

Mayor Sport presented the following Ordinance:

(Luverne Environmental Tobacco Smoke Ordinance for Food and Beverage Establishments)

WHEREAS, tobacco smoke is a leading health problem; and

WHEREAS, the use of lighted smoking products creates a health hazard of seconded hand smoke, which affects the public health, indoor environment and the enjoyment of public places; and

WHEREAS, there is conclusive evidence that second hand smoke causes numerous illnesses and diseases; 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 second hand smoke is a cause of disease, including lung cancer, in nonsmokers.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Luverne, 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 be a totally SMOKE-FREE facility.

Section I. Definitions

- a. Food and/or Beverage Establishment—Any establishment which is required to have a business license from the City of Luverne 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.
- b. Smoking—Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other lighted tobacco product in any manner or form.
- c. Employee—Any individual who performs services for an employer in return for wages or profit.

Section II. Food and Beverage Establishments to be Smoke Free

- 1. It shall be the responsibility of the owner of the Food and Beverage establishment to enforce the provisions of this ordinance so that no smoking by any persons (employee or patrons) shall be allowed at any time, in any part of the enclosed areas of the establishment.

2. The owners shall post signage 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 advising that the facility is a smoke-free facility. Signage shall be no smaller than 8.5 inches by 11 inches, with white letters on a red or black background, and include the following statements: "Smoking is prohibited throughout this facility at all times" with letters no smaller than ¼ inch tall and "City of Luverne Ordinance Number 05-02" with letters no smaller than 1/8 inch tall.
3. 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 serve only that area, has a self-closing door and is available only to employees.
4. 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 may add additional language to the required signage after "Smoking is prohibited throughout this facility at all times" stating "Lodging rooms are available for guest who smoke" in matching letters.

Section III. Violations

1. It shall be the responsibility of the owner, manager or other person having control of such Food and Beverage establishments 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 the first violation, a fine of one hundred dollars (\$100.00);
 - b. In the case of a second violation, within 12 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 (\$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 Luverne from suspending or revoking any licenses or permit issued by and within the jurisdiction of the City of Luverne for repeated violations of this ordinance.
3. If the owner, manager or other person having control of such Food and Beverage establishment attempts to enforce this ordinance and a patron violates it (smokes in SMOKE-FREE establishment), then the owner, manager or other person having control shall not be deemed to be in violation of this ordinance but 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 12 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, a fine of five hundred dollars (\$500.00) for each violation.

Section IV. Enforcement

1. Authority to enforce this ordinance shall be held by the City of Luverne.
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 Luverne's Fire Department, or its designee, the Crenshaw County Health Department, or its designee, shall, while in an establishment that is undergoing otherwise mandated inspections or at compliance with this ordinance.

Section V. Non-retaliation

No owner, 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 preempt the further limitation of smoking in the City of Luverne by any 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 shall implement the provisions of this Ordinance by April 15, 2005.