

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Gulfport, Mississippi, held on the 18th day of March, 2008, the following Ordinance:

ORDINANCE NO. 2579

AN ORDINANCE TO ELIMINATE SMOKING AT CITY FACILITIES, PUBLIC PLACES, AND WORKPLACES AND TO PROVIDE A SMOKE-FREE ENVIRONMENT WITHIN THE CITY OF GULFPORT, MISSISSIPPI

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

WHEREAS, scientific evidence, including studies conducted by the Surgeon General of the United States, demonstrate that (1) secondhand or involuntary exposure to tobacco smoke, also known as “environmental tobacco smoke,” 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 environments and workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the public and in the workplace; 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); and

WHEREAS, scientific studies have further found that each year 9,700 to 18,600 low birth weight babies born in the United States are causally related to exposure to secondhand smoke (U. S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, irritants in secondhand or involuntary smoke annually cause nearly 150,000 cases of bronchitis and pneumonia and 700,000 cases of ear infections in children in the United States (U. S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, the Surgeon General of the United States has further found that there is a causal relationship between exposure to secondhand smoke and increased risks of coronary heart disease morbidity and mortality among both men and women. (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, p. 15); and

WHEREAS, non-smoking sections in buildings do not eliminate non-smokers' exposure to second-hand smoke (U. S. Environmental Protection Agency Office of Air and Radiation IARC Scientific Publications 81:25-41, 1987; and 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, p. 11) and sitting in a smoke-free section of a restaurant for two (2) hours is similar to smoking 1½ cigarettes (Presentation by Katherine Hammond, Ph.D., University of California School of Public Health); and

WHEREAS, on average nine (9) out of ten (10) non-smokers are involuntarily exposed to secondhand smoke or environmental tobacco smoke at least once every two (2) to three (3) days (Journal of the American Medical Association, January 1998); and

WHEREAS, involuntary exposure to secondhand smoke is a significant health hazard and threat and visitors to enclosed areas where smoking is prohibited should not be forced to endure exposure to smoke upon entry to or exit from locations or enclosed areas where smoking is prohibited and where people may congregate to smoke; and

WHEREAS, the Mayor and City Council find and declare that the purposes of this Ordinance are to protect the public health and welfare of its citizens by prohibiting smoking at City facilities, public places, and places of employment and to provide a smoke-free environment; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS:

SECTION 1. That the matters and things set forth in the above preamble are hereby accepted as stated as the findings of the Gulfport City Council. The Council further specifically finds and declares that one of the prevailing purposes of this Ordinance is to protect the public

health and welfare by prohibiting smoking at City facilities, public places, and places of employment to provide a smoke-free environment.

SECTION 2. That Chapter 7 of the Code of Ordinances of the City of Gulfport, Mississippi be and the same is hereby amended to add Article V to establish a Smoke-Free Air Ordinance, to read as follows:

SMOKE-FREE AIR ORDINANCE

SECTION 1. Definitions.

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

A. "Bars" means establishments or businesses that are not located or operated within or as part of a "restaurant" and which are devoted to the serving of liquor, beer, or wine or other alcoholic beverages for consumption by guests, patrons, or consumers on the premises and in which the serving of food is only incidental to the consumption of those beverages. The service of food is incidental to the consumption of alcoholic beverages when an establishment, business, or premises has less than fifteen percent (15%) of the revenue derived from such place from the preparation, cooking, and serving of meals or food and the value of food given to and consumed by customers and not from the sale of alcoholic beverages. Unless they are located or situated in a stand alone building or structure that does not contain or have any areas where smoking is prohibited or restricted herein or otherwise, "bars" shall be separated by a physical barrier from all locations and areas where smoking is prohibited or restricted, including self-closing, tight fitting doors for all entrances and exits, and have a separate ventilation system from the locations and areas where smoking is prohibited or restricted. The physical barrier must form an effective membrane continuous from outside wall to outside wall, from smoke barrier to smoke barrier, from floor to floor or roof above, or a combination thereof, including continuity through all concealed spaces, such as above suspended ceilings, intersitial structural and mechanical spaces. The ventilation system must be an HVAC system designed by a licensed professional engineer to have a negative pressure on the area where smoking is permitted to prevent air from such area to be drawn across or into any location or area where smoking is prohibited or restricted, provide a total air exchange every fifteen (15) minutes, and exhaust smoking area air to the exterior of the building or structure at a distance sufficiently away from the doors, operable windows, or ventilation intakes of the building or structure to prevent the exhausted air from being drawn back into the building or structure. The system shall be operated such that smoke from the area where it is permitted does not enter any location or area where smoking is prohibited or restricted.

B. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity, either for profit or non-profit, including, but not limited to, 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 or provided, and private clubs.

C. "Casino gaming area" means the floor space used for gaming or where gaming occurs within a casino gaming establishment as well as areas immediately adjoining thereto or connected therewith, including, but not limited to, bars contiguous therewith or connected thereto, with such establishment licensed by the State of Mississippi Gaming Commission and located within the Entertainment-Gaming (EG) zoning district of the City. "Casino gaming area" does not include and specifically excludes all areas serving as or where there are located or found to be restaurants, elevators, enclosed stairwells, childcare facilities, and sports or recreation arenas or venues.

D. "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.

E. "City buildings" means all buildings owned and/or operated by the City and those buildings leased and/or sub-leased by or to the City.

F. "Common areas" of buildings, structures, facilities, or grounds means hallways, corridors, lobbies, aisles, water fountain areas, stairwells, entryways, vestibules, community rooms, alcoves, foyers, laundry rooms, waiting areas, elevators, enclosed parking facilities, swimming pools, gymnasiums, and restrooms that are not directly connected to or contiguous with rooms that are rented to guests for temporary living quarters in hotels or motels and which are designated as being "smoking rooms" in accordance with this Article. "Common areas" shall also mean all areas of apartment complexes, condominiums, townhomes, and any multi-family residential development or

facility not part of a tenant's leased premises and all areas on the premises of hotels and motels that are not part of the rented premises to guests or lessees.

G. "Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, including those full time, part-time, temporary or contracted from a third party, and any person who volunteers his or her services.

H. "Employer" means any person, business, partnership, association, limited liability company, corporation, trust, or other entity, whether for profit or non-profit, that employs the services of one (1) or more individual persons.

I. "Enclosed Area" means all space between a floor and ceiling which is predominately or totally bounded, comprised of, or enclosed on all sides by walls, physical barriers, and/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 or are not solid, "office landscaping," or similar features or structures, regardless of whether such walls, barriers, or windows consist of screened or otherwise partially covered openings, open or closed windows, жалousies, open or closed doors or doorways, uncovered openings, or the like.

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

K. "Establishment" means the portion of a building, structure, or facility, including the infrastructure, that is typically reviewed, assessed, inspected, and/or included as part of the plan review, licensing, and monitoring processes of food and/or beverage facilities by the applicable public health licensing authorities. It also includes, in the case of multi-purpose buildings and rooms and for the purposes of this Article, those portions of the building, structure, or facility that are being used for food and/or beverage services during an event, temporary or otherwise.

L. "Health care facility" means an office or institution providing care or treatment of diseases, illnesses, and/or wounds, 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 or clinics 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, restrooms, examining rooms, entrances, and wards within health care facilities.

M. "Hotel" and "motel" each mean any commercial establishment, development, business, or facility that offers rooms that contain a bed and toilet facilities or sleeping quarters to the general public for rent on a nightly, daily, or weekly or otherwise temporary basis, that is not an apartment complex or home.

N. "Mall" or "Shopping Mall" means an area or premises containing common areas or public walkways, sidewalks, or hall areas and parking facilities that generally serve to connect businesses or establishments primarily devoted to the retail sale of goods and/or services, professional or otherwise, including, but not limited to, outlet retail centers or malls and shopping centers.

O. "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. This also includes elevators, medical facilities, stairs, and all enclosed facilities. A private residence is not a "place of employment" unless used as a childcare, adult day care, or health care facility.

P. "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, and which has four (4) or fewer regular employees, does not operate for pecuniary gain, and is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose and which only sells alcoholic beverages, if any, incidental to its operation. 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. Entry into and use of a private club is restricted to members only. When a private club is open to the public, it does not meet this definition. Any exemption of a "private club" from the smoke-free provisions of this Article does not apply when such organization is established to avoid compliance with this Article.

