

Mayor and Council conducted Quasi-Judicial Procedures for Business Item#3-Public hearing and received public comments regarding 3677 Mackerel Drive, Gautier, MS. Barbara L. Aguillard, owner.

Motion made by Councilman Vaughan to table the Business Item #3 until July 17, 2014 Council Meeting. Motion seconded by Councilwoman Martin and unanimously carried.

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There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

**ORDINANCE NUMBER 217-2014**

**ORDINANCE PROHIBITING SMOKING  
IN CERTAIN PUBLIC PLACES AND PLACES OF EMPLOYMENT**

**AN ORDINANCE OF THE CITY COUNCIL OF GAUTIER, MISSISSIPPI, PROVIDING AUTHORITY & INTENT; AMENDING CHAPTER 15 OFFENSES AND MISCELLANEOUS PROVISIONS OF THE CODE OF ORDINANCES OF THE CITY OF GAUTIER, PROHIBITING SMOKING IN CERTAIN VENUES OPEN TO THE PUBLIC AND PLACES OF EMPLOYMENT; AND SETTING AN EFFECTIVE DATE.**

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GAUTIER, MISSISSIPPI, THAT THE CODE OF ORDINANCES OF THE CITY OF GAUTIER IS AMENDED AS FOLLOWS:**

**SECTION 1. Authority & Intent**

- A. The Gautier City Council held a public meeting on April 15, 2014 and received public feedback through the month of May 2014 on the potential adoption of a smokefree ordinance.
- B. In the interest of public health and safety, the City Council finds and declares that the purpose of this ordinance is to protect the public health and welfare of the citizens of this community by prohibiting smoking in public places and places of employment as defined hereafter.

**SECTION 2. Amendment of Chapter 15**

Article 1, Section 15-4 Smoking in Public Buildings is repealed as this is now covered by the amended Chapter 15, Article III, Division 3, Section 15-54.

In order to accomplish the intent as herein set out, the City of Gautier Code of Ordinances Chapter 15, Article III Tobacco Products is hereby amended by adding Division 3- Smoking Prohibitions, Section 15-54- Smoking Prohibited in Certain Public Places and Places of Employment (as shown below).

**ARTICLE III. TOBACCO PRODUCTS**

**Division 3. Smoking Prohibitions**

**Section 15-54. Smoking Prohibited in Certain Public Places and Places of Employment**

*a) Definitions*

The following definitions shall apply in the construction and enforcement of this section:

- (1) *Bars.* Means any premises where non-alcoholic or alcoholic beverages are sold or consumed.
- (2) *Business.* Means any sole proprietorship, partnership, 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.
- (3) *Child Care Facility.* Means any state licensed child care facility including, but not limited to, licensed family day care or licensed group day care centers, licensed day camps, certified school-age programs and head start programs.
- (4) *City Buildings.* Means all City-owned and operated buildings and those portions of buildings leased and operated by the City.
- (5) *City Vehicles.* Means all automobiles, trucks, heavy equipment or motorized units owned, operated or leased by the City.
- (6) *Common Areas of Buildings.* Means all areas not part of a tenant's leased premises, including but not limited to lobbies, community rooms, hallways, laundry rooms, stairwells, elevators, enclosed parking facilities, pool areas, and restrooms contiguous thereto.
- (7) *Employee.* Means any person who is employed by an employer for direct or indirect monetary wages or profit, including those full-time, part-time, temporary or contracted for from a third party; employee also means any person who serves as a volunteer for a business or non-profit entity.
- (8) *Employer.* Means any person, partnership, limited liability company, corporation, or other entity, including a public or non-profit entity that employs the services of one or more individuals.
- (9) *Enclosed Area.* Means all space between a floor and a ceiling which is enclosed on all sides by walls or windows (exclusive of doors or passage ways) which extend from floor to ceiling, including all space therein screened by partitions which do not extend to the

ceiling.

(10) *Entrance.* Means a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk or parking lot.

(11) *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, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms, wards and entrances in the health care facilities.

(12) *Hotel and Motel.* Means any commercial establishment that offers rooms that contain a bed and toilet facilities to the general public for rent that is not an apartment complex or home.

(13) *Mall.* Means any enclosed indoor area containing common areas and discreet businesses primarily devoted to the retail sale of goods and services.

(14) *Place of Employment.* Means an enclosed area controlled by the employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges and restrooms, conference rooms and class rooms, employee cafeterias, hallways and vehicles. This also includes private offices, elevators, medical facilities, stairs, vehicles and all other enclosed facilities. A private residence is not a “place of employment” within the meaning of this section unless it used as a child care facility, adult day care, or health care facility.

