

ORDINANCE NUMBER 13-O- 6

AN ORDINANCE AMENDING AND RESTATING CHAPTER 28½ OF THE
CODE OF ORDINANCES OF THE CITY OF ANNISTON PROHIBITING
SMOKING IN PUBLIC PLACES AND WORKPLACES

WHEREAS, the Council of the City of Anniston finds that secondhand smoke is a known carcinogen, which causes health complications, disease and premature death in children and adults who do not smoke;

WHEREAS, the Council finds that children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome, acute respiratory problems, ear infections, and asthma attacks;

WHEREAS, the Council finds that even occasional exposure of adults to secondhand smoke has adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer;

WHEREAS, the Council finds that there is no risk-free level of exposure to secondhand smoke;

WHEREAS, the Council finds that establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke does not cause harm to others in the workplace;

WHEREAS, the Council finds that smoke-free policies and laws improve health and do not negatively impact, and may positively impact, the hospitality industry;

WHEREAS, the Council finds that secondhand smoke is a form of air pollution, a danger to health, and a material public nuisance;

NOW, THEREFORE, be it ordained by the City Council of the City of Anniston, Alabama as follows:

Section 1. The City Council of the City of Anniston, Alabama hereby amends and restates Chapter 28½ of "The Code of the City of Anniston, Alabama, 1981" in its entirety to read as follows:

Article I. Prohibition of Smoking in Public Places and Workplaces

Section 28½.1. Title. This Article shall be known as the "City of Anniston Smoke Free Air Ordinance of 2013."

Section 28½.2. Intent. The purposes of this Article are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; (2) to address and abate a form of air pollution caused by the smoking of tobacco, a positive danger to health and a material public nuisance; and (3) to afford nonsmokers the right to breathe smoke-free air in public places and in places of employment.

Section 28½.3. Definitions. The following words and phrases, whenever used in this ordinance, shall be construed as defined in this Section:

- A. "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, nightclubs, cocktail lounges, and cabarets.
- B. "Business" means a sole proprietorship, partnership, association, 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.
- C. "E-cigarette" means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which create a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.
- D. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- E. "Employer" means a person, business, partnership, association, corporation, municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- F. "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.
- G. "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.
- H. "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 commercial childcare facility, a commercial adult day care, or a health care facility.

- I. "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 municipal grounds.
- J. "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.
- K. "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, gaming facilities, health care facilities, hotels and motels, laundromats, 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 commercial childcare facility, a commercial adult day care facility, or health care facility.
- L. "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 food for sale 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.
- M. "Service Line" means an indoor or outdoor line in which one (1) 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.
- N. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- O. "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, in any manner or in any form. "Smoking" also includes the use of an e-cigarette that creates a 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.
- P. "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.

Section 28½.4. Application to City Facilities and Property. All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Anniston, as well as all outdoor property owned, leased or operated by the City shall be subject to the provisions of this Article.

Section 28½.5. Prohibition of Smoking in Enclosed Public Places. Smoking shall be prohibited in all enclosed areas of public places within the City of Anniston, including but not limited to, the following places:

- A. Aquariums, gardens, galleries, libraries, and museums.
- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Childcare facilities and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Polling places.
- N. Public transportation vehicles, including buses and taxicabs, under the authority of the City, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- O. Restaurants.
- P. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- Q. Retail stores.
- R. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- S. Service lines.

- T. Shopping malls.
- U. Sports arenas, including enclosed places in outdoor arenas.
- V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Section 28½.6. Prohibition of Smoking in Enclosed Places of Employment. Smoking shall be prohibited in all enclosed areas of places of employment, including, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

Section 28½.6.1. Communication of Prohibition of Smoking in Enclosed Places of Employment. Employers shall communicate to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment that smoking is prohibited in all enclosed areas of places of employment, as set forth in this Article.

Section 28½.7. Prohibition of Smoking in Private Clubs. Smoking shall be prohibited in all enclosed areas of private clubs.

Section 28½.8. Prohibition of Smoking in Enclosed Residential Facilities. Smoking shall be prohibited in the following enclosed areas of residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. All hotel and motel rooms that are rented to guests.

