



City of Foley, AL

407 E. Laurel Avenue
Foley, AL 36535

Signature Copy

Ordinance: 14-1017-ORD

File Number: 14-0214

Enactment Number: 14-1017-ORD

An Ordinance To Amend Ordinance No. 929-06 An Ordinance Prohibiting Smoking In Workplaces and Public Places To Include E-cigarettes. This Ordinance is too large for Legistar to print. The Ordinance is attached in its entirety as Exhibit A.

PASSED, APPROVED AND ADOPTED this 16th day of June, 2014.

President's Signature _____

Date _____

**Attest by Acting City
Clerk** _____

Date _____

Mayor's Signature _____

Date _____

ORDINANCE 14:1017

EXHIBIT A

AN ORDINANCE PROHIBITING SMOKING IN WORKPLACES AND PUBLIC PLACES

The City Council does hereby find that:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.) According to the 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke. (U.S. Department of Health and Human Services. *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.)

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. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 53,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," Bethesda. MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.)

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service

(EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," *US. Department of Health and Human Services (DHHS), Public Health Service, NTP, 2000*; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.)

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death. (California Air Resources Board (ARB), "Appendix II Findings of the Scientific Review Panel: Findings of the Scientific Review Panel on Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant as adopted at the Panel's June 24, 2005 Meeting", *California Air Resources Board (ARB)*, September 12, 2005.)

There is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke. (World Health Organization (WHO), "Protection from exposure to secondhand smoke: policy recommendations," *World Health Organization (WHO)*, 2007.)

In reviewing 11 studies concluding that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smokefree laws, the Institute of Medicine of the National Academies concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smokefree laws reduce heart attacks. (Institute of Medicine (IOM) of the National Academies, Board on Population Health and Public Health Practice, Committee on Secondhand Smoke Exposure and Acute Coronary Events, "Secondhand smoke exposure and cardiovascular effects: making sense of the evidence," *Washington, DC: National Academies Press*, October 2009.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysoshoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzias, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

Studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in hospitality workers find dramatic reductions in the levels of these biomarkers after a smokefree law takes effect. Average cotinine levels of New York City restaurant and bar workers decreased by 85% after the city's smokefree law went into effect. ([n.a.], "The State of Smoke-Free New York City: A One Year Review," *New York City Department of Finance, New York City Department of Health & Mental Hygiene, New York City Department of Small Business Services, New York City Economic Development Corporation*, March 2004). After the implementation of Ontario, Canada's Smokefree Indoor Air Law, levels of NNAL were reduced by 52% in nonsmoking casino employees and cotinine levels fell by 98%. (Geoffrey T. Fong, et. al., "The Impact of the Smoke-Free Ontario Act on Air Quality and Biomarkers of Exposure in Casinos: A Quasi-Experimental

Study," *Ontario Tobacco Control Conference, Niagara Falls, Ontario, December 2, 2006.*)

Following a Health Hazard Evaluation of Las Vegas casino employees' secondhand smoke exposure in the workplace, which included indoor air quality tests and biomarker assessments, the National Institute of Occupational Safety & Health (NIOSH) concluded that the casino employees are exposed to dangerous levels of secondhand smoke at work and that their bodies absorb high levels of tobacco-specific chemicals NNK and cotinine during work shifts. NIOSH also concluded that the "best means of eliminating workplace exposure to [secondhand smoke] is to ban all smoking in the casinos." (*Health hazard evaluation report: environmental and biological assessment of environmental tobacco smoke exposure among casino dealers, Las Vegas, NV.* By Achutan C, West C, Mueller C, Boudreau Y, Mead K. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, NIOSH HETA No. 2005-0076 and 2005-0201-3080, May 2009.)

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. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.) The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 24, 2004.)

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coultas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A., "ASHRAE position document on environmental tobacco smoke," *American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)*, 2005.)

