

**AN ORDINANCE PROHIBITTING SMOKING IN CERTAIN LOCATIONS
IN THE CITY OF ANNISTON**

BE IT ORDAINED by the City Council of the City of Anniston, Alabama, as follows:

WHEREAS, Environmental Tobacco Smoke is a leading public health problem in the City of Anniston and throughout the United States; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the U.S. Surgeon General has determined that secondhand smoke is responsible for the early deaths of 65,000 Americans annually; and

WHEREAS, the Public Health Services's National Toxicology Program has listed secondhand smoke as a known carcinogen (U.S. DHHS, 2000, citing Cal. EPA, 1997); 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 disease; and

WHEREAS, children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; 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 Anniston; 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; and

WHEREAS, The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation; and

WHEREAS, air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, the City Council of the City of Anniston, Alabama, finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places, and (2) to guarantee the right of nonsmokers to breathe smoke-free air, and (3) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANNISTON, ALABAMA, AS FOLLOWS:

Section 1. 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, compensation or profit;
- C. **Employer:** Any person, partnership, corporation, association or other entity that employs five (5) or more persons;
- D. **Enclosed:** A space, structure, facility or any portion thereof, bound 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;
- E. **Food and/or Beverage Establishment:** Any establishment which is required to have a business license from the City of Anniston 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;
- F. **Health Care Facility:** An office or institution providing care or treatment of disease, whether physical, mental, or emotional, or other medical, physiological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialist within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- G. **Place of Employment:** Any indoor or outdoor area under the control of an employer to which employees have access during the course of employment, including, but not limited to work areas, employee lounges, employee restrooms, conference rooms and employee cafeterias. A private residence is not a place of employment.
- H. **Public or Public Place:** An indoor or outdoor area that is used by the general public, or that is a place of business or employment, or that is a public meeting area, and includes, but is not limited to: stores, offices and other commercial establishments, restaurants, public and private educational institutions, health care facilities, nursery and convalescent homes, government buildings, public transportation vehicles, elevators, restrooms and other areas as described in Section 28½ .2;
- I. **Service Line:** Any indoor or outdoor line at which one (1) or more persons are waiting for a receiving service of any kind, regardless of whether such service involves the exchange of money;
- J. **Smoking:** Inhaling, exhaling, burning, carrying or holding any lighted cigar, cigarette, pipe or other lighted tobacco product in any manner or form;
- K. **Ventilation System:** An air purification system that is an electrically powered hospital grade, heap media filter that will clean all of the air in the designated smoking area every 15 minutes as follows: Not less than 95% of three-tenths micron particulates efficiency including dust, smoke, pollen, mold spores, bacteria, tobacco smoke, viruses and allergens and not less than 95% removal of gases, vapors, volatile organic compound (V.O.C.) and odors;

Section 2. Offenses

Except as provided in Section 3, Letter H and Section 4, smoking is prohibited in any of the following public places:

- A. Any commercial establishment, including but not limited to retail stores, banks, ATMs, office buildings and offices;
- B. Any vehicle of public transportation, including but not limited to local trains, buses, taxicabs and limousines;
- C. Elevators;
- D. Restrooms;
- E. Libraries, schools or other educational facilities, museums, auditoriums and art galleries;
- F. Any public area of a health care facility, health clinics or ambulatory care facilities, including but not limited to laboratories associated with the rendition of health care treatment, hospitals, rest homes, doctors' offices and dentists' offices;
- G. Any indoor place of entertainment or recreation, including but not limited to gymnasiums, theatres, concert halls, bingo halls, arenas and enclosed swimming pools; and
- H. Any other enclosed area used by the public.

Section 3. Designating Food and Beverage Establishments as SMOKE-FREE or SMOKING

A. 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.

B. 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 3, Letter H below.

C. 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 Anniston Ordinance No. 06-O- a " with letters no smaller than 1/8 inch tall (approximately 20 pts);

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

E. 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 Anniston Ordinance No. 06- 8 " with letters no smaller than 1/8 inch tall (approximately 20 pts).

F. For establishments designated as SMOKING, patrons shall not be offered a choice of a nonsmoking section; if ashtrays are made available/distributed for patrons, they shall be made available/distributed throughout all enclosed areas generally occupied by patrons. These establishments shall also provide a ventilation system as defined herein and have the filters cleaned every ten (10) days at a minimum.

G. 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, stairways, elevators, 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 in its entirety by walls which extend from floor to ceiling or deck above and any doors to that area must be self-closing.

H. A facility which is SMOKE-FREE but which has a SMOKING establishment within it must ensure that the smoking establishment is an enclosed space, structure, facility or any portion thereof, bound by walls (with or without windows) continuous from floor to ceiling or deck above and served by heating, ventilation as defined herein and air conditioning (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 and any doors to that area must be self-closing.

I. A facility which is SMOKE-FREE but which has a SMOKING establishment within it may add additional language to the required signage (see Section 3, Letter C) after "Smoking is prohibited throughout this facility at all times" stating "except in (name of area)" 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.

