

**ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF JASPER, ALABAMA**

**Ordinance No. 2011-23 as amended by Ordinance No. 2011-28**

**PROHIBITING SMOKING WITHIN PUBLIC PLACES LOCATED  
WITHIN THE CITY OF JASPER, ALABAMA**

WHEREAS, environmental tobacco smoke or second-hand smoke is a leading public health concern throughout the United States;

WHEREAS, second-hand smoke is composed of sidestream smoke (the smoke released from the burning end of a cigarette) and exhaled mainstream smoke (the smoke exhaled by the smoker);

WHEREAS, because sidestream smoke is generated at lower temperatures and under different conditions than mainstream smoke, it contains higher concentrations of many of the toxins found in cigarette smoke;

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing second-hand smoke (sometimes hereinafter referred to as "environmental tobacco smoke") is a cause of disease and illness in otherwise healthy nonsmokers;

WHEREAS, second-hand smoke kills 53,000 Americans prematurely each year;

WHEREAS, second-hand smoke is a known human Class A carcinogen (cancer-causing agent) and contains at least 250 chemicals that are known to be toxic or carcinogenic including formaldehyde, benzene vinyl chloride, arsenic ammonia, and hydrogen cyanide;

WHEREAS, concentrations of many cancer-causing and toxic chemicals are higher in second-hand smoke than in the smoke inhaled by smokers;

WHEREAS, there exists conclusive evidence that environmental tobacco smoke causes cancer, cardiovascular disease, respiratory disease, negative birth outcomes, allergies and irritations to the eyes, ears, nose, and throat of both smokers and nonsmokers;

WHEREAS, there also exists conclusive evidence that second-hand smoke causes sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, and more frequent and severe asthma attacks in children;

WHEREAS, there is no risk free level of second-hand smoke exposure and the effects of even brief exposure (minutes to hours) to second-hand smoke can be nearly as large (averaging 80% to 90%) as chronic active smoking;

WHEREAS, there are laws, ordinances, and regulations in place which protect workers from other environmental hazards, including Class A carcinogens such as asbestos, arsenic, benzene, but none which regulate exposure to environmental tobacco smoke;

WHEREAS, economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no impact or a positive impact on the economic health of the businesses within the hospitality industry after enactment of smoke-free laws; and

WHEREAS, the Surgeon General has concluded that a smoke free environment is the only way to fully protect nonsmokers from the dangers of second-hand smoke.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JASPER, ALABAMA, as follows:

**Section 1.** There is hereby added to the Code of Ordinances of the City of Jasper, Alabama, the following provisions, which are proposed to be codified as Article V of Chapter 13 of said Code, with the following proposed section numbers:

**Sec. 13-120. - Definitions.**

For the purposes of this division, the following terms, phrases, words, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

*Bar and lounge:* 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, saloons and cabarets, regardless of what name is used to describe such facility.

*City:* The City of Jasper, Alabama.

*Employee:* Any person who is employed by an employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

*Employer:* A person, business, partnership, association, corporation, including a municipal corporation, trust, or nonprofit entity that employs the services of one (1) or more individual persons.

*Enclosed Area:* Any area which is enclosed on four (4) sides and on the top, regardless of the nature of such enclosure or the composition of the materials comprising such enclosure.

*Health care facility:* Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions including but not limited to rehabilitation hospitals, or other clinics, nursing homes, homes for the aging or chronically ill, laboratories, offices of any surgeon, chiropractor, physical therapist, physician, dentist, and all specialists within these professions and psychologists and weight control clinics.

*Motion picture theater:* Facilities used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.

*Owner:* Shall mean and include the lessee, sub lessee, assignee, part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, managing agent, officers of the corporation or other person having the right of ownership or possession or the right to sell, rent or lease any real property.

*Person:* Any person, firm, partnership, association, corporation, company or organization of any kind.

*Place of employment:* Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to work areas, restrooms, employee lounges, conference rooms and employee cafeterias. A private residence does not constitute a "place of employment." unless it is used as a child care, adult day care or health care facility.

*Private club:* Private club means a bona fide nonprofit organization or bona fide unincorporated nonprofit association which requires membership applications to be filled out for membership, which collects dues in an amount in excess of Fifty Dollars (\$50.00) monthly, and which maintains membership records that show the date of application, date of election, which shall be after the date of application, and date of admission, which shall be after the date of election, date the initiation fees and dues to be paid and the amounts paid. A private club shall be located entirely upon property which is owned by the private club. The records required by this section shall be kept manually or electronically, indicating the name and address of each member and the serial number of the membership card issued.

