

DRAFT

THE CITY OF SAN ANGELO, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF SAN ANGELO, TEXAS, TO PROTECT THE PUBLIC HEALTH AND WELFARE BY PROHIBITING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT, TO PROTECT THE RIGHT OF THE PUBLIC TO BREATHE SMOKE-FREE AIR, PROVIDING FOR FINES AS PENALTIES, PROVIDING A SEVERABILITY CLAUSE AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of San Angelo, Texas is a Home Rule municipality, duly organized under the laws of the State of Texas;

WHEREAS, the City of San Angelo, Texas possesses all of the rights, powers, and authorities possessed by a home rule municipality, including the authority to protect the health and welfare of the public;

WHEREAS, numerous studies have found that tobacco smoke is a carcinogen, and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the City commission finds that prohibiting smoking in public places and places of employment will protect the public’s health, safety and welfare;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SAN ANGELO, TEXAS:

SECTION 1. That “Smoking Regulations in Public Places and in Places of Employment” of the San Angelo Municipal Code of Ordinances shall be read as follows:

**ARTICLE. SMOKING REGULATIONS IN PUBLIC PLACES AND IN PLACES OF
EMPLOYMENT**

DIVISION 1. GENERALLY

Sec. 01. Title and Purpose.

- A. This Article shall be known as the San Angelo Smoke-Free Air Act of 2010.
- B. The purpose of this chapter is to:
 - (1) Improve and protect the public’s health by eliminating smoking in public

places and places of employment;

- (2) Promote the right of nonsmokers to breathe smoke-free air; and
- (3) Recognize that the need to breathe smoke-free air shall have priority over the choice to smoke.

DIVISION 2. SMOKING PROHIBITED IN PUBLIC PLACES

Sec. 02. Definitions.

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

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, nightclubs, 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 as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
3. "City" means the City of San Angelo.
4. "County" means Tom Green County.
5. "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 an employer. A member of a private club who volunteers his or her time to the club is not considered an employee.
6. "Employer" means a person, business, including a municipal corporation, or trust, that employs the services of one or more individual persons.

7. "Enclosed Area" means all space between a floor and ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge window screen with an 18 by 16 mesh count is not a wall.
8. "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, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, 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.
9. "Place of Employment" means an area under the control of a public or private employer including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, work vehicles, and hallways. A private residence is not a "place of employment" unless it is used as a child care, adult day care, health care facility, or home office with one or more employees not related to the owner of the residence.
10. "Private Club" means an organization, whether incorporated or not, which is the sole owner, lessee, or occupant of a building 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.

11. "Public Place" means an area to which the public is invited or in which the public is permitted. A private residence is not a "place of employment" unless it is used as a child care, adult day care, health care facility, or home office with one or more employees not related to the owner of the residence.

12. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, 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.

13. "Retail Tobacco Store" means an establishment that generates 80% or more of its quarterly gross revenue from the sale of tobacco products and that satisfies all of the following:

- a. Does not have a license to sell food or beverages;
- b. Does not allow sale of tobacco products through vending machines; and
- c. Does not allow individuals under the age of 18 to enter the premises.

14. "Service Line" means an indoor 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.

15. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

16. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar,

cigarette, pipe, or other tobacco or plant products intended for inhalation.

17. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Sec. 03. Application of Article to City-Owned Facilities.

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City, shall be subject to the provisions of this Article.

Sec. 04. Prohibition of Smoking in Enclosed Public Places.

Except as otherwise provided in Section 8, smoking is prohibited in all enclosed public places within the City, including but not limited to, the following places:

1. Aquariums, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
3. Bars.
4. Bingo facilities.
5. Convention facilities.
6. Educational facilities, both public and private.
7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
8. Health care facilities.
9. Hotels and motels, including at least eighty percent (80%) of rooms that are rented to guests.

10. Licensed child care and adult day care facilities.
11. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
12. Polling places.
13. Public transportation facilities, including buses and taxicabs, under the authority of the City, and ticket, boarding, and waiting areas of public transit depots.
14. Restaurants.
15. Restrooms, lobbies, reception areas, elevators, hallways, waiting rooms, and other common-use areas.
16. Retail stores, Retail Service facilities, and Retail Food production and marketing facilities
17. 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.
18. Service lines.
19. Shopping malls.
20. Sports Arenas.

Sec. 05. Prohibition of Smoking in Enclosed Places of Employment.

A. Except as otherwise provided in Section 8, smoking is prohibited in all enclosed places of employment.

B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 06. Prohibition of Smoking in Outdoor Sports Areas.

Smoking is prohibited in the seating areas of all outdoor sports arenas, stadiums, and amphitheaters. Smoking is also prohibited in the seating areas of golf courses and public parks where people assemble to witness sports or other events.

Sec. 07. Reasonable Distance.

Smoking is prohibited within a reasonable distance of 15 feet outside entrances and windows of an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter through entrances and operable windows. This 15 foot distance shall be measured from the center of the entrance. The prohibition above does not apply to a person inside an enclosed motor vehicle or train in motion on a public street, alley, highway, parking lot, or railroad track.

Sec. 08. Where Smoking Not Regulated.

