

ORDINANCE NO. 620.1

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

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 concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur at the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry. (U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.); 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 MAYOR AND BOARD OF ALDERMEN OF THE CITY OF KOSCIUSKO, MISSISSIPPI as follows, to-wit:

1. Title

This Ordinance shall be known as the City of Kosciusko, Mississippi Smoke Free Ordinance.

2. Intent

The Mayor and Board of Aldermen find and declare that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; (2) to guarantee the right of nonsmokers to breathe smokefree air; and,

(3) to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

3. Definitions

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

- A. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- B. "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.
- C. "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.
- D. "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.
- E. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- F. "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. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, or health care facility.
- G. "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 bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- H. "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, gaming facilities, health care facilities, hotels and motels, 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 club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.

- I. "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.
- J. "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 service involves the exchange of money.
- K. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- L. "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.
- M. "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and othersimilar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

4. Application to City-Owned Facilities

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

5. Prohibition of Smoking in Enclosed Public Places

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

- A. 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, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Childcare and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gaming facilities.
- J. Health care facilities.
- K. Hotels and motels, including at least sixty percent (60%) of rooms that are rented to guests.
- L. Lobbies, hallways, and other common areas in apartment buildings,

condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

- M. Polling places.
- N. Private clubs when being used for a function to which the general public is invited.
- O. Public transportation facilities, including buses and taxicabs.
- 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 or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- T. Service lines.
- U. Shopping Malls
- V. Sports arenas, including enclosed places in outdoor arenas.
- W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

6. Prohibition of Smoking in Places of Employment

- A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, 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.

7. Prohibition of Smoking in Outdoor Areas

Smoking shall be prohibited in the following outdoor places:

- A. Within twenty five feet (25) immediately preceding the primary means of ingress and/or the primary means of egress of an area where smoking is prohibited.
- B. Municipal Parks
- C. Any and all school grounds of the City of Kosciusko Schools.

8. 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 5 and 6:

- A. Private residences, except when used as a childcare, adult day care, or health care facility.
- B. Not more than forty percent (40%) 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 7.

9. 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 10(A) is posted.

10. 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 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.

11. 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 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 \$1000 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

12. Enforcement

- A. This Article shall be enforced by the Chief of Police or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Kosciusko.
- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the Police Department.
- D. The Building Official, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this 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 Police

Chief or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction

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 an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. Except as otherwise provided in Section 11(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 be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

A good faith effort to prevent smoking will be a complete defense to this offense.

- 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 permit or license issued to the person for the premises on which the violation occurred.
- D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the Police Department by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.
- E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

14. Public Education

The Mayor 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 ordinance.

15. Governmental Agency Cooperation

The Mayor 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 includes 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.

16. Other Applicable Laws

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

17. Liberal Construction

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

18. Severability

If any provision, clause, sentence, or paragraph of this Article or the application thereof

to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

19. Effective Date

This Article shall be effective thirty (30) days from and after the date of its adoption

ORDAINED, ADOPTED AND APPROVED by the Mayor and Board of Aldermen of the City of Kosciusko, Attala County, Mississippi at its regular meeting held on the 2nd day of October, 2007.

A MOTION for adoption was made by Alderman Tim Kyle and SECONDED by Alderwoman Martha Kate Lawrence and the foregoing Ordinance having been first reduced to writing, and no request being made by the Mayor or any member of the Board of Aldermen that the Ordinance be read by the City Clerk, before any vote was taken, it was submitted to the Board of Aldermen for the passage or rejection on roll call vote upon the vote being as follows, to-wit:

Alderwoman Martha Kate Lawrence	Yes
Alderman Henry Daniel	Yes
Alderman Robert Ellis	No
Alderman John Sullivan	Yes
Alderman Tim Kyle	Yes

Whereupon, the Mayor declared the motion carried and Ordinance adopted. The foregoing Ordinance is approved this the 2nd day of October, 2007.

CITY OF KOSCIUSKO, MISSISSIPPI

By: /s/ JIMMY W. COCKROFT _____

Jimmy W. Cockroft, Mayor of the City of Kosciusko, Mississippi

ATTEST: /s/ Janet P. Baird _____

JANET P. BAIRD, City Clerk

Proposed addition:

8. Where Smoking Not Regulated

E. Smoking Lounges engaged in the sale and use of cigars and/or pipes that are located within a stand-alone building that allows commercial uses. Buildings that physically adjoin adjacent buildings but are located on a separate legal lot shall be considered stand-alone if physically separated by a firewall or some other impenetrable physical boundary. Areas within a building that are separated by a Condo Declaration are not considered stand-alone.