

ORDINANCE NO. 1639

**AN ORDINANCE OF THE CITY OF AMORY, MISSISSIPPI, PROVIDING FOR A SMOKING BAN; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR THE IMPOSITION OF CIVIL 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 studies conducted by the Surgeon General of the United States, 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 the public health and welfare of its citizens by prohibiting smoking in public places and places of employment;

**BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF AMORY, MISSISSIPPI:**

**SMOKING BAN ORDINANCE**

**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 delivered, 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.
5. "Common areas 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 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; 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 non-profit 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 solid walls 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, other landscaping or similar structures.
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, semi-private rooms, wards within 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, that is not an apartment complex or home.
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 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 childcare facility, an adult day care, or health care facility.

14. “Private Club” means a facility owned or operated by an association or corporation, which does not operate for pecuniary gain or have regular employees and which only sells alcoholic beverages 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 a Section 501 exemption from the payment of Federal Income Taxes as a Club under 26 U.S.C. 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. Private Club also 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 purposes, but not for pecuniary gain.

15. “Private residence” means premises owned, rented or leased for temporary or permanent habitation.

16. “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, 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, game rooms, billiard halls and pool halls. A public place also includes the entire building if the building also includes portions of the building to which the general public is not generally invited. 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 child care, adult day care, or health care facility.

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 and indoor ice rinks, bowling centers and other similar places where members of the general public assemble to participate in or to witness sports cultural, recreational, or other events.

### **Section 2. Application of Article to City-Owned Facilities.**

All enclosed facilities, including buildings and vehicles owned, leased , or operated by the City of Amory, 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 and in places of employment as defined in this ordinance, 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. Places of employment.
- q. Polling places.
- r. Private clubs when being used for a function to which the general public is invited.
- s. Public forms of transportation, including but not limited to motor buses, taxicabs, or other public passenger vehicles.
- t. Public bus and transfer point shelters.
- u. Public places including parking garages and jails.
- v. Retail stores.
- w. Restaurants.
- x. 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.
- y. Self-service laundry facilities.
- z. Service lines.
  
- aa. Service lobbies, waiting areas, and the common areas open to the public of financial institutions, businesses and professional offices, and multi-unit commercial facilities.
- bb. Sports arenas and venues
- cc. Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.
- dd. Game rooms, billiard halls or pool halls.

**Section 4. Exceptions.**

The following areas shall not be subjected to the smoking restrictions of this ordinance:

- a. Up to twenty percent (20%) of all rooms that are rented to guests in bed and breakfast facilities, hotel rooms and motel rooms may be designated as smoking rooms.
- b. Private Clubs that have no employees, except when being used for a function to which the general public is invited.
- c. Private residences except those being used for a child care, adult day care or healthcare facility.

**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 of 25 feet immediately preceding the entrance to and 10 feet from the exit of an area where smoking is prohibited.
- b. Attached areas of restaurants that are covered or partially covered with more than 50% of the perimeter of the outside area walled or otherwise closed to the outside.
- c. Seating areas of outdoor sports arenas, stadiums, amphitheaters and other venues.
- d. Any area of property owned by the City of Amory whether improved, unimproved, occupied, or vacant.

**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"x5".
- 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, shall post signage as required by this ordinance.
- c. The proprietor, employer or other person in charge of 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, operator, manager, or other person having control of the area.

**Section 8. Enforcement.**

- a. The Chief of Police, any officer under his command, or designee shall have the power, subject to law, 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 and/or appropriate affidavit.
- 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 Article shall be given to all applicants for a business license in the City of Amory.
- d. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

**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 (\$50.00) for the first offense and no more than two hundred and fifty dollars (\$250.00) for the second and subsequent offenses.
- b. Any person or entity who owns, manages, operates, or otherwise controls a public place or place of employment who fails to comply with the provisions of this Ordinance shall be guilty of a misdemeanor, punishable by:
  - a. A fine not exceeding one hundred dollars (\$100) for a first violation.
  - b. A fine not exceeding two hundred dollars (\$200) for a second violation within one year.
  - c. A fine not exceeding five hundred dollars (\$500) for each additional violation within one year.
- c. The Mayor and Board of Aldermen shall suspend or revoke any business licenses or permits issued by the City for 3 or more violations of this ordinance involving the licensed premises within a twelve (12) month period.
- d. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the Department of Health, Police Department, or the Planning Department by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.
- e. Each day on which a violation of this 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 11. Jurisdiction Clause.**

This ordinance shall be subject to all other governmental jurisdictions rules and regulations and laws pertaining to smoking.

**Section 12.**

That all provisions of the ordinances of the City of Amory 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 Amory not in conflict with the provisions of this ordinance shall remain in full force and effect.

**Section 13.**

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, 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 this Ordinance as a whole.

**Section 14.**

This Ordinance shall take effect 30 days after passage as provided for by law.

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

The foregoing ordinance was proposed in a motion by Alderman Dan Rogers, seconded by Alderman John E. Darden, and after discussion, no Aldermen member having called for a reading, was brought to a vote as follows:

Alderman Dan Rogers Voting Yea  
Alderman John E. Darden Voting Yea  
Alderman Tony Poss Voting Yea  
Alderman Peggy Wilkerson Voting Yea  
Alderman Glen Bingham Voting Yea

Whereupon, the motion having received a majority of affirmative votes, the Mayor and Board of Aldermen declared that the Ordinance had been passed and adopted on this the 2nd day of October 2007.

CITY OF AMORY

BY: s/Howard Boozer  
HOWARD BOOZER, MAYOR

ATTEST:

s/Suzanne C. Mobley  
SUZANNE C. MOBLEY, CITY CLERK