

SMOKING BAN ORDINANCE;

PROVIDING FOR THE IMPOSITION OF CRIMINAL PENALTIES;

AND PROVIDING AN EFFECTIVE DATE

WHEREAS, scientific studies have found that tobacco smoke is a major contributor to indoor air pollution; and

WHEREAS, scientific studies, including a 2006 study and report conducted by the Surgeon General of the United States titled "The Health Consequences of Involuntary Exposure to Tobacco Smoke", have shown that breathing secondhand smoke is a significant health hazard; and

WHEREAS, the Mayor and Board of Aldermen find and declare that the purposes of this Ordinance are to protect public health and welfare of its citizens by prohibiting smoking in certain areas as set forth herein;

WHEREAS, the Mayor and Board of Aldermen of the City of Aberdeen, have found it to be in the best interest of, and necessary for the public health and safety and general welfare of said City, that a Smoking Ban Ordinance be adopted as set forth below;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF ABERDEEN, MONROE COUNTY, MISSISSIPPI, AS FOLLOWS, TO-WIT:

Section 1: Definitions.

1. "Bars" means any premises where non-alcoholic or alcoholic beverages are sold or consumed, including but not limited to taverns, nightclubs, and cocktail lounges.
2. "Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity, formed either for non-profit or 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 performed, and private clubs.
3. "Childcare facility" means any state-licensed childcare facility, including but not limited to licensed family daycare or licensed group daycare 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 of Aberdeen.
5. "Common area 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.
6. "Employee" means any person who is employed in consideration for direct or indirect monetary wages or other compensation and includes individuals so employed whether full-time, part-time, temporarily or by contract with a third

party; employee also means any person who serves as a volunteer for a business or nonprofit entity.

7. "Employer" means any person, business, partnership, association, limited liability company, corporation, or other entity, including a public or nonprofit entity that employs the services of one (1) or more individual persons.

8. "Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by walls or windows (exclusive of doors or passage ways) which extend from floor to ceiling.

9. "Entrance" means a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk, or parking lot.

10. "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, semiprivate rooms, wards and entrances into health care facilities.

11. "Hotel and motel" means any commercial establishment that offers rooms that contain a bed and toilet facilities to the general public for rent and that is not a Private Residence as defined herein.

12. "Mall" means an enclosed, indoor area containing common areas and discrete businesses primarily devoted to the retail sale of goods and services.

13. "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 classrooms, 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 ordinance unless used as a child care, adult day care, or health care facility.

14. "Private residence" means premises owned, rented or leased for permanent or semi-permanent habitation.

15. "Public place" means an enclosed area to which the public is invited or in which the public is permitted or customarily used by the general public, 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.

"Public place" does not include the entire building if the general public is not generally invited into all portions of the building. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

16. "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 as required to be issued by the appropriate authority in the City. 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 of age may not enter the premises.

17. "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.

18. "Service Line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the services involves the exchange of money.

19. "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.

20. "Sports Arena or Venue" means 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.

Section 2: Application of Ordinance to City -Owned Facilities.

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the City of Aberdeen, shall be subject to the provisions of this Ordinance.

Section 3: Smoking Prohibited in Indoor Public Places.

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

- a. Aquariums, galleries, libraries, and museums.
- b. 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.
- c. Bars.
- d. Bingo facilities.
- e. Childcare facilities.
- f. City buildings.
- g. Common areas in bed and breakfast establishments, hotels and motels and common areas of buildings.

- h. Convention facilities.
- i. Educational facilities.
- j. Elevators and enclosed stairwells.
- k. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- l. Health care facilities.
- m. Hotel and motel lobbies.
- n. Indoor shopping malls.
- o. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- p. Indoor sports arenas and venues.
- q. Polling places.
- r. Public forms of transportation, including but not limited to motor buses, taxicabs, or other public passenger vehicles.
- s. Public bus and transfer point shelters.
- t. Public places including parking garages and jails.
- u. Retail stores.
- v. Restaurants.
- w. 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.
- x. Self-service laundry facilities.
- y. Service lines.
- z. Service lobbies, waiting areas, and the common areas open to the public of financial institutions, businesses and professional offices, and multi-unit commercial facilities.
- aa. Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.

Section 4: Exceptions.