During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations. (Klepeis, N.; Ott, W.R.; Switzer, P., "Real-time measurement of outdoor tobacco smoke particles," *Journal of the Air & Waste Management Association* 57: 522-534, 2007.) Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smokefree outdoor area. (Hall, J.C.; Bernert, J.T.; Hall, D.B.; St Helen, G.; Kudon,

L.H.; Naeher, L.P., "Assessment of exposure to secondhand smoke at outdoor bars and family restaurants in Athens, Georgia, using salivary cotinine," *Journal of Occupational and Environmental Hygiene* 6(11): 698-704, November 2009.)

Residual tobacco contamination, or "thirdhand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings. Gases can be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds. (Singer, B.C.; Hodgson, A.T.; Nazaroff, W.W., "Effect of sorption on exposures to organic gases from environmental tobacco smoke (ETS)," *Proceedings: Indoor Air 2002*, 2002.) Tobacco residue is noticeably present in dust throughout places where smoking has occurred. (Matt, G.E.; Quintana, P.J.E.; Hovell, M.F.; Bernert, J.T.; Song, S.; Novianti, N.; Juarez, T.; Floro, J.; Gehrman, C.; Garcia, M.; Larson, S., "Households contaminated by environmental tobacco smoke: sources of infant exposures," *Tobacco Control* 13(1): 29-37, March 2004.) Given the rapid sorption and persistence of high levels of residual nicotine from tobacco smoke on indoor surfaces, including clothing and human skin, this recently identified process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion. (Sleiman, M.; Gundel, L.A.; Pankow, J.F.; Jacob III, P.; Singer, B.C.; Destailats, H., "Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential thirdhand smoke hazards," *Proceedings of the National Academy of Sciences of the United States of America (PNAS)* 107(15): 6576-6581, February 8, 2010.)

Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." ([n.a.], "Summary of results: laboratory analysis of electronic cigarettes conducted by FDA," *Food and Drug Administration (FDA)*, July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm> Accessed on: October 22, 2009.) E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity. (Behan, D.F.; Eriksen, M.P.; Lin, Y., "Economic Effects of Environmental Tobacco Smoke," *Society of Actuaries*, March 31, 2005.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L., "The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States." *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.;

Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

There is no legal or constitutional "right to smoke." (Graff, S.K., "*There is No Constitutional Right to Smoke: 2008*," Tobacco Control Legal Consortium, 2d edition, 2008.) Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous. (Graff, S.K.; Zellers, L., "*Workplace Smoking: Options for Employees and Legal Risks for Employers*," Tobacco Control Legal Consortium, 2008.)

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), *Supplement A*: 6-9, August 1997.)

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

Accordingly, the City Council 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 places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

Definitions

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

1. "Bar" means a stand-alone enclosed area in which the principal or sole purpose and business of the establishment is the serving of alcoholic beverages for consumption by guests on the premises. This term includes such establishments where the sale or service of food is made, but only if it is incidental to the service of alcoholic beverages. Bars must be posted off limits to minors and must not allow any minors inside.
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; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

3. "E-cigarettes" 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.
4. "Employee" means a person who is hired by another to perform a task or job in consideration for direct or indirect monetary wages, gain or profit, and a person who volunteers his or her services for a non-profit entity. This term includes independent contractors.
5. "Employer" means a person, business, and partnership, and association, corporation, including a municipal corporation, trust, or non-profit entity that hires the services of one or more employees.
6. "Enclosed Area" means that area between a floor and ceiling that is enclosed, or is capable of being enclosed, on all sides by solid walls, windows, and/or doorways and which is climate controlled by a HVAC or similar air handling system.
7. "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.
8. "Place of Employment" means an area under the control of an Employer where Employees normally frequent during the course of employment, including, but not limited to, work areas, 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 also used as a location of a business, child care, adult day care, or health care facility.

9. "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 a similar facility located on public or private school grounds or on City of Foley grounds.
10. "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. A "private club" is not open to the general public. A private club established for the purpose of avoiding the prohibitions on smoking called for in this Article shall be deemed a Public Place, however.
11. "Public Place" means an enclosed area to which the general public is invited or in which the general public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A "private club" facility is a "public place" when being used for a function to which the general public is invited or allowed to attend. A private residence is not a "public place" unless it is used as a business location, child care, adult day care, or health care facility.
12. "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.
13. "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, concerts lines, food vendor lines, movie ticket lines, and sporting event lines.

