

Questions and Answers

City of Gulfport, Mississippi Smoke-Free Ordinance

On March 18, 2008, the City of Gulfport's City Council passed the Smoke-Free Air Ordinance. Effective May 1, 2008, the Ordinance prohibited smoking, with limited exceptions, in all enclosed public places, places of employment, and other areas. The Ordinance is designed to protect the health and welfare of the community from health hazards induced by breathing secondhand smoke, including lung cancer, heart disease, and respiratory infections. The following information is intended to assist in promoting awareness of the Ordinance.

Q: When did the Ordinance become effective?

A: **May 1, 2008.**

Q: What are some of the purposes of the City's Ordinance?

A: **To protect the health and welfare of its citizens from exposure to secondhand smoke by prohibiting smoking at City facilities, public places, and places of employment.**

Q: What is secondhand smoke?

A: **Secondhand smoke, also called environmental tobacco smoke ("ETS"), is the combination of two forms of smoke from burning tobacco products: sidestream smoke and mainstream smoke. Sidestream smoke, which makes up about half of all secondhand smoke, comes from the burning end of a cigarette, cigar, or pipe. Mainstream smoke is exhaled by the smoker. Exposure to secondhand smoke is also called involuntary smoking or passive smoking.**

Q: What chemicals are present in secondhand smoke?

A: **Many factors affect what chemicals are present in secondhand smoke. These factors include the type of tobacco, the chemicals added to the tobacco, how the product is smoked, and the paper in which the tobacco is wrapped. More than 4,000 chemicals have been identified in mainstream tobacco smoke; however, the actual number may be more than 100,000. Of the chemicals identified in secondhand smoke, at least 60 are carcinogens (substances that cause cancer), such as formaldehyde. Six others are substances that interfere with normal cell development, such as nicotine and carbon monoxide. In 1993, the U. S. Environmental Protection Agency (EPA) determined that there is sufficient evidence that secondhand smoke causes cancer in humans and classified it as a Group A carcinogen. In 2000, the U. S. Department of Health and Human Services ("DHHS") formally listed secondhand smoke as a known human carcinogen in The U. S. National Toxicology Program's 10th Report on Carcinogens. In 2006 the U. S. Surgeon General, through the DHHS, issued a report entitled *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General* wherein he concluded, among other things, that 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 exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer. The Surgeon General further stated in this 2006 Report that there is no risk-free level of exposure to secondhand smoke and that 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.**

Q: What places are required to be smoke-free under the Ordinance?

A: **With certain limited exceptions, the Smoke-Free Ordinance prohibits smoking in all enclosed facilities and areas within places of employment, including lobbies, conference and meeting rooms, offices, elevators, hallways, stairs, and restrooms, as well as all structures and facilities owned or operated by the City, all public outdoor facilities and properties controlled or leased by the City, and certain outdoor areas or public places within the City as set forth in Sections 5 and 6 of the Ordinance.**

Q: Are there any exemptions from the Ordinance's prohibition of smoking in indoor or enclosed areas?

A: **Yes. Private residences that are not used as a childcare, adult day care, or health care facility or a bed and breakfast lodge, up to 20% of sleeping rooms (designated as smoking rooms) in a hotel, certain outdoor areas of places of employment (set forth in Sections 5 and 6 in the Ordinance), and, with certain conditions, narrowly-defined private clubs, casino gaming floor areas, a self-contained and ventilated "smoking room" designated beyond the security checkpoint at the airport, and, provided they do not allow admittance of**

anyone under the age of twenty-one (21) on their premises and satisfy the definition of “bar” under the Ordinance, stand-alone bars and bars that are part of other structures or buildings, provided they have a self-contained and separate ventilation system and are not part of a restaurant.

Q: Do “public” areas within a private setting, such as the laundry room and hallways or recreation room at an apartment complex, have to be smoke-free?

A: Yes.

Q: Do taxicabs have to be smoke-free?