(15) *Private Club.* Means a facility owned or operated by an associational corporation, which does not operate for a pecuniary gain or have regular employees. Affairs and management of the organization are typically 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 a constitution, or charter, to govern its activities.

It is an organization that has been granted an exemption from the payment of federal income taxes as a “club” under 26 U.S.C. Section 501 of the Internal Revenue Code.

Entry into and use of a private club is restricted to members only and the invited public.

(16) *Private Residence.* Means premises owned, rented or leased for permanent or semi-permanent habitation.

(17) *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, health care facilities, hotel and motel lobbies, laundromats, parking garages, public parks, public transportation 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 used as a child care, adult day care, or health care facility.

(18) *Restaurant.* Means any eating establishment, 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. This term also includes a bar area within the restaurant.

(19) *Retail Tobacco Store.* Means an establishment which is not required to possess a retail food permit, whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and which maintains a valid permit for the retail sale of tobacco products. A retail tobacco store that permits smoking on the premises shall post in a clear and conspicuous manner a sign at each entrance warning persons entering the establishment that smoking may be present on the premises, and that persons under the age of 18 years may not enter the premises.

(20) *Service Line.* Means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(21) *Smoking.* Means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe,

hookah, or other lighted tobacco product in any manner or in any form.

(22) *Sports Arena or Venue.* Means any sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller skating rinks and indoor ice rinks, bowling centers and other similar places where members of the general public assemble to participate in or to witness sporting, cultural, recreational, or other events.

(23) *Tobacco Products.* Means cigars, cigarettes, chewing tobacco, snuff, or any other product in which tobacco is a primary ingredient and is either inhaled as in smoking, or chewed or dipped as in the use of chewing tobacco, or snuff.

(b) *City Property*

All City buildings, vehicles and sports arenas are subject to the provisions of this section and the use of tobacco products of any kind in such City buildings, vehicles or sports arenas is hereby prohibited.

(c) *Smoking Prohibited in Indoor Public Places*

Except as otherwise provided herein, it shall be unlawful for any person to smoke in indoor public places, including but not limited to the following:

(1) Aquariums, galleries, libraries and museums.

(2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels and motels.

(3) Bars.

(4) Bingo facilities.

(5) Child care facilities.

(6) Common areas in bed and breakfast establishments, hotels and motels and common areas of buildings.

(7) Convention facilities.

(8) Educational facilities.

(9) Elevators and enclosed stairwells.

(10) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical

recital, or other similar performance.

(11) Health care facilities.

(12) Hotel and motel lobbies.

(13) Indoor shopping malls.

(14) Lobbies, hallways and any other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

(15) Polling places.

(16) Public forms of transportation, including but not limited to buses, taxicabs, or other public passenger vehicles.

(17) Public bus and transfer point shelters.

(18) Public places including parking garages and jails.

(19) Retail stores.

(20) Restaurants.

(21) Restrooms, 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 a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.

(22) Self-service laundry facilities.

(23) Service lines.

(24) Service lobbies, waiting areas, and common areas open to the public of financial institutions, businesses and professional offices, and multi-unit commercial facilities.

(25) Sports arenas and venues.

(26) Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist, optician, or other medical services provider.

*(d) Exceptions*

The following areas shall not be subject to the smoking restrictions of this section:

(1) Private residences except those being used for a child care, adult day care or health care

facility.

(2) Retail tobacco stores as defined hereinabove.

(3) Private clubs.

*(e) Smoking prohibited in Certain Outdoor Areas*

It shall be unlawful for any person to smoke in certain outdoor areas as follows:

(1) Within 10 feet immediately preceding the primary means of ingress and egress of an area where smoking is prohibited.

(2) Seating areas of outdoor sports arenas and venues.

*(f) Signage*

Signs prohibiting smoking shall be posted conspicuously at the primary entrance of the premises by the proprietor, employer, owner or other person in charge of the building.

Signage shall include the international no smoking symbol and be no smaller than 6"x6". It shall be unlawful for any person to remove, deface or destroy any sign required by this section, or to smoke in a place where any such sign is posted.

*(g) Proprietor's Responsibilities*

The proprietor, employer, owner, or other person in charge of premises regulated hereunder, upon either observing or being advised of a violation, shall advise the smoker of this ordinance and request that he extinguish his cigarette or tobacco product and refrain from smoking. The proprietor, employer, owner or other person in charge of premises regulated hereunder shall post signage as required by this ordinance. The proprietor, employer, owner or other person in charge of premises regulated hereunder shall not provide ashtrays in areas where smoking is prohibited. All ashtrays shall be removed from any area where smoking is prohibited by this section by the owner, operator, manager, employer or other person having control of the premises.

