

**MODEL ORDINANCE PROHIBITING SMOKING
IN ALL WORKPLACES AND PUBLIC PLACES
(100% SMOKEFREE)
Revised February 2011**

Sec. 1000. Title

This Article shall be known as the _____ [*name of City or County*]
Smokefree Air Ordinance of _____ [*year*].

Sec. 1001. Findings and Intent

The _____ [*City or County Governing Body*] does hereby find that:

The 2010 United States Surgeon General's Report, *How Tobacco Cause Disease* concluded: (1) Low levels of secondhand smoke exposure lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attack and stroke; (2) When inhaling secondhand cigarette smoke, individuals breathe in more than seven thousand (7,000) chemicals, hundreds of which are hazardous and known to cause cancer. These chemicals are rapidly absorbed by cells in the body and produce disease-causing cellular change. (3) There is no safe level of exposure to secondhand smoke.

The 2006 United States Surgeon General's Report, *The Health and Consequences of Involuntary Exposure to Tobacco Smoke*, concluded: (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; (3) Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) Establishing smoke-free air workplaces fully protects employees and the public from exposure to secondhand smoke in those places. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure to secondhand smoke; (5) Evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry.

The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately fifty-three thousand (53,000) Americans annually.

Secondhand smoke has been designated as a known human carcinogen (cancer-causing agent) by the U. S Environmental Protection Agency, National Toxicology Program and the International Agency for Research on Cancer (IARC). The National Institute for Occupational Safety and Health has concluded that secondhand smoke is a an occupational carcinogen.

The Institute of Medicine's Report, *Secondhand Smoke Exposure and Cardiovascular Effects: Making Sense of the Evidence* concludes: There is scientific consensus that there is a causal relationship between secondhand smoke exposure and cardiovascular disease. The results of a number meta-analysis of the epidemiologic studies showed an increase of twenty-five percent (25%) to thirty percent (30%) in the risk of cardiovascular disease caused by various exposures. Studies of hospital admissions for acute myocardial infarction in many states and municipalities have determined that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smoke-free air laws, including Starkville, Mississippi and Hattiesburg, Mississippi.

The Society of Actuaries has determined that secondhand smoke costs the United States economy roughly Ten Billion Dollars (\$10,000,000,000.00) a year: Five Billion Dollars (\$5,000,000,000.00) in estimated medical costs associated with secondhand smoke exposure and Four Billion Six Hundred Million Dollars (\$4,600,000,000.00) in lost productivity.

Business owners have no legal or constitutional right to expose their employees to the toxic chemicals and carcinogens in secondhand smoke. On the contrary, employers have a common-law duty to provide their workers with a workplace that is not unreasonably dangerous.

Accordingly, the _____ [*City or County Governing Body*] 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.

Sec. 1002. Definitions

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

- A. “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.
- B. “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.
- C. “E-cigarette” 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.
- D. “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 a non-profit entity.
- E. “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- F. “Enclosed Area” means all space between a floor and a ceiling that is bounded on all sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- G. “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.

- H. “Place of Employment” means an enclosed area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.
- I. “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 any similar facility located on public or private school grounds or on [City *or* County] grounds.
- J. “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.
- K. “Public Place” means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, 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 residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.

L. “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.

M. “Service Line” means an indoor or outdoor 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, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

N. “Shopping Mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

O. “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.

P. “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.

Sec. 1003. Application of Article to [City-Owned or County-Owned] Facilities

All enclosed areas, including buildings, and vehicles owned, leased, or operated by the _____ [City or County] of _____, shall be subject to the provisions of this Article.

Sec. 1004. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the _____ [City *or* County] of _____, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Polling places.
- N. Public transportation vehicles, including buses and taxicabs, under the authority of the _____ [City *or* County], and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.

O. Restaurants.

P. Restrooms, lobbies, reception areas, hallways, and other common-use areas.

Q. Retail stores.

R. 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* County] or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the _____ [City *or* County].

S. Service lines.

T. Shopping malls.

U. Sports arenas, including enclosed places in outdoor arenas.

V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 1005. Prohibition of Smoking in Enclosed Places of Employment

A. Smoking shall be prohibited in all enclosed areas of places 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.

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. 1006. Prohibition of Smoking in Private Clubs

Smoking shall be prohibited in all private clubs.

Sec. 1007. Prohibition of Smoking in Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. At least 90% of hotel and motel rooms that are rented to guests.

Sec. 1008. Prohibition of Smoking in Outdoor Areas

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of _____ [*recommended 15-20*] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. In, and within _____ [*recommended 15-20*] feet of, outdoor seating or serving areas of restaurants and bars.
- C. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within _____ [*recommended 15-20*] feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- D. In, and within _____ [*recommended 15-20*] feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the _____ [*City or County*].
- E. In all outdoor service lines.
- F. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least _____ [*recommended 15-20*] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.
- G. In, and within _____ [*recommended 15-20*] feet of, outdoor playgrounds.

Sec. 1009. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, the following areas shall be exempt from the provisions of Sections 1004 and 1005:

- A. Private residences, unless used as a childcare, adult day care, or health care facility, and except as provided in Section 1007.
- B. Not more than ten percent (10%) of hotel and motel rooms rented to guests and designated as smoking rooms. 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 the provisions of this Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Outdoor areas of places of employment except those covered by the provisions of Section 1008.

Sec. 1010. 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 shall be prohibited in any place in which a sign conforming to the requirements of Section 1011(A) is posted.

Sec. 1011. Posting of Signs and Removal of Ashtrays

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Article shall:

- A. Clearly and conspicuously post “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) in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.

- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

Sec. 1012. Nonretaliation; Nonwaiver of Rights

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 1014, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation.
- B. 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.

Sec. 1013. Enforcement

- A. This Article shall be enforced by the _____ [Department of Health *or* City Manager *or* County Administrator] or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the _____ [City *or* County] of _____.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the _____ [Department of Health *or* City Manager *or* County Administrator].
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

- E. An owner, manager, operator, or employee of an establishment regulated by this Article shall direct a person who is smoking in violation of this Article 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 bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the _____ [Department of Health *or* City Manager *or* County Administrator] 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. 1014. Violations and Penalties

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. Except as otherwise provided in Section 1012(A), 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.
- C. 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.

D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the _____ [Department of Health *or* City Manager *or* County Administrator] by restraining order, preliminary and permanent injunction, or other means provided for by law, and the _____ [City *or* County] may take action to recover the costs of the nuisance abatement.

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

Sec. 1015. Public Education

The _____ [Department of Health *or* City Manager *or* County Administrator] 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. 1016. Governmental Agency Cooperation

The _____ [City Manager *or* County Administrator] shall annually request other governmental and educational agencies having facilities within the _____ [City *or* County] to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, _____ [County *or* City], and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 1017. Other Applicable Laws

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

Sec. 1018. Liberal Construction

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

Sec. 1019. 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.

Sec. 1020. Effective Date

This Article shall be effective thirty (30) days from and after the date of its adoption.

Thereupon, upon motion duly made by Alderman _____, seconded by Alderman _____, to adopt the foregoing ordinance and received the following votes:

_____	_____
_____	_____
_____	_____
_____	_____

Thereupon, the Mayor declared said Ordinance approved, passed and adopted on this the ____ day of _____, 20__.

Mayor

Attest:

City Clerk