

**ORDINANCE AMENDING THE 2008 AMENDMENT TO THE
CAPITAL CITY SMOKE-FREE AIR ORDINANCE OF 2003,
CODIFIED AS CHAPTER 86, ARTICLE VI, OF THE CODE OF
ORDINANCES, CITY OF JACKSON, MISSISSIPPI.**

WHEREAS, the City Council of the City of Jackson, Mississippi, previously determined that the health, safety, and welfare of the City's residents are a primary concern, such that the City Council adopted the Capital City Smoke-Free Air Ordinance of 2003 and amended in 2008, codified as Section 86-161, *et seq.*, of the Code of Ordinances, City of Jackson, Mississippi; and

WHEREAS, the City Council has determined that the Capital City Smoke-Free Air Ordinance of 2003, amended in 2008, should be updated and amended based on new findings.

**THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF JACKSON, MISSISSIPPI, THAT:**

SECTION 1. The Capital City Smoke-Free Air Ordinance of 2003, Section 86-161, *et seq.*, of the Code of Ordinances, City of Jackson, Mississippi, shall be amended to read as follows:

Section 86-161. Title.

This article shall be known as the "Capital City Smoke-Free Air Ordinance of 2003."

Section 86-162. Findings and intent.

WHEREAS, the City of Jackson, Mississippi, pursuant to section 21-17-5 of the Mississippi Code, is authorized to make regulations to secure the general health of the municipality; and

WHEREAS, the City of Jackson, Mississippi, has the duty to protect and promote the health of its citizenry.

THEREFORE, the City Council of the City of Jackson, Mississippi, does hereby find that:

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

Accordingly, the City Council of the City of Jackson, Mississippi, finds and declares that the purposes of this article are to: (1) protect the public health and welfare

by prohibiting smoking in public places and places of employment; and (2) guarantee the right of nonsmokers to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

Section 86-163. Definitions.

The following words and phrases, whenever used herein, 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 gross receipts for the sale of food does not exceed 25 percent of the total gross receipts, including but not limited to cocktail lounges, nightclubs, taverns, and cabarets.
- (b) *"Business"* means a 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.
- (c) *"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.
- (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 ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- (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, 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, and wards within health care facilities.

- (g) *“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, 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.
- (h) *“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 by laws 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.
- (i) *“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, health care facilities, laundromats, 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 is used as a childcare, adult day care, or health care facility.
- (j) *“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 an attached bar.
- (k) *“Retail tobacco store”* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

- (l) “*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.
- (m) “*Shopping mall*” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (n) “*Smoking*” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.
- (o) “*Sports arena*” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Section 86-164. Application of article to city-owned facilities.

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

Section 86-165. Prohibition of smoking in public places.

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

- (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) Child care and adult day care facilities.
- (f) Convention facilities.
- (g) Educational facilities, both public and private.
- (h) Elevators.

- (i) Facilities primarily used for exhibiting a motion picture, stage drama, lecture, musical recital, or other similar performance.
- (j) Health care facilities.
- (k) Hotels and motels, including at least eighty percent (80%) of rooms that are rented to guests.
- (l) Lobbies, enclosed hallways, laundry rooms, clubhouses and other common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (m) Polling places.
- (n) Private clubs, when being used for functions to which the general public is invited.
- (o) Public transportation facilities, including buses and taxicabs, under the authority of the City of Jackson, and ticket, boarding, and waiting areas of public transit depots.
- (p) Restaurants.
- (q) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (r) Retail stores.
- (s) 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 of Jackson or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the City of Jackson.
- (t) Service lines.
- (u) Shopping malls.
- (v) Sports arenas, including enclosed places in outdoor arenas.

Section 86-166. Prohibition of smoking in places of employment.

(a) Smoking shall be prohibited in all enclosed facilities 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) 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 86-167. Prohibition of smoking in outdoor areas.