A: Yes.

Q: Is smoking prohibited in barbershops, beauty salons, laundromats, and schools?

A: Yes.

Q: Is smoking permitted within tobacco-only retail outlets or tobacco retail outlets or businesses?

A: No.

Q: Is smoking permitted on the grounds of a school or educational facility ?

A: No.

Q: Is smoking allowed in private clubs?

A: Smoking is allowed only in those clubs that satisfy the definition of “private club” in the Ordinance, which includes organizations that have four (4) or fewer regular employees, do not operate for pecuniary gain, are operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purposes, whose affairs and management are conducted by a board of directors, executive committee, or similar body, which have established by-laws and/or a constitution, have been granted an exemption from federal income tax as a club under 26 U.S.C. Section 501, and entry into which is restricted to members only. An organization is not a “private club” if it is established for the purpose of avoiding compliance with the Ordinance. Smoke from “private clubs” is not permitted to infiltrate into areas where smoking is prohibited under the Ordinance. Also, “private clubs” are not exempt from the Ordinance’s smoking prohibition if used for a function which is open to the general public or to which the general public is invited.

Q: Will someone over the age of twenty-one be ticketed or cited under this Ordinance if cigarettes are lying on a table?

A: No. A violation of this Ordinance does not occur with mere possession of an un-lit tobacco product.

Q: Must businesses and establishments that are smoke-free under this Ordinance remove ashtrays from their premises?

A: Yes. Ashtrays are required to be removed from all areas where smoking is prohibited.

Q: Do businesses and establishments that are smoke-free under the Ordinance have to post “NO SMOKING” signs at their entrances?

A: Yes. Such signs shall be no smaller than 4” x 4” and 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. In addition, the statement “This entire establishment is smoke-free” shall be included on signs for businesses and establishments where smoking is altogether prohibited. These signs must be placed at a height of between four (4) and six (6) feet above the floor or ground.

Q: Where can I get free “NO SMOKING” signs?

A: Free no smoking stickers/decals or signs can be obtained (while supplies last) by calling (228) 868-5878. Otherwise, a sign company should be able to provide them at a small cost.

Q: Do businesses and establishments that are exempt from the smoking prohibitions in the Ordinance (where smoking is not prohibited) have to post any signs at their entrances?

A: Yes. Section 9(C) of the Ordinance states that a sign no smaller than 4” x 4” must be placed at all entrances to such facility or area at a height of four (4) to six (6) feet above the floor or ground that says “SMOKING IN THIS AREA. This area contains tobacco smoke, which the U. S. Surgeon General has determined is harmful to your health.” The words “SMOKING IN THIS AREA” must be in capital letters and each letter no smaller than ¼” in width and ¼” in height. Each letter in the remaining words shall not be smaller than eighteen (18) point font size and all lettering shall contrast with the background.

Q: Are businesses required to provide an outdoor smoking area?

A: No.

Q: Can employees smoke in an enclosed break room or smoking office?

A: Unless the enclosed establishment or facility is exempt under the Ordinance, smoking is prohibited within all enclosed businesses and facilities.

Q: Is smoking allowed in a vehicle?

A: Vehicles used by a business or otherwise constituting a place of employment must be smoke-free.

Q: Are any non-smoking signs required on such vehicles?

A: Yes. Each vehicle used for business or constituting a place of employment must have at least one conspicuous sign or decal that is visible from the exterior of the vehicle that clearly states that smoking is prohibited. Similar signs or stickers are required on machinery that constitutes a place of employment as well.

Q: Can employees smoke in their private cars?

A: Yes. Employee vehicles are not covered under the Ordinance.

Q: Is smoking restricted outdoors?

