

AN ORDINANCE OF THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FLOWOOD, MISSISSIPPI PROHIBITING SMOKING IN ALL WORKPLACES AND PUBLIC PLACES

WHEREAS, the 2006 United States Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, 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 smoke-free 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 smoke-free 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, scientific evidence has firmly established that there is no safe level of exposure to second-hand tobacco smoke, a pollutant that causes serious illness in adults and children, and 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.); and

WHEREAS, the Mayor and Board of Alderman 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 the public health and welfare by prohibiting smoking in public places and places of employment.

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

1. **Title.** This Ordinance shall be known as the City of Flowood, Mississippi Smoking Ban Ordinance.
2. **Intent.** The Mayor and Board of Aldermen find and declare 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; (2) to guarantee the right of nonsmokers to breathe smoke free air; and, (3) to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

3. Definitions. The following words and phrases, whenever used in this Ordinance, 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. "City" shall mean the City of Flowood, Mississippi.
- 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 description.
- D. "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 or for-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 persons.
- F. "Enclosed Area" means all space between a floor and 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 area under the control of a public or private Employer that Employees normally frequent during the course of employment, 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 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 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 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. 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, 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 Club is a Public Place when being used for a function to which the general public is invited. A private residence is not a Public Place unless it is used as a childcare, adult day care, or Health Care Facility.
- L. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, full-service and fast-food restaurants, and private and public school cafeterias, which gives or offers for sale food and beverages 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 all enclosed areas within a Restaurant.
- M. "Service Line" means an indoor line 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 without limitation, 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 without limitation, sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys.

4. Application to City Facilities. All Enclosed Areas, including but not limited to buildings and vehicles owned, leased, or operated by the City, shall be subject to the provisions of this Ordinance.

5. Prohibition of Smoking in Enclosed Public Places. Smoking shall be prohibited in all Enclosed Public Places within the City, including but not limited to, the following places:

A. Libraries, galleries, and museums,

B. Areas available to and customarily used by the general public in Businesses 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. Gaming facilities,

I. Health care facilities,

J. Hotels and motels, including at least eighty percent (80%) of rooms that are rented to guests,

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

L. Polling places,

M. Private Clubs when being used for a function, to which the general public is invited,

N. Public transportation 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 a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City,

S. Service lines,

T. Shopping Malls,

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

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

6. Prohibition of Smoking in Places of Employment.

A. Smoking shall be prohibited in all Enclosed Areas within 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. The owner, operator, manager, or other person having control of an area where Smoking is prohibited by this Ordinance or otherwise shall communicate the Smoking prohibition to all existing Employees by the Effective Date of this Ordinance and to all prospective Employees upon their application for employment.

7. Prohibition of Smoking in Enclosed Residential Facilities. Smoking shall be prohibited in the following enclosed residential facilities:

A. All private and semi-private nursing homes.

B. At least 80% of hotel and motel rooms that are rented to guests.

8. Prohibition of Smoking in Outdoor Areas. 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 insure that tobacco smoke does not enter those areas.

B. In outdoor seating or serving areas of Restaurants, however, Smoking is allowed in an area which constitutes no more than 50% of the outdoor seating capacity. Ingress and egress to the Restaurant cannot go through the outdoor Smoking area.

C. In all outdoor Sports Arenas except in designated Smoking areas, which may be established only in perimeter areas at least one hundred (100) feet from any seating areas or concession stands. Smoking shall also be prohibited in, and within one hundred (100) feet of, bleachers and grandstands for use by spectators at sporting and other public events.

D. In and within twenty (20) feet of all public transit stations, platforms, and shelters under the authority of the City.

E. In and within twenty (20) feet of outdoor Playgrounds.

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 twenty (20) feet outside entrances, operable windows, and ventilation systems of Enclosed Areas where Smoking is prohibited.

G. In all outdoor Service Lines.

9. Where Smoking Not Regulated. Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of this Ordinance:

A. Private residences, except when used as a childcare, adult day care, or Health Care Facility.

B. Not more than twenty percent (20%) 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 Ordinance. The status of rooms as Smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

C. Private Clubs that have no Employees, except when being used for a function to which the general public is invited; provided that smoke from such clubs does not infiltrate into areas where Smoking is prohibited under the provisions of this Ordinance. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Ordinance.

D. Outdoor areas of Places of Employment except those covered by the provisions of Section 8.

10. Declaration of Establishment as Non Smoking. Notwithstanding any other provision of this Ordinance, 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 nonsmoking. Smoking shall be prohibited in any place in which a sign reasonably conforming to the requirements of Section 11(A) is posted.

11. 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 Ordinance 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 Ordinance 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 Ordinance, except for ashtrays displayed for sale and not for use on the premises or ashtrays affixed to vehicles.

12. 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, or customer because that Employee, applicant, or customer exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance. Notwithstanding Section 14, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed One Thousand Dollars (\$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 may have against the Employer or any other party.

13. Enforcement.

A. This Ordinance shall be enforced by the Chief of Police or an authorized designee.

B. Notice of the provisions of this Ordinance 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 Ordinance 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 establishment regulated by this Ordinance shall direct a person who is Smoking in violation of this Ordinance 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 the City Police Department.

F. Notwithstanding any other provision of this Ordinance, any Employee or individual 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.

14. 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 12(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.

A good faith effort to prevent Smoking shall be a complete defense to this offense.

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 or the Business 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.

15. Other Applicable Laws. This Ordinance shall not be interpreted or construed to permit Smoking where it is otherwise restricted by other applicable laws.

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

17. 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.

18. Effective Date. This Ordinance shall be effective thirty (30) days from and after the date of its adoption (the "Effective Date").

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

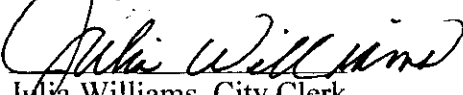
Alderman Flynt voted:	Aye
Alderman Harmon voted:	Aye
Alderman Smith voted:	Aye
Alderman McDaniel voted:	Aye
Alderman Rhoads voted:	Aye

The motion having received the affirmative vote of a 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 4th day of April, 2011.



Gary L. Rhoads, Mayor

Attest



Julia Williams, City Clerk