Smoking shall be prohibited in the following outdoor places:

- (a) Within the 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 and within twenty (20) feet thereof.
- (c) In all outdoor arenas, stadiums, and amphitheaters, except in designated smoking areas, which may be established only in perimeter areas at least twenty (20) feet from any seating areas or concession stands. Smoking shall also be prohibited in, and within twenty (20) feet of bleachers and grandstands for use by spectators at sporting and other public events.
- (d) In all public transit stations, platforms, and shelters under the authority of the City of Jackson.

Section 86-168. 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 86-165 (public places where smoking is prohibited) and 86-166 (no smoking in places of employment):

- (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 Article. 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 Article. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Article.
- (d) Outdoor areas of places of employment, except those covered by the provisions of Section 86-167 prohibition of smoking in outdoor areas.
- (e) Retail tobacco stores, provided that smoke from these areas does not infiltrate into areas where smoking is prohibited under the provisions of this Articles.

Section 86-169. 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 86170(a) is posted.

Section 86-170. Posting of signs.

- (a) "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) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.
- (b) Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. Every vehicle that constitutes a place of employment under this Article shall have at least one conspicuous sign, visible from the exterior of the vehicle, clearly stating that smoking is prohibited.
- (c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

Section 86-171. Non-retaliation.

- (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 Article or reports or attempts to prosecute a violation of this Article.

Notwithstanding Section 86-173, violation of this Section shall be a misdemeanor, punishable by a fine not to exceed \$1,000.00 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 86-172. Enforcement.

(a) This Article shall be enforced by the Office of Code Services or through private affidavits filed with the Jackson Police Department.

(b) Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Jackson.

(c) Citizens who desire to file a complaint under this Article may initiate enforcement with the City Court Services or by filing an affidavit with the Jackson Police Department.

(d) The Office of Code Services and the Jackson 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 inform persons violating this article of the appropriate provisions thereof.

(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 Office of Code Services, Jackson Fire Department, or any person aggrieved by the failure of any 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 seek injunctive relief to enforce those provisions in any court of competent jurisdiction.

Section 86-173. Violations and penalties.

(a) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not exceeding \$500.00 per violation.

(b) Except as otherwise provided in Section 86-171(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, upon conviction, be guilty of a misdemeanor, punishable by:

- (1) A fine not exceeding \$500.00 for a first violation.
- (2) A fine not exceeding \$1000.00 for a second or more violations within one year of any prior violation.
- (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 City permit or license issued to the person for the premises on which the violation occurred.
- (d) Each day on which an infraction of this Article occurs shall be considered a separate and distinct violation.
- (e) Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City of Jackson by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City of Jackson may take action to recover the costs of the nuisance abatement.

Section 86-174. Public education.

The director of Code Services 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 Article.

Section 86-175. Governmental agency cooperation.

The director of Code Services shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this Article. This may include urging all federal, state, county, and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Section 86-176. Other applicable laws.

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

Section 86-177. Liberal construction.

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

SECTION 2. All provisions of the Code of Ordinances of the City of Jackson, Mississippi, in conflict with the provisions of this Article shall be, and the same are hereby, repealed; and, all other provisions of the Code of Ordinances of the City of Jackson, Mississippi, not in conflict with the provisions of this Article shall remain in full force and effect.

SECTION 3. Should any sentence, paragraph, subdivision, clause, phrase, or section of this Article be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this Article as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal, or unconstitutional, and shall not affect the validity of the Code of Ordinances of the City of Jackson, Mississippi, as a whole.

SECTION 4. The preceding amendments and revisions to the Capital City Smoke-Free Air Ordinance of 2003, and amended in 2008, Section 86-161, *et seq.*, of the Code of Ordinances, City of Jackson, Mississippi, shall become effective July 1, 2010.

Section 86-178. Quarterly report to City Council.

No less than quarterly, the Office of Code Services and the Jackson Police Department shall file a joint report with the administration and the City Council setting forth:

- (a) The number of reported violations of this ordinance as well as the name of the offending person or business and the date of the specific offense(s); and
- (b) The outcome of any judicial proceeding concerning said violation(s).

Yeas – Barrett-Simon, Bluntson, Lumumba, Tillman, Weill, Sr., and Yarber.

Nays – None.

Absent – Stokes.

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