

ORDINANCE NO. _____

**ORDINANCE PROHIBITING TOBACCO USE
WITHIN THE CITY OF MONTGOMERY**

WHEREAS, the 2006 U.S. Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industryⁱ; and

WHEREAS, numerous studies have shown that exposure to secondhand smoke, a known carcinogen, causes disease and premature death in children and adults who do not smoke and that health hazards induced by breathing secondhand smoke may include lung cancer, heart disease, respiratory infection and decreased respiratory function; 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 diseaseⁱⁱ; and

WHEREAS, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entiretyⁱⁱⁱ; and

WHEREAS, the Food and Drug Administration (FDA) determined that various electronic cigarette samples tested from two leading manufactures contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze and suggested that “quality control processes used to manufacture these products are inconsistent or non-existent^{iv},” and

WHEREAS, business owners should, in the interest of public health, provide a work environment that does not expose workers or customers to unreasonably dangerous conditions and should take precautions not to expose workers or customers to toxic chemicals found in secondhand smoke.^v

NOW, THEREFORE the Council of the City of Montgomery finds that secondhand smoke is a form of air pollution, a danger to health, and a material public nuisance, and deems it appropriate to enact the following ordinance to (1) protect the public health and welfare by prohibiting smoking in public places and places of employment, (2) guarantee the right of nonsmokers, and (3) recognize the need to breathe smoke-free air.

Section 1. BE IT HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF MONTGOMERY that Article VI, Code of the City of Montgomery, is hereby repealed and the following is hereby adopted to read in full as follows:

Section 2. Smoking in public places and places of employment

(a) *Definitions.* In this Section, the following definitions shall apply:

- (1) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, night clubs, cocktail lounges, and cabarets.
- (2) "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- (3) "City" means the City of Montgomery, Alabama
- (4) "Cigar Bar" means an establishment with a permit or license to sell alcoholic beverages pursuant to the Code of Alabama Title 28 that satisfies all of the following:
 - a) Generates 10% or more of its quarterly gross revenue from the sale of alcoholic beverages for consumption on the premises by customers;
 - b) Generates 80% or more of its quarterly gross revenue from the rental of humidors and the sale of cigars for consumption on the premises by customers; and
 - c) Has a commercial walk-in grade humidor; and
 - d) Does not allow individuals under the age of 21 to enter the premises.
 - e) Revenue generated from the sale of other tobacco products, including cigarettes or electronic smoking devices, shall not be used to determine whether an establishment satisfies the definition of a cigar bar.
- (5) "Common Area" means a hallway, corridor, lobby, aisle, water fountain area, restroom, stairwell, interior and/or exterior general public entryway or exit, refreshment area, or restroom.
- (6) "Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
- (7) "Employee" means a person who works for an employer, whether in consideration for direct or indirect monetary wages or profit, or as a volunteer.
- (8) "Employer" means a person, association, trust, or a business, including a municipal corporation, with one or more employees.

- (9) "Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
- (10) "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- (11) "Hookah Bar" means an establishment with a permit or license to sell alcoholic beverages pursuant to Code of Alabama Title 28 that satisfies all of the following:
- a) Generates 10% or more of its quarterly gross revenue from the sale of alcoholic beverages for consumption on the premises by customers;
 - b) Generates 80% or more of its quarterly gross revenue from the sale of shisha for consumption on the premises by customers and the sale of accessories used for smoking shisha; and
 - c) Does not allow individuals under the age of 21 to enter the premises.
 - d) Revenue generated from the sale of other tobacco products, including cigarettes, cigars, or electronic smoking devices, shall not be used to determine whether an establishment satisfies the definition of a hookah bar.
- (12) "Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- (13) "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City of Montgomery grounds.
- (14) "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee,

or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities, requires applications to be filled out for membership, and maintains membership records that show the date of application, admission, name and address for each member, and serial number of the membership card issued. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

- (15) "Public Event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.
- (16) "Public Place" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- (17) "Recreational Area" means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.
- (18) "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as 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.
- (19) "Service Line" means an indoor or outdoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- (20) "Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.
- (21) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.
- (22) "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or

other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

(b) **Public Places.** Smoking shall be prohibited in all enclosed public places within the City of Montgomery, including but not limited to, the following places:

- (1) Zoos, galleries, libraries, and museums.
- (2) Banks.
- (3) Bar and lounges.
- (4) Bingo facilities.
- (5) Child care and adult day care facilities.
- (6) Convention facilities.
- (7) Educational facilities, both public and private.
- (8) Elevators.
- (9) Gaming facilities, including bingo facilities.
- (10) Health care facilities.
- (11) Hotels and motels.
- (12) Laundromats.
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (14) Parking Structures
- (15) Polling places.
- (16) Private Clubs.
- (17) Professional Offices.
- (18) Public transportation vehicles, including buses and taxicabs, under the authority of the City of Montgomery, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- (19) Restaurants and retail food production.
- (20) Restrooms, lobbies, reception areas, waiting rooms, hallways, and other common-use areas.
- (21) Retail service establishments.
- (22) Retail stores.
- (23) Rooms, chambers, places of meeting or public assembly, and other enclosed areas and vehicles owned, leased, or operated by the City of Montgomery.
- (23) Service lines.
- (24) Shopping malls.