*(h) Enforcement*

The chief of police, or his designee, shall have the power to enter upon the premises covered

by this section to ascertain whether the premises are in compliance with this section. Any person who desires to register a complaint under this section may contact the police department. A copy of this section shall be kept on file at the Economic Development & Planning Department/City Hall and shall be given to all applicants for a business license in the City. Applicable fines for violation of this ordinance may be found in the City's Comprehensive Fee Schedule.

(i) *Non-retaliation*

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 section or reports, or attempts to prosecute, a violation of the section.

**SECTION 3.** All provisions of the ordinances of the City in conflict with the provisions of this section shall be and the same are hereby repealed and all other provisions of the ordinances of the City not in conflict with the provisions of this section shall remain in full force and effect.

**SECTION 4.** Should any sentence, paragraph subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole and, to that extent, the same shall remain in full force and effect.

**SECTION 5.** This Article shall be effective thirty (30) days from and after the date of its adoption.

Thereupon, upon motion duly made by **Councilman Colledge** to approve as provided and revised, seconded by **Councilman Anderson** to adopt the foregoing ordinance and received the following votes:

AYES:           Gordon Gollott  
                  Mary Martin  
                  Rusty Anderson  
                  Adam Colledge

NAYS:           Johnny Jones  
                  Hurley Ray Guillotte  
                  Casey Vaughan

Thereupon, the Mayor declared said Ordinance approved, passed and adopted on this the 3rd day of June, 2014.

\_\_\_\_\_  
Gordon Gollott, Mayor

Approved as to form and legal sufficiency

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Joshua W. Danos, Esq.

Attest: \_\_\_\_\_  
Cynthia Russell  
City Clerk

**CITY OF GAUTIER  
MEMORANDUM**

**To:** Samantha Abell, City Manager  
**From:** Patty Huffman, Grants and Projects Manager  
**Through:** Chandra Nicholson, Director of Economic Development and Planning  
**Date:** May 28, 2014  
**Subject:** Potential Adoption of Ordinance Prohibiting Smoking in Public Places and Places of Employment

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**REQUEST:**

The Economic Development and Planning Department requests City Council review of two potential smokefree air ordinances that the City of Gautier could adopt. The model policy from the Americans for Nonsmokers' Rights was provided by the MS State Department of Health. A second, less restrictive smokefree ordinance adopted last year by a neighboring city is included as an alternative.

**BACKGROUND:**

The City of Gautier received a technical assistance grant from the Mississippi State Department of Health, Office of Tobacco Control to assist with educating constituents on the benefits of a comprehensive community smokefree policy. One of the four primary goals of the Office of Tobacco Control is to eliminate exposure to secondhand smoke in public environments (i.e. worksites, restaurants, and other public places). According to the MS Department of Health, over 500 non-smoking Mississippians die each year as a result of exposure to secondhand smoke. According to the U.S. Surgeon General, there is no safe level of exposure to secondhand smoke.

**DISCUSSION:**

The City of Gautier held a public meeting on April 15, 2014 regarding the potential adoption of a smokefree air ordinance and accepted public comments through May 26th. In addition, a survey link was provided through the City's website and Facebook page for the same time period. 566 responses were received. A summary of the public input received is attached.

The major differences between the model ordinance and the alternate ordinance are: the less restrictive version exempts private clubs from the smoking prohibition unless they are open to the general public; outside restaurant areas can have some outside smoking areas; e-cigarettes are not prohibited, and there is no requirement that hotel and motel rooms must be smokefree, and no penalties are specified. (See the two documents for additional details.)

**RECOMMENDATION:**

The Economic Development and Planning Department staff recommends that City Council determine whether to adopt a smokefree ordinance at this time. City Council may:

1. Adopt the model ordinance provided by the Mississippi State Department of Health as presented (100% smokefree);
2. Adopt the alternate modified ordinance as presented;
3. Adopt one of the above ordinances with changes; or
4. Decline to adopt any smokefree ordinance at this time.

