clerk

  
Jim McClain, Council President

APPROVED:

  
David M. Frings, Mayor