

STATE OF ALABAMA

LIMESTONE COUNTY

CITY OF ATHENS

ORDINANCE NO 2004-1502

**AN ORDINANCE OF THE CITY OF ATHENS, ALABAMA TO LIMIT
SMOKING FOR FOOD AND BEVERAGE ESTABLISHMENTS**

WHEREAS, environmental tobacco smoke is a leading public health problem in the City of Athens, 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 throats of both smokers and non-smokers; 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 Athens; 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 non-smokers,

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Athens, 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, SMOKE-RESTRICTED facility or a totally SMOKING facility.

Section I. 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 exchange for wages or profits.
- 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, ventilation, 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 Athens, 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, SMOKE-RESTRICTED, 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, (2) SMOKE-RESTRICTED, OR (3) SMOKING.

2. For establishments designated as SMOKE-FREE, no smoking by any persons, employees, or patrons, at any time will be allowed in any part of the enclosed areas of establishment, except as noted in Section II, Number 11 below.
3. For establishments designated as SMOKE-FREE, signage shall be posted clearly and conspicuously on or adjacent to each and every door to the establishment that is generally accessed by patrons or employees and shall be 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 shall include the following statements: "This establishment is a SMOKE-FREE facility" with letters no smaller than 5/8 inches tall; "Smoking is prohibited throughout this facility at all times" with letters no smaller than 1/4 inch tall (36 pts) and "City of Athens Ordinance Book 22, pages 873-77," with letters no smaller than 1/8 inches tall (approximately 20 points.)
4. For establishments designated as SMOKE-RESTRICTED, smoking shall be allowed within the establishment while protecting non-smokers from the effects of secondhand smoke to the extent possible.
5. For establishments designated as SMOKE-RESTRICTED, signage shall be posted conspicuously on or adjacent to each and every door to the establishment that is generally accessed by patrons or employees and shall be 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 shall include the following statements: "This establishment is a SMOKE RESTRICTED facility" with letters no smaller than 5/8 inches tall (approximately 66 points). "Smoking is allowed only in certain separately ventilated and designated areas. Secondhand smoke is not circulated in the designated non-smoking area", with letters no smaller than 1/4 inch tall (approximately 36 pts) and "City of Athens Ordinance Book 22, pages 873-77," with letters no small than 1/8 inches tall (approximately 20 points.)
6. For establishments designated as SMOKING-RESTRICTED, smoking shall only be allowed in completely enclosed rooms where the air is: separately ventilated to the outside and not mixed with air circulating in any non-smoking area, or sufficiently filtered either mechanically or electronically to remove substantially all of the smoke and carcinogenic matter in the air before it is mixed with air circulating in any non-smoking area; and not require non-smokers to pass through any smoking area to reach non-smoking areas or common facilities such as restrooms, telephones, or lounges; and post appropriate signage designating smoking and non-smoking sections.
7. For establishments designated as SMOKING, smoking by patrons shall be allowed throughout all enclosed areas generally occupied by patrons.
8. For establishments designated as SMOKING, signage shall be posted clearly and conspicuously on or adjacent to each and every door to the establishment that is generally accessed by patrons or employees and shall be 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 shall include the following statements: "This establishment is a

SMOKING facility” with letters no smaller than 5/8 inches tall; “Smoking is allowed throughout this facility at all times” with letters no smaller than 1/4 inch tall (36 pts); “There is no non-smoking section” with letters no smaller than 1/4 inches tall (approximately 36 points); and “City of Athens Ordinance Book 22, pages 873-77,” with letters no smaller than 1/8 inches tall (approximately 20 points.)

9. For establishments designated as SMOKING, patrons shall not be offered a choice of a non-smoking section; if ashtrays are made available/distributed for patrons they shall be made available/distributed throughout all enclosed areas generally occupied by patrons.

10. 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, either SMOKE-FREE, SMOKING-RESTRICTED, 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 floor to ceiling or deck above and any doors to that area must be self-closing.

11. Food and beverage establishments may offer employees a separate smoking lounge if it is physically separated in its entirety by walls which extend from floor to ceiling or deck above, is served by HVAC system (s) which serves only that area, and the HVAC system shall be balanced so as to keep a 9% pressure environment in all doorways and windows, has a self-closing door and is available only to employees of the establishment.

12. 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 to guests may add additional language to the required signage (See Section II, Number 3) after the statement “Smoking is prohibited throughout this facility at all times” stating “Lodging rooms are available for guests who smoke” in matching letters.

13. Food and beverage establishments will be listed in a listing by status (SMOKE-FREE, SMOKE-RESTRICTED, or SMOKING, to be published annually by the City of Athens City Clerk’s Department no later than November 1, 2004; the first listing will be completed by December 1, 2004; the listing will be available to the public from the City Clerk’s Department and shall also be available on the City’s web site.

Section III: Violations

1. It shall be the responsibility of the owner, business agent, manager, or other person having control of the food and beverage establishment to insure compliance with all sections of this ordinance pertaining to his/her place of business. A violator of this ordinance may receive:
 - a. First violation – one hundred dollar (\$100.00) fine.
 - b. Second violation within 24 months of the first violation – five hundred dollar (\$500.00) fine
 - c. Three or more violations within 24 months of the second or current violation – five hundred dollar (\$500.00) fine for each violation.
2. No provision, clause or sentence of this section of this ordinance shall be interpreted as prohibiting the City of Athens from suspending or revoking any license or permit issued by and within the jurisdiction of the City of Athens for repeated violations of this ordinance.
3. If the owner, business agent, manager or other person in charge of such food and beverage establishment attempts to enforce this ordinance and a patron violates it (smokes in a SMOKE-FREE establishment) the owner, business agent, manager or other person in charge shall not be deemed to be in violation of this ordinance, and the patron shall be subject to fines as follows:
 - a. First violation – one hundred dollar (\$100.00) fine.
 - b. Second violation within 24 months of the first – five hundred dollar (\$500.00) fine.
 - c. Three or more violations within 24 months of the second or current violation – Five hundred dollar (\$500.00) fine for each violation.
4. Each calendar day that an owner, business agent, manager, or other person in charge of a food and beverage establishment operates in violation of any provision of this ordinance shall be deemed a separate violation; each calendar day that 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 Athens, its subsidiary programs, or designees.

2. An owner, business agent, 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 Athens Fire Department, or its designee, the Limestone County Health Department, or its designee, and the City of Athens Building Inspection Department or its designee shall, 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 wishes to register a complaint under this ordinance may initiate enforcement with the City of Athens Chief of Police.

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 any 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 prohibited by such fire, health or other law, ordinance, or other regulation.

2. Nothing in this ordinance shall be deemed to preempt the further limitation of smoking in the City of Athens 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 and/or licensed shall designate their status by notifying the City's City Clerk's office in writing by November 1, 2004, and annually thereafter at the time of renewing their business license. Food and beverage establishments shall implement the provisions of this ordinance by January 1, 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.

ADOPTED: This the 13th day September, 2004

PRESIDENT, CITY COUNCIL, CITY OF ATHENS, ALABAMA

APPROVED: This the 13th day of September, 2004

MAYOR, CITY OF ATHENS, ALABAMA

ATTEST:

CITY CLERK, CITY OF ATHENS, ALABAMA