J. 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, and the HVAC system(s) shall be balanced so as to keep a 0% pressure environment in all doorways and windows, has a self-closing door and is available only to employees of the establishment.

K. 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 3, Letter C) after "Smoking is prohibited throughout this facility at all times" stating "Lodging rooms are available for guests who smoke" in matching letters.

L. Food and Beverage establishments will be listed in a listing by status (SMOKE-FREE or SMOKING) to be published annually by the City's Finance Department no later than January 1; the first listing will be done by January 1, 2007; the listing will be available to the public from the City's Finance Department and will also be posted on the City's web site.

Section 4. Designation of Smoking Areas

A. Other than as provided in Section 3, Letter H, smoking areas may be designated by proprietors or other persons in charge of a public place as designated in Section 2, except in places in which smoking is otherwise prohibited by the fire department of the city or by other statute, ordinance or resolution;

B. Where smoking areas are designated, each smoking area shall:

- (1) Be set apart from nonsmoking areas; and
- (2) Be situated so that the smoking area is an enclosed space, structure, facility or any portion thereof, bound by walls (with or without windows) continuous from floor to ceiling or deck above and served by heating, ventilation as defined herein and air conditioning (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 and any doors to that area must be self-closing; and
- (3) Be designated by appropriate signs which are clearly visible to patrons in or entering the area via the front entrance to the premises; and
- (4) Contain ashtrays, containers or other facilities for the extinguishment of smoking materials; and
- (5) Not include service lines or cashier areas; and
- (6) Not include meat or produce counter areas in any store.

C. No public place within Section 2, other than those places enumerated as exceptions under Section 6, shall be designated as a smoking area in its entirety.

Section 5. Regulation of Smoking in the Workplace

Each employer in the City of Anniston shall implement and maintain a smoking policy for its employees within sixty (60) days after this chapter becomes law. This policy shall contain at a minimum, the following provisions and requirements:

A. The employer shall accommodate, insofar as possible, the preferences of nonsmoking and smoking employees. An employer is not required by this provision to incur any expense for making structural or other physical modifications to accommodate the preferences of nonsmoking or smoking employees.

B. The smoking policy shall be announced within three (3) weeks of adoption to all employees working in the place of employment and posted conspicuously in all work places under the employer's control.

Section 6. Exceptions

The restrictions imposed herein shall not apply to:

A. An area which is specifically designated as a smoking area in accordance with Section 3, Letter H, or by Section 4;

B. An entire room or hall which is used for private social functions, provided that the event is under the control of the sponsor of the function and not of the proprietor or person in charge of the establishment or hall;

C. A private, enclosed office provided that this exception shall not be construed to permit smoking in the reception areas of lobbies or offices unless designated as smoking areas;

D. Performers upon a stage, provided that the smoking is part of a theatrical production; and

E. A tobacco specialty retail shop.

Section 7. Posting of Signs

"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) shall be clearly and conspicuously posted in every public place where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.

Every public place where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

Section 8. Non-retaliation; Non-waiver of Rights

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.

Section 9. Enforcement

This Article shall be enforced by any sworn officers of the Anniston Police Department, firefighters of the Anniston Fire Department, the county health officer, or a duly authorized representative thereof.

Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Anniston.

Any citizen who desires to register a complaint under the Article may initiate enforcement with the City Manager or other city official.

The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, or at any other times deemed necessary by these entities, inspect for compliance with this Article.

An owner, manager, operator or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.

Notwithstanding any other provisions of this Article, an employee or private citizen may bring legal action to enforce this Article.

In addition to the remedies provided by the provisions of this Section, the City Manager 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 Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 10. Violations and Penalties

Any person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50.00).

A person who owns, manages, operators, or otherwise controls a public place or place of employment who fails to comply with the provisions of this Article shall be guilty of an infraction, punished by:

A fine not exceeding one hundred dollars (\$100.00) for a first violation.

A fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year.

A fine not exceeding five hundred dollars (\$500.00) for each additional violation within one (1) year.

In addition to 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.

Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City Manager 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.

Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Section 11. Other Applicable Laws

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

Section 12. Liberal Construction

This Article shall be liberally construed so as to further its purposes.

Section 13. 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 effect 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 14. Effective Date

This ordinance shall become effective ^{October 1, 2006 and} upon its publication one time in The Anniston Star, a newspaper of general circulation, published in the City of Anniston, and the City Clerk is hereby directed to cause a copy of said ordinance to be published one time in said newspaper.

To the extent this Article is inconsistent with any provision of Chapter 28 ½ of the Code of Anniston, 1981, those ordinances or parts of ordinances conflicting with this Article are hereby repealed.

PASSED AND ADOPTED this the 23rd day of May, 2006.

CITY COUNCIL OF THE CITY OF
ANNISTON, ALABAMA

By: 
Hoyt W. Howell, Jr., Mayor

By: 
Floyd S. Bennett, Jr., Council Member

By: 
Herbert N. Palmore, Council Member

By: my
Benjamin J. Little, Council Member

By: 
Jeff Fink, Council Member

ATTEST:


Alan B. Atkinson, City Clerk