**ATTACHMENT(S):**

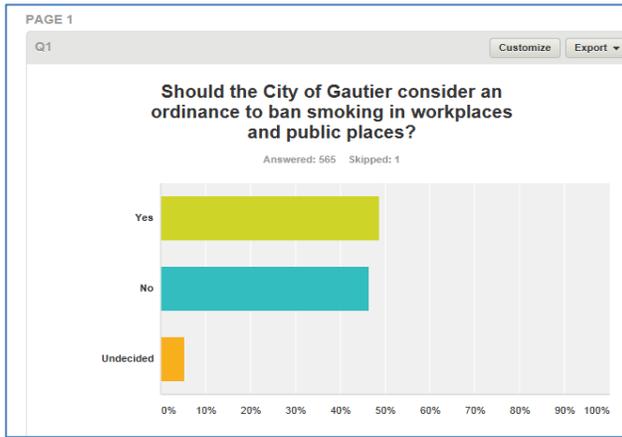
Ordinance Prohibiting Smoking in all Workplaces and Public Places (100% smokefree)  
Ordinance Prohibiting Smoking in Certain Public Places and Places of Employment (alternate)  
Smokefree Ordinance Public Input Summary

# Responses from the Public on the Potential Adoption of a Smoke Free Ordinance in the City of Gautier

## City Council Public Comments Meeting Held on April 15<sup>th</sup>:

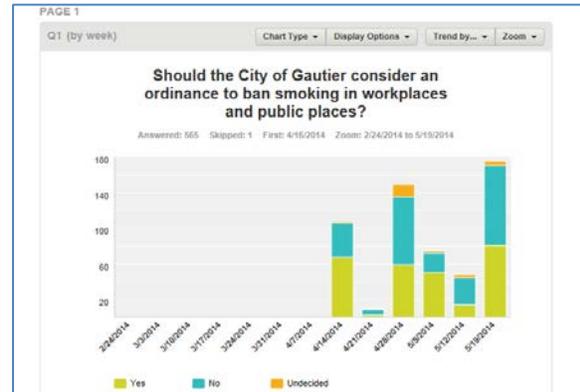
Informal Show of Hands:	Yes	11	(61%)
	No	7	(39%)

## Informal Survey Monkey Survey Conducted from April 16<sup>th</sup> thru May 26<sup>th</sup>



Results:	Yes	48.59%
	No	46.29%
	Undecided	5.12%

**566 Responses**



516 Responses from FaceBook Survey Link

50 Responses from City Website Link

**566 Total Survey Responses**

## Mississippi Press Online Poll (as of May 7, 2014):

Should Gautier adopt a smoke-free ordinance, prohibiting smoking in all workplaces and public places?

(# of responses unknown)



**Other:**

Q: *Should the City of Gautier consider an ordinance to ban smoking in workplaces and public places?*

**Email messages sent to City Hall:**

Yes 2 Responses

No 2 Response

**Facebook Comments:**

Yes 2 Individuals

No 7 Individuals

(See e-mailed comments below.)

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**Emailed Public Comments**

**Subject:** Support of Ordinance to Prohibit Smoking

I hope that I am not too late to voice my support for the ordinance to prohibit smoking. I am sure that since this is coming up, I do not need to point to all the health reasons that this should be implemented. It pains me every time I have to walk past someone smoking especially with my children. I would love to see Gautier step up to the plate to protect its citizens and make this a healthier and more enjoyable place to live.

If there is anything else that I can do to support or aid this cause, please let me know!

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**Subject:** Non Smoking Ban

I know it is past the 15th but I still wanted to weigh in on the nonsmoking ban. Simply put, smoking **KILLS** including 2nd hand. Smokers have the right to kill themselves but not me. We have to wear seat belts to protect ourselves just in case, but still have to put up with smoking, which we know **KILLS**. I have known several people who never smoked a day in their life, and die of lung cancer due to someone smoking in their breathing area. When will we finally say enough is enough? Let's face it the only reason cigarettes are not illegal is because of the money the government makes off of it.

Thank YOU.

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**Subject:** Smoking Ordinance

I do not believe it is the RIGHT of any government to tell PRIVATE business what they can and cannot do. If they chose to have a ban on smoking then that is up to them. When governments get involved in this kind of "feel good" legislation, then businesses and private citizen suffer!

**Subject:** Ordinance that Prohibits Smoking in All Workplaces and Public Places

Hi;

I have been working out of town for the past few months and saw this information on the website. Could you let me know the status of the review and any vote that has been taken?

I am personally against the proposed ordinance even though I do not smoke. I don't believe the City or any government should have the right to tell a business what they can or cannot do if it doesn't violate any law. Smoking is legal! If we are going to approve something like this ordinance, why not prohibit smoking altogether, anywhere in the city...even in my yard??

Please let's not continue down the path of reducing our freedoms and restricting our right to be free! Wasn't the Constitution written to protect these very rights we are proposing to take away with this ordinance??

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