

ORDINANCE 2013-9

AN ORDINANCE PROHIBITING SMOKING AND THE USE OF TOBACCO PRODUCTS IN CITY OWNED PARKS AND WITHIN 50 FEET OF SAID AREAS AND FOR OTHER PURPOSES

THE CITY COUNCIL OF THE CITY OF DOVER DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Title. This Ordinance shall be titled and referred to as the "City of Dover No Smoking or Tobacco Products Use Ordinance."

SECTION 2: Findings and Purpose. The City Council of the City of Dover hereby finds and declares that:

- (A) Smoking and use of tobacco products are hazardous to health.
- (B) Numerous studies have shown that second-hand smoke is a significant public health hazard.
- (C) The U.S. Environmental Protection Agency has classified second-hand smoke as a group A carcinogen, the most dangerous class of carcinogen.
- (D) The U.S. Centers for Disease Control and Prevention (CDC) estimates that second-hand smoke causes 3,000 lung cancer deaths per year among adult non-smokers in the U.S.
- (E) Second-hand smoke is especially hazardous to particular groups, including those with chronic health problems, the elderly and children.
- (F) The CDC has found that second-hand smoke causes children to suffer from lower respiratory tract illness, such as bronchitis and pneumonia, exacerbates childhood asthma, and increases the risk of acute chronic middle ear infection in children.
- (G) The City of Dover is committed to keeping its City owned parks healthy and pleasant for everyone.
- (H) Smoking endangers children and others in city owned parks and vehicles by exposing them to second-hand smoke.
- (I) Additionally, discarding cigarettes and cigar butts and tobacco products in and around City owned parks is unsightly, unclean and particularly hazardous to small children who handle them and sometimes ingest them.
- (J) Moreover, children and youth who observe smoking and tobacco use in City owned parks may model the behavior.
- (K) Numerous studies have determined that environmental tobacco smoke (ETS) is a significant source of exposure to toxic air indoor contaminants, causally associated with respiratory illnesses, including lung cancer, asthma, and emphysema.
- (L) There is scientific research linking ETS with heart disease and ETS carcinogens pose a special risk to children, the elderly, and individuals with cardiovascular disease and/or impaired respiratory function, including asthmatics and those with obstructive airway disease.
- (M) The separation of smokers from nonsmokers within the same airspace does not eliminate the exposure of nonsmokers to ETS, given that no safe level of exposure to ETS has been found.

- (N) Accordingly, the City Council of the City of Dover recognizes that ETS poses a serious public health hazard, that nonsmokers need protection from ETS exposure and that, therefore, prohibition by the City Council of smoking, the use of tobacco products and the improper disposal of tobacco products in city owned parks is imperative in order to protect the public health, safety, and welfare of the citizens of the City of Dover.

SECTION 3: Authority. This Ordinance is passed pursuant to the authority granted to the City of Dover by the State of Arkansas under A.C.A §§ 14-43-601, 14-43-602, 14-54-103, 14-55-101, and 14-55-102.

SECTION 4: Definitions.

- (A) **Tobacco Product.** For purposes of this Ordinance “tobacco product” means a cigarette, cheroot; stogie; cigar, snuff, chew, dip or other preparations of pulverized tobacco, including granulated, pug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette; chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing; and any article product made of tobacco or a tobacco substitute.
- (B) **Smoking.** For purposes of this Ordinance “smoking” means inhaling, exhaling, burning or carrying any lighted cigarette, cigar, pipe, weed, plant, or other combustible substance in any manner or in any form.
- (C) **City Park.** For the purpose of this Ordinance, “city park” means any real property owned, leased or operated by the City of Dover, which by reason of location, natural features, scenic beauty, or historical interest possesses distinctive physical, aesthetic, intellectual, creative, or social values and are used for athletics, recreation, relaxation, entertainment, cultural development, and other recreational activities.

SECTION 5: Prohibition of Smoking or Use of Tobacco Products in City Parks and Within Fifty Feet of City Parks.

- (A) Smoking use and tobacco products shall be prohibited at all times in any and all City owned City Parks: Dover City Park and J.P. Lovelady Ballfield, and any future city owned City parks.
- (B) Smoking and use of tobacco products shall be prohibited at all times within fifty feet (50 feet) of any City of Dover owned park.
- (C) Disposal shall be prohibited at all times of any cigarette, cigar, tobacco product, in any of the City of Dover owned City parks, or within fifty (50) feet of the boundaries of City owned City parks except in designated waste disposal containers.

SECTION 6: Ordinance not to excuse noncompliance with other laws and regulations; authority for more restrictive requirements.

- (A) Nothing in this chapter excuses noncompliance with any state or federal law, any other applicable ordinance of the city, or any rule or regulation adopted pursuant thereto which prohibits smoking or use of tobacco products.
- (B) Nothing in this article shall prohibit the owner, lessee, manager, operator, or other person in charge of a place open to the public from adopting nonsmoking or no tobacco products use requirements that are more restrictive than those set forth in this Ordinance.
- (C) This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other applicable law or regulation.
- (D) Punishment under this Ordinance shall not preclude any other law proscribing the act of littering. Nothing in this Ordinance shall preclude the City of Dover from seeking any other remedies, penalties, or procedures provided by law.

SECTION 7: Violations; Penalties.

- (A) Any person who violates any provision of Section 5 shall be deemed guilty of a misdemeanor and subject to the following penalties:
 - (1) A fine of fifty (\$50.00) dollars plus the court costs for the first offense;
 - (2) A fine of one hundred twenty-five (\$125.00) plus the court costs for the second offense;
 - (3) A fine of two hundred fifty (\$250.00) plus court costs for the third and each subsequent offense.
- (B) Persons who smoke in an area where smoking or use of tobacco products is prohibited and who refuse to extinguish their smoking material when asked, may be required to leave the premises, and shall be subject to prosecution for criminal trespass if they do not leave when asked.
- (C) Each calendar day during which the violation occurs shall constitute a separate and distinct offense.

SECTION 8: Severability. The provisions of this Ordinance are severable. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional or if any application of any provision of this Ordinance to any person or circumstance is held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or applications. The City Council hereby declares its intent that it would have adopted this Ordinance and each section, subsection, sentence, clause, or phrase not declared invalid or