- (25) Sports arenas, including enclosed places in outdoor arenas.
- (26) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.
- (27) Parking decks and parking facilities under the control of the City of Montgomery

(c) ***Regulation of Smoking in Places of Employment.***

- (1) Smoking shall be prohibited in all enclosed areas of places of employment located within the City of Montgomery, including, but not limited to: common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles.
- (2) This prohibition also applies to rooms, chambers, places of meeting or public assembly, and other enclosed areas and vehicles owned, leased, or operated by the City of Montgomery, including areas under the control of an agency, board, commission, or committee of the City, to the extent the place is subject to the jurisdiction of the City.
- (3) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Section and to all prospective employees upon their application for employment.

(d) ***Regulation of Smoking in Residential Facilities.*** Smoking shall be prohibited in the following enclosed residential facilities:

- (1) All private and semi-private rooms in nursing homes.
- (2) All hotel and motel rooms that are rented to guests.

(e) ***Regulation of Smoking in Outdoor Public Places.*** Smoking shall be prohibited in the following outdoor places:

- (1) In and within 20 feet outside entrances, windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- (2) In outdoor shopping malls, including parking structures.
- (3) In all outdoor arenas, stadiums, and amphitheaters, smoking shall also be prohibited in, and within 30 (thirty) feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- (4) In outdoor recreational areas, including parking lots.
- (5) In, and within 20 feet of, all outdoor playgrounds.
- (6) In, and within 20 feet of, all outdoor public events.
- (7) In, and within 20 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City of Montgomery.
- (8) In all outdoor service lines.

(f) **Exemptions.** Notwithstanding any other provision of this Section to the contrary, the following areas shall be exempted from the provisions of this section:

- (1) Smoking shall not be prohibited in private residences, except when used as a childcare, adult day care, or health care facility.
- (2) A Cigar Bar that as of October 21, 2014 was operating as a Cigar Bar if all of the following requirements are met:
 - a. The Cigar Bar does not allow the smoking of any tobacco products, except cigars, on the premises;
 - b. Smoke from the Cigar Bar does not migrate into any area where smoking is prohibited pursuant to this Act;
 - c. The Cigar Bar satisfactorily reports on a quarterly basis to [the Department of Health on a form proscribed by the Department of Health, the revenue generated from the sale of cigars and component parts for consumption on the premises by customers as a percentage of quarterly gross revenue. The Department of Health shall determine whether any additional documentation is required of the Cigar Bar to authenticate or verify revenue data submitted by the Cigar Bar;
 - d. The Cigar Bar does not expand in size, change ownership or change its location after October 21, 2014;
 - e. The Cigar Bar does not close business or suspend operation for more than 60 consecutive days after October 21, 2014 unless such closure is the result of a fire or natural disaster beyond the control of the owner; and
 - f. Cigar bars shall post health warning signage that states: "Warning: Cigar smoking causes lung cancer, heart disease, and other forms of cancer. Cigar tobacco contains nicotine, tar and carcinogens. Cigar smoking is not a safe alternative to cigarette smoking." The signage must be prominent, clearly visible and posted in every room where smoking is permitted. The signage must be written in forty eight (48) point font or greater. The warning must also be displayed prominently on each bar menu.

A Cigar Bar that fails to meet the requirements of this Act is not exempt from the requirements of Section 2b and shall immediately prohibit smoking on its premises. A Cigar Bar that fails to meet the requirements of this Act may not again qualify for the exemption under this Act.

- (3) A Hookah Bar that as of October 21, 2014 was operating as a Hookah Bar, if all of the following requirements are met:
 - a. The Hookah Bar does not allow the smoking of any tobacco products, except shisha on the premises;
 - b. Smoke from the Hookah Bar does not migrate into any area where smoking is prohibited pursuant to this Act;
 - c. The Hookah Bar satisfactorily reports on a quarterly basis to the Department of Health on a form proscribed by the Department of Health the revenue generated from the sale of shisha and component parts for consumption on the premises by customers as

a percentage of quarterly gross revenue. The Department of Health shall determine whether any additional documentation is required of the Hookah Bar to authenticate or verify revenue data submitted by the Hookah Bar;

- d. The Hookah Bar does not expand in size, change ownership or change its location after October 21, 2014;
- e. The Hookah Bar does not close business or suspend operation for more than 60 consecutive days after October 21, 2014 unless such closure is the result of a fire or natural disaster beyond the control of the owner; and
- f. Hookah bars shall post health warning signage that states: "Warning: Hookah smoking causes lung cancer, heart disease, and other forms of cancer. Hookah tobacco (shisha) contains nicotine, tar and carcinogens. Hookah smoking is not a safe alternative to cigarette smoking." The signage must be prominent, clearly visible and posted in every room where smoking is permitted. The signage must be written in forty eight (48) point font or greater. The warning must also be displayed prominently on each bar menu.