Q. "Private residence" means premises owned, rented or leased for permanent or semi-permanent habitation and which complies with the City's zoning ordinances pertaining to residential zones or areas.

R. "Proprietor" shall mean the party, regardless of whether or not the party is owner or lessee of the public place, who ultimately controls, governs, or directs the activities within the public place. The term does not mean the owner of the property, unless the owner ultimately

controls, governs, or directs the activities within the public place. The term "proprietor" may apply to a corporation as well as to an individual.

S. "Public place" means an enclosed area to which the public, including, but not limited to, shoppers, customers, patrons, patients, students, clients, guests, and other invitees of any establishment, business, or property, is invited or in which the public is permitted, including, but not limited to, banks, educational facilities, health care facilities, hotels and motels, laundromats, parking garages, public parks, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, bars, sports arenas, theaters and waiting rooms. A private club is a "public place" when being used for a function which is open to the general public and/or to which the general public is invited. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility or as a bed and breakfast facility or lodge.

T. "Restaurant" includes every building or other structure and facility, or any part thereof, and all buildings, structures, and facilities in connection therewith, regardless of situs or location, that are kept, used, maintained, advertised, or held out to the public as a place where food is served or which gives or offers for sale food to the public, guests, or employees, including, but not limited to, fast food eateries, doughnut shops, coffee shops, cafeterias, private and public school cafeterias, kitchens, and catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant as well as outdoor dining areas, including, without limitation, patios, decks, balconies, and wherever food is sold, served, and/or consumed on the premises. "Restaurant" shall include all restaurants in resorts, hotels, and motels. Where a restaurant is situated or located does not affect its applicability with this Article.

U. "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.

V. "Smoking" or "to smoke" means inhaling, exhaling, burning, carrying, or possessing any lighted or ignited tobacco product, including, but not limited to, cigarettes, cigars, pipes, hookahs, and any lighted or ignited combustible plant or plant substance and any synthetic derivation thereof, in any manner or in any form. It shall be presumed that a lighted or ignited cigarette, cigar, pipe, or hookah contains tobacco.

W. "Sports or recreation arena or venue" means sports pavilions, stadiums, gymnasiums, health spas, recreation or fitness centers, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and centers and other similar places where members of the general public assemble to engage in physical exercise or participate in or to witness athletic or sporting, cultural, recreational, or other events. "Sports or recreation arena or venue" includes, but is not limited to, tennis and basketball courts, swimming pools, lanes, tracks, playing fields, concession areas, recreation or fitness centers, pavilions, playground areas, grandstands, bleachers, press boxes, restrooms, wharfs, piers, walkways, and locker rooms.

SECTION 2. Application of Article to City-Owned Facilities, Vehicles, and Machinery.

All facilities, including, but not limited to, all structures and buildings, whether temporary or permanent, as well as all vehicles, machinery, and sports or recreation arenas or venues owned, leased, or operated by the City of Gulfport shall be subject to the provisions of this Article and smoking shall be prohibited at all such areas and places.

SECTION 3. Smoking Prohibited in Enclosed Public Places.

Except as otherwise specifically provided in this Article, smoking is prohibited from all enclosed public places within the City and it shall be unlawful for any person to smoke in any such public place, 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, and retail service establishments.
- C. Bingo facilities.
- D. Childcare and adult day care facilities.
- E. City structures and buildings, regardless of whether temporary or permanent.
- F. Common areas of buildings, structures, establishments, businesses, facilities, and grounds, including, but not limited to, hotels, motels, bed and breakfast lodges or establishments, apartments, condominiums, trailer parks, movie theaters, office buildings, retail service or commercial establishments, multi-unit commercial centers or facilities, shopping centers, malls, retirement facilities, nursing homes, and other multiple-unit residential facilities, and the like.
- G. Convention facilities.
- H. Educational facilities and schools, both public and private.