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of this Article:

1. Private clubs that have no employees, except when members of the public are present.

This exemption shall not apply if the smoke from such clubs infiltrates into area where smoking is prohibited under the provisions of this Article. This exemption also shall not apply to any organization that is established for the purpose of avoiding compliance with this Article.

2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms. Rooms that are designated as smoking rooms must be on the same floor and be contiguous to each other. This exemption shall phase out four years after the Article's enactment.

3. A retail tobacco store that as of the date of enactment of this Article was operating as a retail tobacco store, if all of the following requirements are met:
 - i. Smoke from the retail tobacco store does not migrate into an enclosed area where smoking is prohibited pursuant to this Article.
 - ii. The retail tobacco store is located in a freestanding structure that shares no common walls with other establishments and is occupied solely by the retail tobacco store.
 - iii. The retail tobacco store satisfactorily reports on a quarterly basis to the Environmental Health Department, on a form proscribed by the Environmental Health Department, the revenue generated from the sale of tobacco products as a percentage of quarterly gross revenue. The Environmental Health Department shall determine whether any additional documentation is required of the retail tobacco store to authenticate or verify revenue data submitted by retail tobacco store.
 - iv. The retail tobacco store does not expand in size or change its location after the date of enactment of this Article.

4. Patios and outdoor seating and serving areas attached to a restaurant or bar in compliance with Section 7 above.

This exemption shall not apply to any business that is established for the purpose of avoiding compliance with this Article.

Sec. 09. Declaration of Establishment as Nonsmoking.

Notwithstanding any other provision of this Article, an owner, operator, manager, 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 is prohibited in any place in which a sign

conforming to the requirements of Section 10 is posted.

Sec. 10. Posting of Signs and Removal of Ashtrays.

A. "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 and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.

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

C. 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.

D. Signs identifying the nonsmoking distance prescribed by Sec. 07 are optional.

Sec. 11. Nonretaliation.

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.

Sec. 12. Enforcement.

A. The Director of Environmental Health Department or designee shall be responsible for enforcing this Article in coordination with other officials designated herein. Such other designated officials shall fully cooperate with the Director of Environmental Health Department in the enforcement of this Article.

B. Notice of the provisions of this Article shall be given to all applicants for a commercial water utility account in the City.

C. Any citizen who desires to register a complaint under this Article may initiate

enforcement with the Director of Environmental Health Department or designee.

D. Inspectors and officials of the Health Department and Fire Department shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article. Health Inspectors, Fire Marshals, Fire Inspectors, and peace officers are authorized to enforce this Article by citation, notice of violation, or sworn complaint in the San Angelo Municipal Court.

E. An owner, manager, operator, or employee of an establishment regulated by this Article shall direct a person who is smoking 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.

F. Notwithstanding any other provision of this Article, an employee or private citizen may file a sworn complaint in the San Angelo Municipal Court to enforce this Article.

G. In addition to the remedies provided by the provisions of this Section, the City Attorney 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.

Sec. 13. Violations and Penalties.

A. It is an offense for a person to smoke in an area where smoking is prohibited by the provisions of this Article, and upon conviction shall be punishable by a fine not to exceed one hundred dollars (\$100), in accordance with section XXX of the San Angelo Municipal Code.

B. It is an offense for a person who owns, manages, operates, or otherwise controls a public place or place of employment that fails to comply with any provision of this Article, by act or

omission, and upon conviction shall be punishable by:

1. A fine not exceeding two hundred dollars (\$200) for a first violation.
2. A fine not exceeding three hundred dollars (\$300) for a second violation within one (1) year.
3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

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

- D. Violation of this ordinance is declared to be a public nuisance, which may be abated by the City or its designated agents by restraining order, preliminary and permanent injunction, or other means provided for by law. The City may recover the reasonable costs of any court enforcement action seeking abatement of this nuisance.

Sec. 14. Public Education.

The Director of Environmental Health Department or designee shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 15. Governmental Agency Cooperation.

The Director of Environmental Health Department or designee shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Article.

Sec. 16. Other Applicable Laws.

This Article shall not be interpreted or construed to permit smoking where it is otherwise

restricted by other applicable laws.

Sec. 17. Liberal Construction.

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

SUBDIVISION 2. Severability. If any provision, section, subsection, sentence, clause or the application of same to any person or set of circumstances for any reason is held to be unconstitutional, void or invalid or for any reason unenforceable, the validity of the remaining portions of this ordinance or the application thereby shall remain in effect, it being the intent of the City Commission of the City of San Angelo, Texas in adopting this ordinance, that no portion thereof or provision contained herein shall become inoperative or fail by any reasons of unconstitutionality of any other portion or provision.

SUBDIVISION 3. Repealer. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed to the extent of conflict with this ordinance.

SUBDIVISION 4. Penalty. It is an offense to violate any part of this ordinance, punishable upon conviction in accordance with Subdivision 2 above, per Section XXX of the San Angelo Municipal Code of Ordinances.

SUBDIVISION 5. Publishing and Effective Date. This ordinance shall be published and become effective thirty (30) days after its adoption.

INTRODUCED AND PASSED by the City Commission of the City of San Angelo, Texas, on First Reading this the _____ day of _____, 20____; and PASSED on Second and Final Reading the _____ day of _____, 20____.

, Mayor

ATTEST:

, City Secretary