A: Sections 5 and 6 of the Ordinance identify certain areas where smoking is prohibited outdoors, including within twenty (20) feet of outside entrances and exits that are used for ingress and egress by patrons, guests, or customers as well as within twenty (20) feet of operable windows and ventilation systems that are a part or service enclosed areas where smoking is prohibited. Smoking is also prohibited at all public outdoor properties and facilities controlled or leased by the City, school grounds, and “sports or recreation arenas or venues” as defined by the Ordinance and which include, by way of a non-exhaustive example, grandstands, bleachers, concession areas, stages, and restrooms. The Ordinance further prohibits smoking in outdoor seating or serving areas of restaurants which can not reasonably accommodate seating for at least twenty (20) customers within an enclosed area at the establishment and in covered or partially covered outdoor areas of public places or places of employment where 50% or more of the perimeter of the outside area or place is walled or otherwise closed to the outside.

Q: May owners of businesses or establishments that are excepted from the Ordinance’s smoking prohibitions restrict or prohibit smoking on their premises?

A: Yes.

Q: Can employees or business patrons smoke outside a business establishment?

A: Yes. Employees and patrons may smoke outside as long as they are not within twenty (20) feet of any outdoor entrance or exit used for ingress and egress by patrons, guests, or customers or any operative window or ventilation system that is a part of or otherwise services enclosed areas where smoking is prohibited.

Q: What happens when the law is violated?

A: Experience in cities and states with smoke-free laws shows that such laws are generally self-enforcing. Business owners are law-abiding and our citizens overwhelmingly support the law. However, persons who smoke in an area where smoking is prohibited can be found guilty of a misdemeanor and fined up to \$100. A business owner who does not comply with the Ordinance can be fined up to \$100 for the first violation, up to \$200 for a second violation within one (1) year, and up to \$500 for the third and each subsequent violation

within one (1) year. A second and each subsequent violation can result in the suspension or revocation of any license or permit issued to the establishment or person.

Q: Who should I call if I see someone breaking the law by smoking in violation of the Smoke-Free Ordinance?

A: Call the City of Gulfport Police Department at (228) 868-5959.

Q: Are there any responsibilities of an owner, proprietor, manager, or employer? What could happen if any of these are violated?

A: According to the Ordinance, the owner, proprietor, manager, employer or other person in charge or control of a business or area where smoking is prohibited must advise the smoker of the Ordinance and ask that they extinguish the cigarette or tobacco product. They can further contact or notify the Gulfport Police Department for enforcement. In addition, they are required to properly post all signs required by the Ordinance and remove and not provide any ashtrays where smoking is prohibited. Violations of any of these responsibilities can result in fines up to \$100 for a first violation, up to \$200 for a second violation within one (1) year, and up to \$500 for a third and each subsequent violation within one (1) year. In addition, a second and each subsequent violation can result in the suspension or revocation of any license or permit issued to the establishment or person.

Q: What should a business owner, manager or employee do if someone smokes inside their establishment or outside the main entryway?

A: Politely inform the individual that the smoke-free law prohibits smoking in the establishment, or, if applicable, within 20 feet from the entryway and request the individual to extinguish their cigarette or tobacco product. Emphasize that it is the establishment's responsibility to comply with the law, otherwise the establishment can be fined or other action taken against it. Anyone, including business owners, managers, and employees, can fill out and sign an Affidavit with the Gulfport Police Department to pursue a violation of the Ordinance. Such individuals can contact the Police Department at (228) 868-5959 for assistance.

Q: Can a business owner or manager decide to ban smoking anywhere on the premises including outside areas and parking lots?

A: Yes. Any owner, operator, manager or other person who controls any establishment or facility may declare the entire establishment or facility as smoke-free.

Q: Where can one find a copy of the Ordinance?

A: The Ordinance can be viewed on the City's website, www.gulfport-ms.gov, or by contacting the City's Citizen Request Manager at (228) 868-5878.

Note: Nothing in this document should be construed as legal advice. This document is also not intended to serve as a replacement of or substitute for any of the provisions of the City's Smoke-Free Ordinance, which the reader is encouraged to review.