

ORDINANCE 00-2013

AN ORDINANCE PROHIBITING SMOKING IN ALL WORKPLACES AND PUBLIC PLACES

An Ordinance regulating smoking with the City of Creola, Alabama.

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

SECTION 1. This ordinance shall be known and may be cited as the "Smoking Ordinance" for the City of Creola, Alabama.

SECTION 2. 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, 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 provides 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, including a 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 child care, adult day care, or 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 an similar facility located on public or private school grounds or on City of Creola 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. 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. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- 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 area, 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.

- 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 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.
- M. "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of a 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 ecigarette which 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 Ordinance.
- 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 arena, swimming pools, roller and ice rinks and bowling alleys.

SECTION 3. All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Creola as well as outdoor property adjacent to such buildings and under the control of the City of Creola shall be subject to the provisions of this ordinance.

SECTION 4. Smoking shall be prohibited in all enclosed public places within the City of Creola, including but not limited to, the following places:

- A. Aquariums, 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. Child care 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 parkers, 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 of Creola, 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 of Creola or a political subdivision of the State, to the extent the place is subject to the jurisdiction of Creola.
- 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 5. Prohibition of Smoking in Enclosed Places of Employment.

- A. Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, 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 6. Prohibition of Smoking in Enclosed Residential Facilities. Smoking shall be prohibited in the following enclosed residential facilities.

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

Section 7. Prohibition of Smoking in Outdoor Public Places. Smoking shall be prohibited in the following outdoor places.

- A. Within a reasonable distance of 15-20 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, and within 15-20 feet of outdoor seating or serving areas of restaurants and bars.
- C. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 15-20 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- D. In, and with 15-20 feet of, all outdoor playgrounds.
- E. In, and within 15-20 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City of Creola.
- F. In all outdoor service lines, including lines in which service is obtained by person in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by person in vehicles, but only within 15-20 feet of the point of service.
- G. In all outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed 25% of total outdoor common area, which must be located at least 15-20 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Section 8. Where Smoking Not Regulated.

- A. Notwithstanding any other provision of this Ordinance to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility.

Section 9. Declaration of Establishment or Outdoor Area as Nonsmoking.

- A. Notwithstanding any other provision of this ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor are as a nonsmoking place,

Section 10. 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 the ordinance shall.

- A. Clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
- C. Remove all ashtrays from any area where smoking is prohibited by this ordinance, except for ashtrays displayed for sale and not for use on the premises.

Section 11. Nonretaliation; Nonwaiver of Rights.

- A. 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 ordinance or reports or attempts to prosecute a violation of this ordinance. Violation of this section shall be a misdemeanor, punishable by a fine not to exceed \$1,000 for each violation.

- B. 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 12. Enforcement.

- A. This ordinance shall be enforced by the Building Inspector or an authorized designee.
- B. Notice of the provisions of this ordinance shall be given to new applicants for a business license in the City of Creola.
- C. Any citizen who desires to register a complaint under this ordinance may initiate enforcement with the Building Inspector or City Clerk.
- D. The Building Inspector, or their designee shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this ordinance.
- E. An owner, manager, operator, or employee of an are regulated by this ordinance shall direct a person who is smoking in violation of this ordinance 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, operator, or employee shall contact a law enforcement agency.
- F. Notwithstanding any other provision of this ordinance, an employee or private citizen may bring legal action to enforce this ordinance.
- G. In addition to the remedies provided by provisions of this section, 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 ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 13. Violation and Penalties.

- A. A person who smokes in an area where smoking is prohibited by the provisions of this ordinance shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars.
- B. Except as otherwise provided in this ordinance, 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 ordinance of an infraction, punishable by:
 - 1. A fine not exceeding on hundred dollars for a first violation.
 - 2. A fine not exceeding two hundred dollars for a second violation within one year.
 - 3. A fine not exceeding five hundred dollars for each additional violation within one year.
- C. In addition to the fines established by this section, violation of this ordinance 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 ordinance is hereby declared to be a public nuisance, which may be abated by Building Inspector or their designee by restraining order, preliminary and permanent injunction,

or other means provided for by law, and the City of Creola may take action to recover the costs of the nuisance abatement.

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

Section 14. Severability.

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

Section 15. This ordinance shall be in full force and in effect upon its adoption and publication as provided by law.

ADOPTED this 25 day of April, 2013.

Donald E. Neh

Mayor

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Creola, Alabama, on 25th of April, 2013.

ATTEST:

Kim W. Pettway

Kim W. Pettway, City Clerk