- I. Elevators and stairwells.
- J. Health care facilities.
- K. Hotels and motels, except where otherwise specifically excepted by this Article.
- L. Polling places.
- M. Private clubs when being used for a function that is open to the general public or to which the general public is invited.
- N. Public transportation facilities and vehicles, including, but not limited to, airports, train stations, bus stations, buses, taxicabs, limousines for hire, and public passenger vehicles under the authority of the City, including ticket, boarding, and waiting areas of public transit depots, stations, or facilities and public bus transfer point shelters or stops.
- O. Parking garages and jails.
- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores.
- S. Rooms, 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.
- T. Service lines, service lobbies, and waiting areas open to the public at financial institutions, businesses and professional offices, and multi-unit commercial facilities.
- U. Sports or recreation arenas and/or venues.
- V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.
- W. Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.

SECTION 4. Smoking Prohibited in Places of Employment.

Unless specifically excepted herein by this Article, smoking shall be prohibited in all enclosed facilities and areas within places of employment. 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.

SECTION 5. Smoking Prohibited in Certain Outdoor areas.

Smoking is prohibited from the following outdoor areas or public places within the City and it shall be unlawful for any person to smoke in any such area or place:

- A. Within twenty (20) feet of outside entrances and exits that are used for ingress and egress by patrons, guests, or customers as well as operable windows and ventilation systems that are a part of or otherwise service enclosed areas where smoking is prohibited.
- B. In outdoor seating or serving areas of restaurants that can not reasonably accommodate seating for at least twenty (20) patrons or customers inside the restaurant or within an enclosed area at the establishment. "Outdoor seating or serving area" herein means an area that is attached to, contiguous with, or otherwise part of a restaurant and which has no more than one solid wall or partition.
- C. Covered and/or partially covered outdoor areas of public places and places of employment that fifty percent (50%) or more of the perimeter of the outside area or place is walled or otherwise closed to the outside.
- D. Sports or recreation arenas or venues, including, but not limited to, seating or viewing areas of outdoor amphitheaters, stages, and venues such as grandstands and bleachers, concession areas, restrooms, and hallways, as well as the sidewalks connected thereto or contiguous therewith.
- E. All public outdoor properties and facilities controlled or leased by the City, including, but not limited to, all parks, sports fields, tennis courts, walkways or trails, wharfs, piers, and public transit stations and platforms.
- F. Any and all grounds of a school or educational facility used for a pre-school, elementary, middle, junior high, and/or high school serving any level of education from pre-school through 12th grade, whether denominational, private, sectarian, or public, any and all grounds of a childcare facility and child day care facility, business, or establishment, as well as any and all grounds utilized as or part of a summer camp or day camp for minors, as such term is statutorily defined in this State.

SECTION 6. Outdoor Smoking Distances.

A. Smoking is prohibited and it shall be unlawful for any person to smoke within twenty (20) feet of all entrances to and exits from enclosed areas of public places, businesses, establishments, facilities, and places of employment that are used for ingress and egress by patrons, guests, or customers well as twenty (20) feet from operable windows and ventilation systems which are part of or affixed to any such public place, business, establishment, facility, or place of employment. The main public entrances cannot serve as entrances or exits to outdoor areas where smoking is not regulated.

B. This twenty (20) feet restriction shall be measured along a straight line from nearest point of the entrance, exit, operable window or door, stairwell leading to or from the entrance or exit, or ventilation system.

SECTION 7. Where Smoking Not Regulated.

A. The following areas and places shall not be subject to and are exempt from the smoking restrictions and prohibitions of Sections 3 and 4 of this Article:

1. Not more than twenty percent (20%) of rooms in a hotel or motel rented to guests and designated as smoking rooms. All such smoking rooms shall be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Article, including, but not limited to, common areas of such establishment or facility and the non-smoking rooms rented to guests. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
2. Private clubs, except when being used for a function which is open to the general public or 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.
3. Private residences, except when any part thereof is used as a childcare, adult day care, or health care facility or bed and breakfast lodge.
4. Outdoor areas of places of employment except those covered by the provisions of Section 5 and/or the Outdoor Smoking Distance provisions of Section 6 of this Article.
5. Casino gaming area within a licensed casino located within the Entertainment-Gaming (EG) zoning district.
6. Bars, provided that this exemption shall not apply to any bar that allows anyone under the age of twenty-one (21) on its premises.
7. A designated "smoking room" located beyond the security checkpoint within the terminal of a municipal or regional airport facility, as such airport is defined under Miss. Code Ann. § 61-3-3, as amended, which room serves as a separate, sealed room beyond the security checkpoint used for the sole purpose of smoking and which shall, in addition to any other requirements in this Article, comply with all signage requirements, be enclosed by physical barriers that are impenetrable by smoke and prevent the escape of smoke into other areas of the airport terminal facility, have self-closing, tight fitting doors for all entrances and exits, must exhaust tobacco smoke directly to the outside and away from air intake ducts, and be on a separate ventilation system from areas where smoking is permitted and be maintained under negative pressure with respect to surrounding spaces and areas in order to contain tobacco smoke solely within the room.

