

ORDINANCE 505

AN ORDINANCE OF THE CITY OF COLLINS, MISSISSIPPI, PROHIBITING SMOKING LIGHTED OR HEATED TOBACCO, ELECTRONIC SMOKING DEVICES AND THE USE OF SMOKELESS TOBACCO IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

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 is to protect the public health and welfare of its citizens by prohibiting smoking, lighted or heated tobacco, electronic smoking devices, cigarettes, cigars, pipes, hookahs, vape pens and the use smokeless tobacco in public places and places of employment;

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF COLLINS, MISSISSIPPI, , in regular meeting assembled as follows:

SECTION 1. That the Ordinance of the City of Collins, Mississippi, to read as follows:

CHAPTER I

ARTICLE I.

SMOKING BAN AND THE USE OF E-CIGARETTES, E-CIGARS, E-PIPES, E-HOOKAHS, VAPE PENS AND SMOKELESS TOBACCO BAN ORDINANCE

Par. 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. "Electronic smoking device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
7. "Employee" means any person who is employed by an employer in consideration for direction or indirect monetary wages or profit, including those full time, part-time, temporary or contracted for ma third party; employee also means any person who serves as a volunteer for a business or nonprofit entity.
8. "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.
9. "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.
10. "Entrance" means a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk or parking lot.
11. "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 therapist, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, wards within and entrances into health care facilities.
12. "Hookah" means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to tobacco, shisha, or other plant matter.

13. "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.
14. "Mall" means an enclosed, indoor area containing common areas and discrete businesses primarily devoted to the retail sale of goods and services.
15. "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.
16. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City grounds.
17. "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 bylaws 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, benevolent, or athletic purposes, but not for pecuniary gain.
18. "Private residence" means premises owned, rented or leased for temporary or permanent habitation.
19. "Public Event" means an event which is open to an may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.
20. "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, healthcare 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. 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.
21. "Restaurant" means an eating establishment, including but not limited to, coffee shop, 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.
22. "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.
23. "Smoking" means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, hookah, or other lighted or heated tobacco product in any manner or in any form. Smoking also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this ordinance.
24. "Use of Smokeless Tobacco" means the use of snuff, chewing tobacco, and all tobacco products for use in mouth and all other tobacco products other than lighted tobacco products in any form.
25. "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 to events.

Par. 2 Application of Article to City-Owned Facilities.

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

Par. 3 Smoking, Electronic Smoking Devices and Use of Smokeless Tobacco Prohibited in Indoor Public Places.

Except as otherwise provided, it shall be unlawful for any person to smoke, to use any e-cigarette, e-cigar, e-pipe, e-hookah, vape pen or use of smokeless tobacco in indoor public places, 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. Playgrounds
- r. Polling places.
- s. Private clubs when being used for a function to which the general public is invited.
- t. Public forms of transportation, including but not limited to motor buses, taxicabs, or other public passenger vehicles.
- u. Public bus and transfer point shelters.
- v. Public Events
- w. Public places including parking garages and jails.
- x. Retail stores
- y. Restaurants.
- z. Restrooms, chambers, places of meeting and 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.
- aa. Self-service laundry facilities.
- bb. Service lines.
- cc. Service lobbies, waiting areas, and the common areas open to the public of financial institutions, businesses and professional offices, and multi-unit commercial facilities.
- dd. Sports areas and venues
- ee. Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.

Par. 4 Exceptions.

The following areas **shall not** be subject to the smoking and use of smokeless tobacco restrictions of this ordinance:

- a. Up to twenty percent (20%) of all rooms that are rented to guests in bed and breakfast facilities, hotel and motel rooms may be designated as smoking and use of smokeless tobacco 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 childcare, adult daycare or healthcare facility.
- d. The Mississippi State Veterans Nursing Home.
- e. Outside patio's or recreation areas not visible to the public with an outside wall not less than 6ft at Bars and Restaurants.

Par. 5 Signage.

- a. Signs prohibiting smoking, electronic smoking devices and use of smokeless tobacco 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 and no use of smokeless tobacco symbol and be no small 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 or to use smokeless tobacco in a place where any such sign is posted.

Par. 6 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, electronic smoking devices or tobacco product and refrain from smoking, the use of electronic smoking devices and the use of smokeless tobacco.
- 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 area where smoking and the use of smokeless tobacco is prohibited. All ashtrays shall be removed from any areas where smoking or the use of smokeless tobacco is prohibited by this Article by the owner, operator, manager, or other persons having control of the area.

Par. 7 Enforcement.

- a. The Chief of Police or designee shall have the power, whenever they may deem it necessary, 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.
- 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 Collins.
- d. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

Par. 8 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) for the first offense and no more than two hundred and fifty dollars (\$250) for the second and subsequent offenses.
- b. Any person who owns, manages, operates, or otherwise controls a public place or place of employment 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 year.
 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one year.
- c. The Board of Aldermen shall suspend or revoke any business license or permit issued by the City for three (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 City of Collins 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.

Par. 9 Non-retaliation; Non-waiver 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.
- 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.

Par. 10 Jurisdiction Clause.

This ordinance shall be subject to all other governmental jurisdictions rules and regulations and laws pertaining to smoking, electronic smoking devices and the use of smokeless tobacco.

SECTION 2. That all provisions of the ordinances of the City of Collins 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 Collins not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. 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 the code of Ordinances as a whole.

SECTION 4. This Ordinance shall be in full force and effect 30 days after passage in accordance with provisions of Mississippi Code, 1972 Annotated, §21-13-11.

SECTION 5. This Ordinance shall repeal Ordinance 472 as adopted May 6, 2008.

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

The above Ordinance was reduced to writing, read and considered paragraph by paragraph, and section by section and then as a whole at this regular meeting of the Mayor and Board of Aldermen on November 19, 2019, whereupon, **Alderman Lundy** made a motion which was seconded by **Alderman Magee** to adopt the Ordinance, was submitted for a vote of all Aldermen present and voting and the following vote was recorded, to-wit:

VOTING AYE:

Alderman Magee
Alderman Thompson
Alderman Buffington
Alderman Mooney
Alderman Lundy

VOTING NAY:

WHEREUPON, the Mayor declared the Ordinance duly adopted and enacted on this the 19th day of November 2019.

By:
Hope Magee Jones
MAYOR

ATTEST:

Suzette Davis
CITY CLERK

STATE OF MISSISSIPPI
COUNTY OF COVINGTON

CERTIFICATE

I, Suzette Davis, City Clerk in and for the City of Collins, Mississippi, do hereby certify that the above and foregoing is a true and correct copy of ORDINANCE NUMBER 504 ADOPTED BY THE Mayor and Board of Aldermen at its Regular Meeting of November 19, 2019, and is duly of record in the office of the City Clerk, City Hall, 300 Main Street, Collins, Mississippi, in Minute book #25.

Witness my Signature and Official Seal of Office on the 19th day of November 2019.

Suzette Davis, City Clerk
City of Collins, Mississippi

Publish One Time: November 27, 2019

CITY OF COLLINS, MISSISSIPPI

BY:
Hope Magee Jones
Mayor

ATTEST:
Suzette Davis
City Clerk