

ORDINANCE No. 2-05

Clanton Environmental Tobacco Smoke Ordinance for Food and Beverage Establishments

WHEREAS, Environmental Tobacco Smoke is a leading public health problem in the City of Clanton 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 Clanton; 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 the City of Clanton, 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 totally SMOKE-FREE facility or a totally SMOKING facility.

Section I. Definitions and Guidelines

Definitions

- a. **Business Agent-** An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.
- b. **Employee-** Any individual who performs services for an employer in return for wages or profit.
- c. **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.
- d. **Food and/or Beverage Establishment-** Any establishment which is required to have a business license from the City of Clanton 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.
- e. **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 as SMOKE- FREE or SMOKING

1. It shall be the responsibility of the owner of the Food and Beverage establishment to designate his/her establishment as one of the following: (1) SMOKE-FREE or (2) SMOKING.

2. For establishments designated as SMOKE-FREE, no smoking by any persons (employees or patrons) at anytime will be allowed in any part of the enclosed areas of the establishment, except as noted in Section II, Numbers 8 and 9 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 pts.); "Smoking is prohibited throughout this facility at all times" with letters no smaller than 1/4 inch tall (approximately 36 pts.); and "City of Clanton Ordinance Book _____, Page _____" with letters no smaller than 1/8 inch tall (approximately 20 pts.).

4. For establishments designated as SMOKING, smoking by patrons shall be allowed throughout all enclosed areas generally occupied by patrons.

a. If an owner, operator, business agent, or other person who controls a food and/or beverage establishment that is designated as SMOKING wishes to have a non-smoking area within the premises, it shall be at the discretion of said owner, operator, business agent or other person who controls said establishment whether to declare and enforce a non-smoking policy within the premises.

5. 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 pts.); "Smoking is allowed throughout this facility at all times" with letters no smaller than 1/4 inch tall (approximately 36 pts.); "There is no nonsmoking section" with letters no smaller than 1/4 inch tall (approximately 36 pts.); and "City of Clanton Ordinance Book _____, Page _____" with letters no smaller than 1/8 inch tall (approximately 20 pts.).

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 by barriers which are constructed in a manner so as to shield non-smoking patrons in their entirety from smoking patrons.

7. A facility which is SMOKE-FREE but which has a SMOKING establishment within it may add additional language to the required signage (see Section II, Number 3) after "Smoking is prohibited throughout this facility at all times" stating "except in designated areas" in matching letters and signage is required for exterior doors only. If all areas/establishments within a facility are SMOKE-FREE, then signage shall be required for exterior doors only.

8. Food and Beverage establishments may offer a separate smoking lounge if it is physically separated by barriers which are constructed in a manner so as to shield non-smoking patrons in their entirety from smoking patrons, is served by 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.

9. Smoking may be permitted in hotel, motel, inn, bed and breakfast and lodging rooms that are rented to guests designated as "smoking rooms". A facility which offers such rooms for rent to guests may add additional language to the required signage (see Section II, Number 3) after "Smoking is prohibited throughout this facility at all times" stating "Lodging rooms are available for guests who smoke" in matching letters and signage.

10. Food and Beverage establishments will be listed in a listing by status (SMOKE-FREE or SMOKING) to be published annually by the City Clerk's Office no later than March 1; the first listing will be done by July 1, 200__; the listing will be available to the public from the City Clerk's Office and will also be posted on the City's website.

Section III. Violations

1. It shall be the responsibility of the owner, business agent, manager or other person having control of such Food and Beverage establishment to ensure compliance with all sections of this ordinance pertaining to his/her place of business. A violator of this ordinance may receive:

a. In the case of a 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 or current violation, a fine of five hundred dollars (\$500.00) for each violation.

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

3. 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 (smoke 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 and the patron shall be subject to a fine as follows:

- a. In the case of a 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 or current violation, a fine of five hundred dollars (\$500.00) for each violation.
4. Each calendar day an owner, business agent, manager or other person having control of a Food and Beverage establishment operates in violation of any provision of this ordinance shall be deemed a separate violation; each calendar day a patron violates this ordinance (*i.e.*, smokes in a SMOKE-FREE establishment) shall be deemed a separate violation.

Section IV. Enforcement

1. Authority to enforce this ordinance shall be held by the City of Clanton, its subsidiary programs or designees.
2. An owner, manager, operator, or employee of an establishment regulated by this ordinance shall inform persons violating this ordinance of the appropriate provisions thereof.
3. The City of Clanton's Fire Department, or its designee, the Chilton County Health Department, or its designee, shall, while in an establishment that is undergoing otherwise mandated inspection, 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 Clanton.
5. Any fines or fees collected under this ordinance shall be used for the enforcement of these regulations.

Section V. Non-retaliation

No owner, business agent, manager or other person having control of a Food and Beverage establishment shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action or other adverse action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this ordinance or exercises any right conferred by this ordinance.

Section VI. 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 Clanton by any local regulatory body within the limits of its authority and jurisdiction.

Section VII. 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 VIII. Effective Date

Food and Beverage establishments legally permitted an/or licensed shall designate their status by notifying the City Clerk's Office in writing by May 01, 2005, and annually, thereafter, at the time of renewing their regular, annual business license. Food and Beverage establishments shall implement the provisions of this ordinance by June 01, 2005. Should an establishment opt to change its status prior to the regular annual renewal date for its business license, it will be required to purchase another business license at the same cost as the most recent regular annual one, in addition to any and all regular annual purchases.

Read, approved and adopted on this the 28th day of February 2005.

CITY OF CLANTON, ALABAMA,
a municipal corporation

BY: 
Mayor

Authenticated:

City Clerk