SECTION 8. Declaration of Establishment as Nonsmoking.

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, business, facility, or outdoor area may prohibit smoking from or otherwise restrict smoking in areas in addition to those where smoking is prohibited or otherwise restricted in this Article. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this Article is posted.

SECTION 9. Signs.

- A. Every place, public or otherwise, where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. Signs shall be posted by the owner, operator, proprietor, employer, or other person having control of the premises or structure. These signs shall include 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) and be no smaller than four (4) inches tall and four (4) inches in width and be placed at a height of between four (4) and six (6) feet above the floor or ground. For those facilities, establishments, and places where smoking is altogether prohibited, a further sign, which can be included with the universal “no smoking” symbol, shall be conspicuously posted at the main entrance to each such place stating “This entire establishment is smoke-free.”

- B. Every vehicle or piece of machinery that constitutes a place of employment under this Article or where smoking is otherwise prohibited shall have at least one conspicuous sign, visible from the exterior of the vehicle or piece of machinery clearly stating that smoking is prohibited.
- C. Signs Where Smoking Permitted.
 - 1. Where smoking is permitted by this Article within an enclosed or partially enclosed facility or area, the owner, operator, proprietor, employer, or other person having control of the premises, structure, facility or area shall conspicuously post a sign no smaller than four (4) inches tall and four (4) inches in width at a height of between four (4) and six (6) feet above the floor or ground at all entrances to that facility or area stating the following:
 - A. “SMOKING IN THIS AREA. This area contains tobacco smoke, which the U. S. Surgeon General has determined is harmful to your health.”
 - 2. The words “SMOKING IN THIS AREA” shall be in capital letters and no smaller than one-quarter inch in width and one-quarter inch in height. Each letter in the remaining words in this sign shall not be smaller than eighteen (18) point font size. All such lettering in this sign shall contrast with the background.
- D. It shall be unlawful for any person to remove, deface, or destroy any sign required by this Article, or to smoke in the immediate area where any such sign is posted.

SECTION 10. Other Responsibilities of Owners, Proprietors, Managers, and Employers.

- A. The owner, proprietor, manager, employer, or other person in charge or control of premises, establishments, businesses, facilities, or areas regulated hereunder, upon either observing or being advised of a violation, shall advise the smoker of this Article or Ordinance and request that they extinguish their cigarette or tobacco product and refrain from smoking and can contact or notify the Police Department for enforcement hereunder.
- B. The owner, proprietor, manager, employer, or other person in charge or control of such premises shall post signage as required by this Article.
- C. The owner, proprietor, manager, employer, or other person in charge or control of such premises shall not provide ashtrays in areas where smoking is prohibited. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, proprietor, manager, employer, or other person in charge or control of the area.

SECTION 11. Non-retaliation; Non-waiver of Rights.

- A. No person or employer shall refuse to hire or in any manner retaliate against an employee, applicant for employment, customer, or patron because that employee, applicant, customer, or patron exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 13, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$1,000 for each violation.
- B. Any individual who works in and/or is invited to an establishment, business, casino gaming area, or place of employment which may be excepted from the prohibitions of this Article and where the owner, proprietor, manager, employer, or other person in of such premises or area allows smoking, whether as a customer, shopper, patron, client, employee, contractor, or otherwise, does not waive or otherwise limit or surrender any legal or equitable rights such individual may have against the owner, proprietor, manager, employer, or other person in charge or control of areas or places or against any other party.

SECTION 12. Enforcement.

- A. Except as otherwise provided in this Section, this Article shall be enforced by the Chief of Police or an authorized designee.
- B. The Chief of Police or his or her designee shall have the power and authority, subject to law, to enter upon the premises named in this Article to ascertain whether the premises

are in compliance with this Article. Enforcement will be through issuance of a summons and complaint.