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

- a. Private residences except those being used for a child care, adult day care or health care facility.
- b. Retail tobacco stores.

Section 5: Smoking Prohibited in Certain Outdoor Areas.

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

- a. Within a reasonable distance immediately preceding the primary means of ingress and/or the primary means of egress of an area where smoking is prohibited.
- b. Attached areas of restaurants that are (i) covered or partially covered and (ii) have more than 50% of the perimeter of the outside area walled or otherwise closed to the outside provided, however, said attached areas may permit smoking under certain conditions set forth in subsection (c).
- c. In the attached areas of restaurants defined in subsection (b), smoking may be permitted in a contiguous area designated for smoking so long as such area: (i) constitutes no more than twenty-five percent of the outdoor seating capacity of such food service establishment and (ii) is clearly designated with written signage as a Smoking area.
- d. Seating areas of outdoor sports arenas, stadiums, amphitheaters and other venues.

Section 6: Signage.

- a. Signs prohibiting smoking shall be posted conspicuously at the primary entrance of the premises by the proprietor, employer or other person in charge of the building.
- b. Signage shall include the international no Smoking symbol and be no smaller than 5" x 5".
- c. It shall be unlawful for any person to remove, deface, or destroy any sign required by this ordinance, or to smoke in a place where any such sign is posted.

Section 7: Proprietor's Responsibilities.

- a. The proprietor, employer 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 they extinguish their cigarette or tobacco product and refrain from smoking.
- b. The proprietor, employer or other person in charge of premises regulated hereunder shall post signage as required by this ordinance.
- c. The proprietor, employer 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

Ordinance by the owner, operator, manager, or other person having control of the area.

Section 8: Enforcement.

a. The Chief of Police or designee, shall have the power, to enter upon the premises named in this Ordinance to ascertain whether the premises are in compliance with this Ordinance.

Enforcement will be through issuance of a summons and complaint.

b. Any person who desires to register a complaint under this ordinance may contact the City Police Department.

c. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Aberdeen.

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

Section 9: Violations and Penalties.

a. Any person who violates any provision of this ordinance may be subject to a fine of no more than fifty dollars (\$50) for the first offense and no more than two hundred and fifty dollars (\$250) for the second and subsequent offenses.

b. Any person who owns, manages, operates, and/or otherwise controls an area subject to this Ordinance who fails to comply with the provisions of this Ordinance shall be guilty of a misdemeanor, punishable by:

i. A fine not exceeding one hundred dollars (\$100) for first violation.

ii. A fine not exceeding two hundred dollars (\$200) for the second violation within one year.

iii. A fine not exceeding five hundred dollars (\$500) for each additional violation within one year.

c. The Board of Aldermen shall suspend or revoke any business license or permit issued by the City for 3 or more violations of this Ordinance involving the licensee's premises within a twelve (12) month period.

d. Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by the Department of Health, Police Department or the Department of Community Planning and Development by restraining order, preliminary or 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 Ordinance occurs shall be considered a separate and distinct violation.

Section 10: 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.

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 10: Jurisdiction Clause.

This Ordinance shall be subject to all other applicable governmental jurisdictions' rules, regulations and laws pertaining to smoking.

Section 11: That all provisions of the Ordinances of the City of Aberdeen in conflict with the provisions of this Ordinance be, and the same are hereby, repealed and all other provisions of the Ordinances of the City of Aberdeen not in conflict with the provisions of this ordinance shall remain in full force and effect.

Section 12: That 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.

Section 13: This Ordinance shall be in full force and effect on the 30th day after passage.

The City Clerk shall cause the Ordinance to be published in a local newspaper with a general circulation.

The above and foregoing Ordinance having first been reduced to writing was read and considered section by section, and said Ordinance was put to a vote upon its final passage as a whole, and the same was passed as read, with the following vote, to-wit:

Aldermen voting "YEA": Alderman Brunson Odom
Alderman Jim Buffington
Mayor Cecil Belle

Aldermen voting "NAY": Alderman Alonzo Sykes
Alderman Willie Cook

Aldermen absent or not voting: Alderman Cloyd Garth

THEREUPON, the Mayor declared said Ordinance approved, passed, and adopted this 20th_ day of February, 2007.

Cecil S. Belle, Mayor

ATTEST:

Jackie Benson, City Clerk

