

CITY OF FLOWOOD, MISSISSIPPI SMOKING BAN ORDINANCE

WHEREAS 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.)

WHEREAS 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. According to the 2014 U.S. Surgeon General's Report, *The Health Consequences of Smoking—50 Years of Progress*, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke.

WHEREAS 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 approximately 53,000 Americans annually.

WHEREAS 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.

WHEREAS 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. In 2015, ASHRAE amended its ventilation Standard for Acceptable Indoor Air Quality (62.1) to include an environment that is completely free from marijuana smoke and emissions from electronic smoking devices.

WHEREAS 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, continuing to expose people to tobacco toxins, which represent an unappreciated health hazard through dermal

exposure, dust inhalation, and ingestion. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings, and gases can be absorbed into carpets, draperies, and other upholsteries, which can then be reemitted (off-gassed) back into the air and form harmful compounds. Tobacco residue is noticeably present in dust throughout places where smoking has occurred. The dangers of residual tobacco contamination are present in spaces that are not 100% smokefree, such as in nonsmoking rooms of hotels that allow smoking in some guest rooms. Partial smoking restrictions in hotels do not protect non-smoking guests from exposure to tobacco smoke and tobacco-specific carcinogens.

WHEREAS electronic 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 that typically contains nicotine, heated through an electronic ignition system. ESD emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke. The January 2018 National Academies of Sciences, Engineering, and Medicine publication states that there is conclusive evidence that in addition to nicotine, most ESDs contain and emit numerous potentially toxic substances and increase airborne concentrations of particulate matter and nicotine in indoor environments. Studies show that people exposed to ESD aerosol absorb nicotine (measured as cotinine) at levels comparable to passive smokers. Many of the elements identified in the aerosol are known to cause respiratory distress and disease. ESD exposure damages lung tissues. Human lung cells that are exposed to ESD aerosol and flavorings — especially cinnamon — show increased oxidative stress and inflammatory responses. 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 World Health Organization (WHO), the National Institute for Occupational Safety and Health (NIOSH), and the American Industrial Hygiene Association (AIHA) recommend that ESDs not be used in smokefree environments, to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smokefree laws.

WHEREAS secondhand smoke from combusted marijuana contains fine particulate matter that can be breathed deeply into the lungs, which can cause lung irritation and asthma attacks, thus making respiratory infections more likely. Exposure to fine particulate matter can exacerbate health problems especially for people with respiratory conditions like asthma, bronchitis, or COPD.^{28, 29} Secondhand smoke from marijuana also has many of the same chemicals as smoke from tobacco, including those linked to lung cancer. More research is needed, but the current body of science shows that both tobacco and marijuana smoke may have similar harmful cardiovascular effects. Thus, In the interest of public health, the use of combustible or aerosolized marijuana should be prohibited wherever tobacco smoking is prohibited.

WHEREAS the Mayor and Board of Aldermen of the City of Flowood, Mississippi have determined that it is in the best interest of the citizens of the City of Flowood to protect public health and welfare by prohibiting smoking in public places and places of employment.

WHEREAS this Ordinance repeals the Ordinance of the Mayor and Board of Aldermen of the City of Flowood, Mississippi prohibiting smoking in all workplaces and public places adopted the 4th day of April 2011.

BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FLOWOOD, MISSISSIPPI as follows:

Section 1. Title

This Ordinance shall be known as the City of Flowood, Mississippi Smoking Ban Ordinance.

Section 2. Definitions

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

- A. "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.
- B. "Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
- C. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or a person who volunteers his or her services for a non-profit entity.
- D. "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.
- E. "Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two 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 and whether or not containing openings of any kind.
- F. "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.

G. “Hookah” means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

H. “Place of Employment” means an 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, construction sites, temporary offices, and vehicles. A private residence is not a “place of employment” unless it is used as a childcare, adult day care, or health care facility.

I. “Playground” means any park or recreational area designed in part to be used by children that have 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 property.

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 Event” means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers’ markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

L. “Public Place” means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, 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 childcare, adult day care, or health care facility.

M. “Recreational Area” means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.

N. “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.

O. “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.

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

Q. “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” includes the use of an electronic smoking device which creates an aerosol or 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.

R. “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

Section 3. Application of Article to City of Flowood Facilities and Property

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

Section 4. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the City of Flowood, including but not limited to, the following places:

A. 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. Bingo facilities.

D. Childcare and adult day care facilities.

E. Convention facilities.

F. Educational facilities, both public and private.

G. Elevators.

H. Health care facilities.

I. Hotels and motels.

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

K. Parking structures.

L. Polling places.

M. Public transportation vehicles and transportation facilities.

N. Restaurants including bar areas.

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

P. Retail stores.

Q. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, or committee of the City of Flowood or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Flowood.

R. Service lines.

S. Shopping malls.

T. Sports facilities, including enclosed places in outdoor arenas.

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

Section 5. 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, without limitation, 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.

Section 7. 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. All hotel and motel guest rooms.

Section 8. Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of twenty (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 twenty (20) feet of, outdoor seating or serving areas of restaurants.
- C. In outdoor shopping malls, including parking structures.
- D. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within one hundred feet (100) feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- E. In outdoor recreational areas, including parking lots.
- F. In, and within twenty (20) feet of, all outdoor playgrounds.
- G. In, and within twenty (20) feet of, all outdoor public events.
- H. In, and within twenty (20) feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City.
- I. In all outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers or parking lot attendants. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles, but only within twenty (20) feet of the point of service.
- J. 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 twenty (20) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Section 9. Prohibition of Smoking in Outdoor Places of Employment

A. Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, and temporary offices such as trailers, restroom facilities, and vehicles.

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.

Section 10. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility.

Section 11. Declaration of Establishment or Outdoor Area 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 12(A) is posted.

Section 12. Posting of Signs and Removal of Ashtrays

The owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility 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 or, in the case of outdoor places, clearly and conspicuously post “No Smoking” signs in appropriate locations.

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.

Section 13. 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 Ordinance or reports or attempts to prosecute a violation of this Ordinance. Notwithstanding Section 15, 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.

Section 14. Enforcement

A. This Article shall be enforced by the Chief of Police 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 of Flowood.

C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Police Department.

D. The Building Official, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.

E. An owner, manager, operator, or employee of an area regulated by this Ordinance shall direct a person who is smoking in violation of this Ordinance to extinguish or turn off 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 the City Police Department.

F. Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action to enforce this Ordinance.

G. In addition to the remedies provided by the provisions of this Section, the Police Chief 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 Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 15. Violations and Penalties

A. A person who smokes in an area where smoking is prohibited by the provisions of this

Ordinance shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

B. Except as otherwise provided in Section 13(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 Ordinance 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 Ordinance 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 Ordinance is hereby declared to be a public nuisance, which may be abated by the Police Department 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.

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

Section 16. Other Applicable Laws

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

Section 17. Liberal Construction

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

Section 18. Severability

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

Section 19. Effective Date

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

A motion to adopt the Ordinance was made by Alderman Smith and seconded by Alderman McDaniel. The Ordinance was put to a vote, and the result was as follows:

Alderman Harmon: AYE
Alderman Smith: AYE
Alderman Flynt: AYE
Alderman Robbins: AYE
Alderman McDaniel: AYE

The motion having received the affirmative vote of the majority of the members of the Board of Aldermen present, being a quorum of said Board of Aldermen, the Mayor declared the motion carried and the Ordinance adopted this the 6th day of February 2023.


Gary Rhoads, Mayor

Attest:


Josh Carlisle, City Clerk

