

ORDINANCE NO. 953

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO REPEALING CHAPTER 15 OF TITLE 4 OF THE SAN ANSELMO MUNICIPAL CODE AND ADDING SAID CHAPTER PROHIBITING TOBACCO SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT AND REGULATING THE SALE OF TOBACCO PRODUCTS

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The Town Council of the Town of San Anselmo does hereby ordain as follows:

SECTION 1. Chapter 15 of the San Anselmo Municipal Code is hereby repealed.

SECTION 2. Findings and Purpose. The Town Council of the Town of San Anselmo finds as follows:

1. The U.S. Environmental Protection Agency has classified environmental tobacco smoke as one of only twelve Class-A carcinogens to which there is no safe level of exposure.
2. Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution;
3. Reliable scientific studies, including studies by the Surgeon General of the United States and studies commissioned and assessed by the U.S. Environmental Protection Agency, have shown that breathing sidestream or secondhand smoke is a significant health hazard to nonsmokers; particularly to children and teens, elderly people, and individuals with cardiovascular disease, and
4. Within minutes short term exposure to sidestream smoke may cause the human body to experience over contraction of the heart, thickening of the blood and arteries, increased chance of heart attack or stroke, depression of the immune system, and cell mutations from the mutagens and carcinogens in smoke.
5. Health hazards induced by exposure to environmental tobacco smoke include lung and other forms of cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, broncho-constriction and broncho-spasm, and that the most common cause of premature death from environmental tobacco smoke is heart disease;
6. Reliable scientific studies assessed by the U.S. Environmental Protection Agency have found that sidestream and secondhand tobacco smoke causes the death of at least 53,000 non-smokers annually and is a leading cause of premature death and disability among non-smokers;
7. Non-smokers with allergies, respiratory diseases and those who suffer other ill effects of

breathing sidestream or secondhand tobacco smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same;

8. Persons, particularly employees, have a right to a smoke-free environment if they desire;

9. Tobacco smoking is a leading cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic losses to businesses;

10. Substantial scientific evidence exists that the direct use of tobacco products causes cancer, heart disease, and various other medical diseases. The Surgeon General of the U.S. has found that tobacco-caused diseases are the leading cause of premature, preventable death and disability in the U.S.;

11. The National Centers for Disease Control have found that at least four-hundred-thirty-four thousand (434,000) Americans die each year from tobacco-caused diseases. The Surgeon General of the U.S. and the U.S. Department of Health and Human Services have found that a majority of those Americans who die of tobacco-caused diseases became addicted to nicotine in tobacco products as adolescents before the age of legal consent;

12. The National Institute on Drug Abuse has concluded that the nicotine in tobacco products is a powerful addictive drug and identifies nicotine addiction as the most widespread example of drug dependence in the U.S.;

13. The Surgeon General of the U.S. has found that nicotine in tobacco products is as addictive as cocaine and heroin;

Accordingly, the Town Council finds and declares that the purposes of this ordinance are:

- A. To protect public health, safety and general welfare;
- B. To guarantee the right of nonsmokers to breathe tobacco smoke-free air, and to recognize that the need to breathe tobacco smoke-free air has priority over the desire to smoke;
- C. To reduce addiction to tobacco products by minors.

SECTION 3. Chapter 15 of Title 4 of the San Anselmo Municipal Code is hereby enacted to read as follows:

Chapter 15  
SMOKING REGULATIONS

Sections:

4-15.01	Title
4-15.02	Definitions
4-15.03	County Owned Vehicles and Facilities
4-15.04	Prohibitions of Smoking in Public Places
4-15.05	Places of Employment
4-15.06	Smoking Optional Areas
4-15.07	Posting of Signs
4-15.08	Sale of Tobacco Products
4-15.09	Enforcement
4-15.10	Penalties
4-15.11	Non-retaliation
4-15.12	Public Education
4-15.13	Governmental Agency Cooperation
4-15.14	Other Applicable Laws
4-15.15	Severability

Section 4-15.01 This Chapter shall be known as the San Anselmo Clean Indoor Air and Health Protection Ordinance.

Section 4-15.02 Definitions. The following words and phrases, whenever used in this article, shall have the following meanings:

- (a) "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises, and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area. A "bar" for the purpose of this definition does not include any bar where smoke can filter into a restaurant through a passageway, ventilation system, or any other means.
- (b) "Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, 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.
- (c) "Cocktail Lounge" means a bar, within a restaurant, which is not the sole means of public access to the dining areas, is not the sole waiting area for dining patrons, prohibits minors unless passing through, in which the service of food is only incidental to the consumption of beverages, has a separate ventilation system, and is enclosed.
- (d) "Town" shall mean the Town of San Anselmo.