Section 28½.9. Prohibition of Smoking in Outdoor Public Places. Smoking shall be prohibited in outdoor public places as follows:

- A. Within a reasonable distance of no less than fifteen (15) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. On all outdoor property that is adjacent to buildings owned, leased, or operated by the City of Anniston and that is under the control of the City.
- C. In, and within seven (7) feet of, outdoor seating or serving areas of restaurants, bars, private clubs, hotels and motels, except such outdoor seating or service areas which are openly and obviously designated by the owner or operator with signage as a "Smoking Area" and which are at least seven (7) feet from any entrance, open window, or ventilation system to an enclosed area where smoking is prohibited.
- D. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within fifteen (15) feet of, bleachers and grandstands for use by spectators at sporting and other public events.

- E. In, and within fifteen (15) feet of, all outdoor playgrounds.
- F. In, and within fifteen (15) feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City.
- G. In, or within fifteen (15) feet of, all outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers.
- H. In outdoor common areas of hotels and motels, apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in such outdoor common areas which are openly and obviously designated by the owner or operator with signage as a "Smoking Area" by the owner or operator, not to exceed twenty-five percent (25%) of the total outdoor common area, and which are at least fifteen (15) feet from any entrance, open windows, or ventilation systems to an enclosed area where smoking is prohibited.

Section 28½.10. Prohibition of Smoking in Outdoor Places of Employment. Subject to any exception specifically set forth in this Article, smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, temporary offices such as trailers, restroom facilities, and vehicles.

Section 28½.10.1. Communication of Prohibition of Smoking in Outdoor Places of Employment. Employers shall communicate to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment that smoking is prohibited in all outdoor places of employment, as set forth in this Article.

Section 28½.11. Where Smoking is Not Regulated. Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited in private residences, unless used as a commercial childcare facility, a commercial adult day care, or health care facility.

Section 28½.12. Posting of Signs and Removal of Ashtrays. The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Article shall:

- A. 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.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.

- D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

Section 28½.13. Non-retaliation. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 28½.17 of this Article, violation of this Section shall be a misdemeanor, punishable by a fine not to exceed \$500 for each violation.

Section 28½.14. Non-waiver of Rights. 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.

Section 28½.15. Notice Provided to all Applicants for Business License. The City shall provide notice of the provisions of this Article to all applicants for a business license in the City of Anniston.

Section 28½.16. Enforcement. This Article shall be enforced as follows:

- A. Any duly sworn and on-duty police officer employed by the City of Anniston, or any other authorized designee of the City otherwise allowed by law, is authorized to enforce this Article.
- B. Any citizen and any employee, official or agent of the City may initiate enforcement of this Article by registering a complaint with the Police Department of the City of Anniston or with any other authorized designee of the City otherwise allowed by law.
- C. 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 Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 28½.17. Violations and Penalties. The violation of the prohibitions set forth in this Article shall result in the following penalties:

- A. A person who knowingly or intentionally smokes in an area where smoking is prohibited by the provisions of this Article commits an offense, punishable by a fine not exceeding fifty dollars (\$50) per offense. A charge of violation shall be treated in the same manner as a traffic violation.
- B. Except as otherwise provided in Section 28½.13, 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 Article shall be guilty of an offense, punishable by:
 1. A fine not exceeding one hundred dollars (\$100) for a first violation. A charge of violation shall be treated in the same manner as a traffic violation.

2. A fine not exceeding 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.
 3. A fine not exceeding 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.
- C. In addition to the fines established by this Section, violation of this Article 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.
- D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City of Anniston, or its authorized designee, by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.
- E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Section 28½.18. Other Applicable Laws. This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 28½.19. Liberal Construction. This Article shall be liberally construed so as to further its purposes.

Section 28½.20. Severability. If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

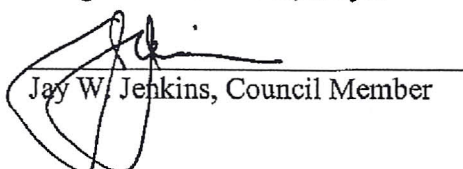
Section 28½.21. Effective Date. This Article shall be effective July 1, 2013 after its adoption and publication one (1) time in the Anniston Star, a newspaper of general circulation published in the City of Anniston.

Section 28½.22. Express Repeal of all Conflicting Ordinances. All ordinances or parts of ordinances of the City of Anniston in conflict herewith are expressly repealed.

PASSED and ADOPTED this ^{23rd} day of April, 2013.

CITY COUNCIL OF THE CITY OF
ANNISTON, ALABAMA


Vaughn M. Stewart II, Mayor


Jay W. Jenkins, Council Member