*Public place:* Any area, completely enclosed or otherwise, to which the public is invited or permitted, including but not limited to retail stores, retail service establishments, retail food production and marketing establishments, restaurants, theaters, stadiums, sports facilities, waiting areas for any business, establishment, etc., restrooms, elevators, government or civic buildings, educational facilities, medical or health facilities, public transportation, libraries, museums, auditoriums, art galleries and meeting rooms; hotels and motels. A private

residence does not constitute a "public place" unless it is used as a child care, adult day care, or health care facility.

*Restaurant:* 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 facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

*Retail store:* Any establishment whose primary purpose is to sell or offer for sale to consumers, not for resale, any goods, wares, merchandise, food for consumption off the premises, articles or other things, and all activities, operations and services connected therewith or incidental thereto. "Retail store" shall not include hotels, motels, restaurants, those restaurant facilities which are an integral part of a retail store, bars, lounges, catering establishments and other similar facilities.

*Retail tobacco stores:* Means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

*Smoke or smoking:* The act of burning, inhaling, exhaling or carrying any lighted tobacco product, weed, filler or plant of any kind in a cigarette, cigar, pipe, hookah or water pipe or in any other device and shall include carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment; or the lighting, emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

*Smoke-free:* Free from carcinogens, toxins and air pollution of second hand smoke.

*Tobacco vending machine:* Includes any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, trade checks, slugs or credit cards.

#### **Sec. 13-121. - Enforcement.**

The provisions of this article are enforceable by any duly authorized municipal code enforcement officer, police officer or fire department official, or as otherwise allowed by law.

#### **Sec. 13-122. - Violation; penalty.**

Any person, firm, or corporation violating any provisions of this division shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as provided for in section 1-8 of the Code of Ordinances for the City of Jasper,

Alabama, as amended. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. The business license of a person, firm or corporation shall be revoked following the second violation of the article.

**Sec. 13-123. - No smoking area.**

- (a) No one shall be permitted to smoke in any of the following areas:
- (1) In any municipal building, property, or facility whether used, owned or leased by the city;
  - (2) All enclosed areas under the control of the city, whether owned or leased, including without limitation any city vehicles;
  - (3) In any public transportation vehicle;
  - (4) In any elevator, regardless of its capacity;
  - (5) In any health care facility, regardless of capacity, except that this prohibition shall not apply in the private enclosed sleeping or living quarters of a person living in such facility;
  - (6) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance;
  - (7) Any educational facilities used for classes, sponsored by any person, firm or corporation, public or private;
  - (8) In any retail stores;
  - (9) All areas available to and customarily used by the general public in all business and nonprofit entities patronized by the public;
  - (10) In any restaurant or eating establishment;
  - (11) Bars and/or Lounges;
  - (12) Sports arenas and facilities, including enclosed places and in the seating areas of all outdoor arenas, stadiums and amphitheaters;
  - (13) Private Clubs.
- (b) No area shall be designated as a smoking area in which smoking is prohibited by the fire marshal or by other law, ordinance, or regulation.
- (1) Smoking shall be prohibited in vehicles and motorized equipment owned by the City of Jasper;
  - (2) Smoking shall be prohibited in any common area in apartment buildings, condominiums, retirement facilities, and other multiple-unit residential facilities;
  - (3) Smoking shall be prohibited in any common areas of a mall;
  - (4) In any place of employment.
- (c) Smoking shall be prohibited on the property of the following:
- (1) Jasper City Board of Education;

- (2) City of Jasper Board of Parks and Recreation.
- (d) Smoking shall be prohibited where conditions are such as to make smoking a fire hazard, and in space where flammable or combustible materials are stored or handled.

**Sec. 13-124. - Exceptions.**

- (a) The prohibitions contained above shall not apply to:
  - (1) Private residences, except when used as a licensed child care, adult day care or health care facility;
  - (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty (20) percent of rooms rented to guests in a single hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under provisions of this article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;
  - (3) Any part of a private club to which access is limited to members of the club and their guests (as defined by the policy of the private club), and which is designated as a smoking area; provided, however, that such area shall be not greater than ten percent (10%) of the total inside area of the private club, and that such area shall be separated from the remainder of the private club by, at a minimum, four walls which extend from floor to ceiling and further provided that such area shall be served by a separate HVAC system from the nonsmoking areas of the private club;
  - (4) Outdoor smoking areas of any place of employment shall be located a minimum of fifteen (15) feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances or other means;
  - (5) Open air outdoor dining areas at restaurants and bars and/or lounges;
- (b) Nothing in this section shall be deemed to amend or repeal applicable fire or health regulations.

**Sec. 13-125. - Regulations regarding posting, etc.**

- (a) No person shall smoke in any public place or place of employment, as defined in this article, which has been designated as a "no smoking" area.

Such nonsmoking areas shall be identified by clearly, sufficiently and conspicuously posted "no smoking" signs and/or signs with the international "no smoking" symbol.