- (e) "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
- (f) "Employer" means any person, partnership, corporation, including a municipal corporation, or non-profit entity, who employs the services of one or more individual persons.
- (g) "Enclosed" means surrounded by a ceiling, floor, and solid walls which, except for doors, passageways and/or windows, extend from floor to ceiling on all sides. If an enclosed area is divided by internal partial walls or other "office landscaping", it is still, in its entirety, enclosed. A retractable roof, whether open or closed, shall be considered a ceiling for the purpose of this definition.
- (h) "Minor" shall mean any individual who is less than eighteen years old.
- (i) "Non-profit Entity" means any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a "non-profit entity" within the meaning of this section.
- (j) "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (k) "Place of Employment" means 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, employee lounges and restrooms, conference and class rooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a child care or health care facility.
- (l) "Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health facilities, shopping malls, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, hotels and motels, theaters and waiting rooms. A private residence is not a "public place".
- (m) "Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, including any associated outdoor eating area, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere,

including catering facilities, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Section 4-15.02(a).

- (n) "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories.
- (o) "Self-service Merchandising" means open display of tobacco products and point-of-sale tobacco promotional products to which the public has access without the intervention of an employee.
- (p) "Service Line" means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.
- (q) "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, weed or plant or other combustible substance whose smoke is intended to be inhaled.
- (r) "Sports Arena" means enclosed or unenclosed sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.
- (s) "Tobacco Product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.
- (t) "Tobacco Vending Machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.
- (u) "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

#### Sec. 4-15.03. Application of Article to Town-Owned Vehicles and Facilities

All Town-owned vehicles, including jitneys and buses and other means of public transit under the authority of the Town, and all enclosed facilities owned and controlled by the Town, including jails, and any board, council, commission and agency of the Town shall be subject to the provisions of this chapter.

#### Sec. 4-15.04. Prohibition of Smoking in Public Places

A. Except as otherwise provided, smoking shall be prohibited in all enclosed public places within the Town of San Anselmo, including, but not limited to, the following places:

1. Elevators.
2. Buses, taxicabs, and other means of public transit under the authority of the Town of San Anselmo, and ticket, boarding, and waiting areas of public transit depots.
3. Restrooms.
4. Service lines.
5. Retail stores.
6. All areas available to and customarily used by the general public in all business and non-profit entities patronized by the public, including but not limited to, and offices, banks, laundromats, malls, hotels, and motels.
7. Restaurants, provided:

(a) Cocktail lounge areas within restaurants that sell alcoholic beverages shall be exempted. **Except as provided in Section 4-15.04(b)**, within one year of the effective date of this chapter, such areas shall meet the standards of "Cocktail Lounge" as defined in Section 4-15.02(c).

**(b) For a period of two years from the effective date of this chapter, restaurants and associated cocktail lounges for which an on-sale general eating place license issued by the State Department of Alcoholic Beverage Control is in effect shall be exempted.**

8. Public areas of aquariums, galleries, libraries museums when open to the public.
9. Any facility which is primarily used for exhibiting motion pictures, stage productions, lectures, musical recitals or other similar performances, except for smoking which is part of such production.
10. Sports arenas and convention halls.
11. Every room, chamber, place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee including joint committees, or agencies of the Town or any political subdivision of the State during such time as a public meeting is in progress,

to the extent such place is subject to the jurisdiction of the Town.

12. Waiting rooms, hallways, wards and rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy, mental health, and drug and alcohol treatment facilities, doctors' and dentists' offices.
  13. A minimum of 50% of guest rooms in every hotel, motel, and bed-and-breakfast facility must be permanently designated nonsmoking.
  14. Lobbies, hallways, and other common areas in apartment buildings, condominiums, senior citizen residences, nursing homes, and other multiple-unit residential facilities.
  15. Lobbies, hallways, and other common areas in multiple- unit commercial facilities.
  16. Polling places.
  17. All structures or areas designated by written findings of the Chief of the Fire Department as potential fire hazards if smoking were allowed;
- B. Smoking shall be prohibited in outdoor areas immediately adjacent to any entrance or exit of any building within which smoking is prohibited. For purposes of this section, entrance or exit shall mean an opening into a building from a contiguous street, sidewalk, walkway or parking area.

Sec. 4-15.05. Regulation of Smoking in Places of Employment.