A Hookah Bar fails to meet the requirements of this Act is not exempt from the requirements of Section 2b and shall immediately prohibit smoking on its premises. A Hookah Bar that fails to meet the requirements of this Act may not again qualify for the exemption under this Act

(g) *Designation of an Establishment or Outdoor Area as Nonsmoking.* Notwithstanding any other provision of this Section, an owner or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 11-9-10(h) is posted.

(h) *Signage.* The owner or other person in control of a public place or place of employment where smoking is prohibited by this Section shall:

- (1) Clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place;
- (2) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited within 20 feet;
- (3) Clearly and conspicuously state on the "No Smoking" sign or the international "No Smoking" symbol the distance requirement that corresponds to the type of establishment in accordance with 2 (e); and
- (4) Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Section at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.

(i) *Nonretaliation; nonwaiver of rights.*

- (1) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, because that employee, applicant, or customer exercises any rights

afforded by this Section or reports or attempts to prosecute a violation of this Section. A violation of this provision shall be a misdemeanor, punishable by a fine not to exceed \$500 for each violation.

- (2) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

(j) *Enforcement.*

- (1) This Section may be enforced by any County Health Officer or his or her duly authorized representative, the Fire Marshall or his or her duly authorized representative, or as otherwise allowed by law.
- (2) Notice of the provisions of this Section shall be given to all applicants for a business license in the City of Montgomery.
- (3) Any citizen who desires to register a complaint under this Section may initiate enforcement with an entity responsible for enforcement, such as the Montgomery County Health Department.
- (4) The Montgomery Fire Department and Montgomery County Health Department, or its designee may, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Section.
- (5) Any owner, manager, operator, or employee of an area regulated by this Section shall direct a person who is smoking in violation of this Section to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- (6) Notwithstanding any other provision of this Section, an employee or private citizen may bring legal action to enforce this Section.
- (7) In addition to the remedies provided by the provisions of this Section, the City of Montgomery or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Section may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

(k) *Violations and penalties.*

- (1) A violation of this Section shall be punishable by a fine of \$50 for each violation. A charge of violation shall be treated in the same manner as a traffic violation. Any law enforcement officer may issue a citation pursuant to this section.
- (2) Except as otherwise provided in Section I (1), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Section shall be guilty of an offense, punishable by:
 - a. A fine of one hundred dollars (\$100) for a first violation. A charge of violation shall be treated in the same manner as a traffic violation.

b. A fine of two hundred dollars (\$200) for a second violation within one (1) year. A charge of violation shall be treated in the same manner as a traffic violation.

c. A fine of five hundred dollars (\$500) for each additional violation within one (1) year. A charge of violation shall be treated in the same manner as a traffic violation.

(3) In addition to the fines established by this Section, violation 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 to the person for the premises on which the violation occurred.

(4) Violation of this Section is hereby declared to be a public nuisance, which may be abated by the City of Montgomery or a designee by restraining order, preliminary and permanent injunction, or other means provided for by law, and the entity or person seeking abatement may take action to recover the costs of the nuisance abatement.

(5) Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.

(l) **Other applicable laws.** This Section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 3. Public Education. The City of Montgomery may publish a brochure for affected businesses and individuals explaining the provisions of this Ordinance.

Section 4. Governmental Agency Cooperation. The City of Montgomery will request other governmental and educational agencies having facilities within Montgomery County to establish local operating procedures in cooperation and compliance with this Ordinance. This includes urging all Federal, State, County, and School District agencies to update their existing smoking regulations to be consistent with the current health findings regarding secondhand smoke.

Section 5. Severability. If any word, provision, clause, sentence, paragraph, or subsection of this Ordinance or the application thereof to any person or circumstances shall be held invalid by a court of competent jurisdiction then the remaining provisions of this Ordinance shall be in full force and effect.

Section 6. Effective Date. This Ordinance shall be effective after approval by the Council of the City of Montgomery and Mayor and publication as required by law, provided that the effective date shall be 30 days after publication as required by law.

ADOPTED this the _____ day of _____, 2014.

TODD STRANGE, MAYOR

ATTEST:

BRENDA GALE BLALOCK, CITY CLERK

ⁱ U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

ⁱⁱ California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.

ⁱⁱⁱ Samet, J.; Bohanon, Jr., H.R.; Coultas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A., "ASHRAE position document on environmental tobacco smoke," *American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)*, 2005.

^{iv} [n.a.], "Summary of results: laboratory analysis of electronic cigarettes conducted by FDA," *Food and Drug Administration (FDA)*, July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm>
Accessed on: October 22, 2009.

^v Graff, S.K.; Zellers, L., "*Workplace Smoking: Options for Employees and Legal Risks for Employers*," Tobacco Control Legal Consortium, 2008.