- (b) Any person who smokes in a posted "no smoking" area is in violation of this article.
- (c) No person shall willfully destroy, remove or deface any sign posted in compliance with this article, and any such prohibited conduct shall be a violation of this article.

**Sec. 13-126. - Regulations of smoking in places of employment.**

- (a) It shall be the duty of the owner, operator and/or manager of any facility, business, corporation, partnership, agency or vehicle within the purview of this article to comply herewith. Such owner, operator or manager shall post or cause to be posted all "no smoking" required by this article, within thirty (30) days of enactment of this article.
- (b) Such owner, operator or manager shall inform persons smoking that they are in violation of the law and shall promptly report such violators of the law to the proper authorities.
- (c) It shall be the responsibility and duty of the owner, operator and/or manager of any facility, business, corporation, partnership or agency which employs any person to disseminate the information required by this Article.
- (d) Where smoking is permitted, suitable noncombustible ash trays shall be provided.
- (e) Lighted matches, cigarettes, cigars, or other burning objects shall not be discarded in a manner that could cause ignition of other combustible material.

**Sec. 13-127. - Restaurant and Bar/Lounge Regulations.**

- (a) Restaurants and bars/lounges covered by the provisions of this division shall be designated as nonsmoking; with the exception of that area of a restaurant and/or bar/lounge that has open air dining. Open air dining is defined as an area that is completely open to exterior ventilation which is at least fifteen (15) feet outside an enclosed entrance area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances or other means.

- (b) A restaurant, facility or eating establishment and/or bar/lounge may be designated in its entirety (including any outside open air dining area) as a nonsmoking area by the owner or manager thereof.
- (c) No restaurant or eating establishment, or bar/lounge, regulated by this law, may be designated as a smoking area in its entirety.

**Sec. 13-128. - Hotel and motel regulations.**

Smoking is prohibited in hotels and motels in the city, and its police jurisdiction, except in that portion of any hotel and motel which has been properly designated by hotel and motel management as a "smoking room" in the private rooms section of the hotel or motel.

Provided further that the percentage of guest rooms of the property designated as smoking rooms at any hotel or motel shall be limited to a maximum of twenty (20) percent of the total number of private rooms in the hotel or motel following the effective date of this article. In other words, at least eighty (80) percent of the total number of private rooms in any hotel or motel in the city or its police jurisdiction, following the effective date of this article, shall be "no smoking" rooms.

**Sec. 13-129. - Public restrooms.**

- (a) Smoking is prohibited in all public restrooms in the city, and its police jurisdiction, whether or not the owner or manager of the facility has properly posted this area "public place" or "place of employment" as a "no smoking" area.
- (b) It shall be unlawful, and a violation of this article, for any owner or manager of a public place or place of employment, as defined in this article, to fail to properly post all public restrooms under his, or her, maintenance and control as a "no smoking" area in accordance with the provisions of this article.

**Sec. 13-130. - Common areas of malls.**

Notwithstanding any other provision of this division, smoking is prohibited in the common area and corridors of all malls and public places within the city and its police jurisdiction and signs shall be posted. This is to include the entrance and exit of the mall and all public places for a minimum distance of fifty (50) feet.

**Sec. 13-131. - Notification.**

All retailers selling cigarettes or tobacco products must clearly display the following sign at the entrance to the store selling the product:

IT IS ILLEGAL TO SELL OR PERMIT TO BE SOLD ANY  
TOBACCO PRODUCTS TO ANY PERSON UNDER THE AGE  
OF NINETEEN (19) YEARS OF AGE

The notice must be black letters at least one (1) inch in height on a white background, and will be made available through the city clerk at the request of any retailer.

**Sec. 13-132. - Nuisance.**

Any violation of this division is hereby declared to be a nuisance. In addition to any other relief provided by this division, the city may apply to a court of competent jurisdiction for an injunction to prohibit the continuation of any violation of this division. Such application for relief may include seeking a temporary restraining order, a temporary injunction and permanent injunction.

**Section 2.** If any part of this Ordinance is held by a court of competent jurisdiction to be invalid or unconstitutional, the same shall not be construed to affect the validity of the remaining parts of this Ordinance which are not declared invalid.

**Section 3.** That this Ordinance shall become effective upon its passage, approval and publications as required by the law of the State of Alabama.

**Adopted** on this the 4th day of October, 2011 and amended on the 1st day of November, 2011.

CITY COUNCIL OF THE CITY OF  
JASPER, ALABAMA

By: *Sandra Sudduth*  
Hon. Sandra Sudduth, President

ATTEST:

*Kathy Chambless*  
Hon. Kathy Chambless, City Clerk

APPROVED/VETO:

*V.L. "Sonny" Posey*  
Hon. V.L. "Sonny" Posey, Mayor