- A. No person shall smoke in an enclosed place of employment.
- B. Within 60 days of the effective date of this article, each employer having an enclosed place of employment located within the Town shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:  
  
Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes 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.
- C. All employers shall comply with these non-smoking provisions and shall be responsible for their implementation in their places of employment.
- D. "No Smoking" signs shall be conspicuously posted at building entrances and in

employee lounges, cafeterias and lunchrooms.

- E. All employers shall supply a written copy of the smoking policy to any existing or prospective employee.

Sec. 4-15.06. Smoking Optional Areas

- A. Notwithstanding any other provision of this article to the contrary, the following areas shall not be subject to the smoking restrictions of this article:

1. Private residences, except when used as a child care or health care facility.
2. Retail tobacco stores.
3. Enclosed restaurant, hotel and motel conference or meeting rooms and public and private assembly rooms, which are equipped with a ventilation system which conducts air to the outside, while these places are being used for private functions, such as weddings, receptions, etc. to which functions the public is not invited, provided that 50% of these areas are designated nonsmoking.
4. An enclosed place of employment which employs only the owner and no other employee, provided that:
  - (a) The place of employment is not a public place, and
  - (b) The place of employment does not share a ventilation system with any other enclosed place of employment or public place.
5. Bars and cocktail lounges as defined herein.

- B. Nothing in this Chapter shall be construed to prevent any owner, operator, manager, or other person who controls any establishment or facility from declaring and enforcing a non-smoking policy in the entire establishment or facility.

Sec. 4-15.07. Posting of Signs.

- 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, sufficiently and conspicuously posted in every building, as well as on entrances at eye level, or other place where smoking is regulated by this article, by the owner, operator, manager or other person having control of such building or other place.



- B. Every restaurant and mall shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

Sec. 4-15.08. Regulating the Sale of Tobacco Products

- A. Any person, business, tobacco retailer or other establishment subject to this chapter shall post plainly visible signs at the point of purchase of tobacco products which state "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID REQUIRED". The letters of said signs should be at least one quarter inch (1/4") high.
- B. No person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or greater unless the seller has some reasonable basis for determining the buyer's age.
- C. It shall be unlawful for any person, business, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service merchandising, or by any means other than vendor-assisted sales.
- D. No person, business, or tobacco retailer shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any vending machine for the purpose of selling or distributing any tobacco product. Any tobacco vending machine in use on the effective date of this chapter shall be removed within thirty (30) days after the effective date of this chapter.

Sec. 4-15.09. Enforcement.

- A. Notice of these regulations shall be given to all applicants for a business license.
- B. Enforcement of this chapter shall be implemented by the Town Administrator or his/her designee.
- C. Any citizen who desires to register a complaint under this chapter may initiate enforcement with the Town Administrator or his/her designee.
- D. The Fire Department or the Health Department shall require, while an establishment is undergoing otherwise mandated inspections, certification from the owner, manager, operator or other person having control of such establishment that all requirements of this chapter have been complied with.

Sec.4-15.10. Violations and Penalties.

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to regulation under Sections 4-15.04, 4-15.05 and 4-15.08 of this Chapter chapter to refuse or fail to comply with any of its provisions.
- B. It shall be unlawful for any person to smoke in any area where smoking is prohibited under Sections 4-15.04, 4-15.05 and 4-15.06(b) of this Chapter.
- C. Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter who violates any provision of this chapter shall be deemed guilty of an infraction, punishable as provided by law.

Sec. 4-15.11. Non-retaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any right to a smokefree environment afforded by this article.

Sec. 4-15.12. Public Education.

The Town Administrator shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter to citizens affected by it, and to guide owners, operators and managers in their compliance with it. Such program may include publication of a brochure for affected business and individuals explaining the provisions of this chapter.

Sec. 4-15.13. Governmental Agency Cooperation.

The Town Administrator shall annually request other governmental and educational agencies having facilities within the Town to establish local operating procedures in cooperation and compliance with this chapter. This includes urging all Federal, State, County and school district agencies to update their existing smoking control regulations to be consistent with current health findings regarding environmental tobacco smoke.

Sec. 4-15.14. Other Applicable laws.

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

Sec. 4-15.15. Severability.

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

SECTION 4. Effective Date.

The effective date of this ordinance shall be January 1, 1994.

I hereby certify that the foregoing ordinance was introduced at a regular meeting of the Town Council of the Town of San Anselmo held on the 12th day of October, 1993, and thereafter adopted at the regular meeting held on the 26th day of October, 1993, by the following vote, to wit:

AYES: Breen, Kanis, Yarish, Zaharoff, Chignell

NOES: (None)

ABSENT: (None)

  
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MAYOR

ATTEST:

  
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TOWN CLERK