- C. The Fire Department, Department of Urban Development, and Health Department or their designees shall, while an establishment or premises is undergoing otherwise mandated or authorized inspections, inspect for compliance with this Article.
- D. Any person who desires to register a complaint under this Article may initiate enforcement with the Police Department.
- E. Notwithstanding any other provision of this Article, any individual, including, but not limited to, customers, patrons, guests, and employees, may bring legal action to enforce this Article or to otherwise pursue a violation hereof. As such, enforcement of this Article may be by any method permitted under state law for the prosecution of misdemeanor offenses, provided that such violations are brought before the Municipal Court unless otherwise required by state law.
- F. In addition to the remedies provided by the provisions in this Article, the Police Chief or any person aggrieved by the failure of an owner, operator, proprietor, manager, or other person in charge or control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
- G. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Gulfport.

SECTION 13. Violations and Penalties

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of a misdemeanor, punishable by a fine not exceeding one hundred dollars (\$100).
- B. 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 be guilty of a misdemeanor, 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 the third and for each subsequent violation within one (1) year.
- C. In addition to the fines established by this Section, for a second violation of this Article and for each subsequent violation of this Article within one (1) calendar year by a person who owns, operates, manages, or otherwise controls a public place or place of employment may result in the suspension or revocation of any business or privilege license or permit or any other applicable license or permit issued to the person for the premises or area where the violation occurred or for the premises, business, establishment, or place where the violation occurred. Prior to such suspension or revocation, a hearing shall be held by the City Official under whose authority the license or permit was earlier issued, or his or her designee, to determine whether a second or subsequent violation of this Article occurred within the time period set forth herein and whether such license or permit should be suspended or revoked in response thereto. Advance written notice of this hearing shall be sent or delivered to the licensee or permittee at the address identified in or associated with said license or permit. At this hearing, the licensee or permittee shall have the opportunity to respond to the charges that a second or subsequent violation of this Article occurred and that their license or permit should be suspended and/or revoked in response thereto. The licensee or permittee shall be notified in writing of a decision following this hearing.
- D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the Police Department or Department of Urban Development or their designee by restraining order, preliminary and/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 Article occurs shall be considered a separate and distinct violation.

SECTION 14. Other Applicable Laws.

- A. This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or regulations nor shall this Article be interpreted or construed to create or confer any right to smoke or any right to smoke in any location or place.

- B. This Article shall not be interpreted or construed to preempt further or more restrictive limitations or prohibitions on smoking by any other governmental entity or regulatory authority.

SECTION 15. Liberal Construction.

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

SECTION 16. Other Ordinances; Severability.

- A. All provisions of the ordinances of the City of Gulfport in conflict with the provisions of this Article are hereby repealed and all other provisions of the ordinances of the City of Gulfport not in conflict with the provisions of this Article shall remain in full force and effect.
- B. If any sentence, paragraph, subdivision, clause, phrase, or section of this Article or the application thereof to any person or circumstances be adjudged or held to be unconstitutional, illegal, invalid, or unenforceable by a court of competent jurisdiction, such finding or such invalidity shall not serve as an invalidation or affect the validity or enforceability of any other section or provision of this Article and to this end, the provisions of this Article are declared to be severable. Such an invalid sentence, paragraph, subdivision, clause, phrase, or section shall also not affect the validity of the Code of Ordinances as a whole.

SECTION 17. Effective Date.

This Ordinance shall be effective May 1, 2008.

The above and foregoing Ordinance, having been first reduced to writing, was introduced by Councilmember Carriere, seconded by Councilmember Hollimon, and was adopted by the following vote, to wit:

YEAS:

Hollimon
 Roland
 Holmes-Hines
 Carriere
 Resh
 Nalley

NAYS:

Smith

The President thereby declared the motion carried and the Ordinance adopted this, the 18th day of March, 2008.



ATTEST:

Amelia S. Rordeaux

 CLERK OF COUNCIL

ADOPTED:

Neil Resh

 PRESIDENT

The above and foregoing Ordinance having been submitted to and approved by the Mayor this, the 19th day of March, 2008.

ATTEST:

Amelia S. Rordeaux

 CITY CLERK

ADOPTED:

[Signature]

 MAYOR