14. "Shopping Mall" means an enclosed or open public walkway or hall area that serves to connect retail or professional establishments.
15. "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 e- cigarette 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 Article.
16. "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 arenas, swimming pools, roller and ice rinks, and bowling alleys.
17. "Vaping" means to inhale vapor from any electronic oral device, such as on 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.

Application of Article to City-Owned Facilities and Property

All Enclosed Areas, including buildings and vehicles, which are owned, leased, or operated by the City of Foley, as well as all outdoor property adjacent to such buildings and under the control of the City of Foley, shall be subject to the provisions of this Article.

Prohibition of Smoking and Vaping in Enclosed Public Places

Smoking and vaping shall be prohibited in all enclosed Public Places, as well as the areas within a reasonable distance outside of the main entrance(s) of such Public Places, within the City of Foley.

Prohibition of Smoking and Vaping in Places of Employment

Smoking and vaping shall be prohibited in all enclosed areas which are a place of employment. 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 areas. This prohibition on smoking and vaping shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Prohibition of Smoking and Vaping in Outdoor Arenas and Stadiums

Smoking and vaping shall be prohibited in the seating areas of all outdoor sports arenas, stadiums, and amphitheaters, as well as in bleachers and grandstands for use by spectators at sporting and other public events.

Reasonable Distance

Smoking and vaping shall be prohibited within a reasonable distance of 15 linear feet outside all main entrances/exits to enclosed areas where smoking is prohibited in this Article.

Where Smoking And Vaping Use Not Prohibited

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

1. Private residences which are not also a place of employment, business or public place as defined herein.
2. Hotel and motel rooms that are rented to guests and are designated as smoking and/or vaping rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking and vaping rooms on the same floor must be contiguous and smoke and/or vapor from these rooms must not infiltrate into areas where smoking and/or vaping is prohibited under the provisions of this Ordinance. The status of rooms as smoking/vaping or nonsmoking/nonvaping may not be changed, except to add additional nonsmoking rooms.
3. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers or E-Cigarette users and have requested in writing to be placed in a room where smoking and/or vaping is permitted; provided that smoke or vapor from these places does not infiltrate into areas where smoking and/or vaping is prohibited under the provisions of this Article.
4. Private clubs when being used or occupied by its members only.

5. Places of employment that do not meet the definition of an Enclosed Area (except those covered by the provisions of Sections 1006 or 1007).
6. Bars.
7. In businesses that exclusively sell vapor products through sampling.

Declaration of Establishment as Nonsmoking and Nonvaping

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 and/or nonvaping place. Smoking and E-Cigarette use shall be prohibited in any place in which a sign conforming to the requirements of Section 1010 (A) is posted.

Posting of Signs

1. "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.
2. Every public place and place of employment where smoking and E-Cigarette use is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
3. 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.

Non-retaliation; Non-waiver of Rights

1. 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.
2. 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.

Enforcement

1. This Article shall be enforced by the Codes Enforcement Officer or an authorized designee.
2. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Foley.
3. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Codes Enforcement Officer.
4. The Health Department, Police Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
5. An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.
6. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
7. In addition to the remedies provided by the provisions of this Section, the Codes Enforcement Officer 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.

Violations and Penalties

A person who smokes or uses E-Cigarettes in an area where smoking and/or vaping is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

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 Article shall be guilty of an infraction, punishable by:

1. A fine not exceeding one hundred dollars (\$100) for a first violation.

2. A fine not exceeding two hundred dollars (\$200) 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.

In addition to the 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 Council 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.

Public Education

The Codes Enforcement Officer 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.

Governmental Agency Cooperation

The Codes Enforcement Officer 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. This includes urging all Federal, State, County, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke and/or vapor.

Other Applicable Laws

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

Liberal Construction

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

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 affect 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.

Effective Date

This Article shall be effective thirty (30) days from and after the date of its adoption and its publication as required by law.

PASSED. APPROVED AND ADOPTED this 16th day of June, 2014.

/s/ J. Wayne Trawick, President

/s/ Kathryn Taylor, Acting City Clerk

/s/ John E. Koniar, Mayor