

**BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN  
OF THE TOWN OF BELMONT, MISSISSIPPI OF**

**THE TOWN OF BELMONT, MISSISSIPPI  
SMOKE FREE AIR ORDINANCE**

**WHEREAS**, the Town of Belmont, pursuant to Section 21-13-1, et seq of the Mississippi Code of 1972, as amended, is authorized to make regulation to secure the general health, safety and welfare of the Municipality; and

**WHEREAS**, the Town of Belmont, in order to promote and protect its citizenry, finds this Ordinance, as it relates to smoking of tobacco or any plant or product intended for inhalation by someone within the Town's city limits, is rationally related to the aforementioned purposes; is narrowly tailored to be only as restricted as needed to effect these purposes; is not arbitrary and capricious; and is necessary to the public health, safety and welfare;

**NOW THEREFORE BE IT ORDAINED** by the Mayor and Aldermen of the Town of Belmont, Mississippi, as follows:

**Sec. 1000. Title**

This Ordinance shall be known as the Town of Belmont, Mississippi Smoke free Air Ordinance.

**Sec. 1001. Findings and Intent**

The Board of Aldermen does hereby find that:

The 2010 United States Surgeon General's Report, *How Tobacco Cause Disease* concluded: (1) Low levels of secondhand smoke exposure lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attack and stroke; (2) When inhaling secondhand cigarette smoke, individuals breathe in more than seven thousand (7,000) chemicals, hundreds of which are hazardous and known to cause cancer. These chemicals are rapidly absorbed by cells in the body and produce disease-causing cellular change. (3) There is no safe level of exposure to secondhand smoke.

The 2006 United States Surgeon General's Report, *The Health and Consequences of Involuntary Exposure to Tobacco Smoke*, concluded: (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 problems, ear infections, and asthma attacks; (3) Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) Establishing smoke-free air workplaces fully protects employees and the public from exposure to secondhand smoke in those places. Separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposure to secondhand smoke; (5) Evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry.

Business owners have no legal or constitutional right to expose their employees to the toxic chemicals and carcinogens in secondhand smoke. On the contrary, employers have a common-law duty to provide their workers with a workplace that is not unreasonably dangerous.

Accordingly, the Board of Aldermen finds and declares 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; and (2) to guarantee the right of nonsmokers to breathe smoke free air, and to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

### **Sec. 1002. Definitions**

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

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges and cabarets.
- B. "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.
- C. "E-cigarette" means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.
- D. "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.
- E. "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.
- F. "Enclosed Area" means all space between a floor and a ceiling that is bounded on all sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door or other physical barrier, whether temporary or permanent.
- G. "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.

- H. "Place of Employment" means an enclosed area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care or health care facility.
- I. "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 the Town of Belmont grounds.
- J. "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.
- K. "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 vehicles and 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 residence is not a "public place" unless it is used as a child care, adult day care or health care facility.

- L. "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.
- M. "Service Line" means an indoor or outdoor 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, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines and sporting event lines.
- N. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- O. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form. "Smoking" also includes the use of an e-cigarette which creates a 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.
- P. "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks and bowling alleys.

**Sec. 1003. Application of Article to Town Facilities**

All enclosed areas, including buildings and vehicles owned, leased or operated by the Town of Belmont, shall be subject to the provisions of this Ordinance.

**Sec. 1004. Prohibition of Smoking in Enclosed Public Places**

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

- A. Libraries and museums.
- B. Areas available to 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. Child care 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.
- 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. Public transportation vehicles, including buses and taxicabs, under the authority of the Town, and ticket, boarding and waiting areas of public transportation facilities, including bus, train and airport facilities.
- O. Restaurants.
- P. Restrooms, lobbies, reception areas, hallways and other common-use areas.
- Q. Retail stores.

- R. Rooms, chambers, places of meeting or public assembly, including school buildings under the control of an agency, board, commission, committee or council of the Town or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the Town.
- S. Service lines.
- T. Shopping malls.
- U. Sports arenas, including enclosed places in outdoor arenas.
- V. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals or other similar performances.

**Sec. 1005. Prohibition of Smoking in Enclosed Places of Employment**

- A. Smoking shall be prohibited in all enclosed areas of places of employment without exception. 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.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

**Sec. 1006. Prohibition of Smoking in Private Clubs**

Smoking shall be prohibited in all private clubs.

**Sec. 1007. Prohibition of Smoking in Enclosed Residential Facilities**

Smoking shall be prohibited in the following enclosed residential facilities:

- A. All private and semi-private rooms in nursing homes.
- B. At least 90% of hotel and motel rooms that are rented to guests.

**Sec. 1008. Prohibition of Smoking in Outdoor Areas**

Smoking shall be prohibited in the following outdoor places:

- A. Within a reasonable distance of 15 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.
- B. In, and within 15 feet of, outdoor seating or serving areas of restaurants and bars.
- C. In all outdoor arenas, stadiums and amphitheaters. Smoking shall also be prohibited in and within 15 feet of bleachers and grandstands for use by spectators at sporting and other public events.
- D. In, and within 15 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the Town.
- E. In all outdoor service lines.
- F. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least 15 feet outside entrances, operable windows and ventilation systems of enclosed areas where smoking is prohibited.
- G. In, and within 15 feet of, outdoor playgrounds.

**Sec. 1009. Where Smoking Not Regulated**

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 1004 and 1005:

- A. Private residences, unless used as a childcare, adult day care or health care facility, and except as provided in Section 1007.
- B. Not more than ten percent (10%) 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 Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

- C. Outdoor areas of places of employment except those covered by the provisions of Section 1008.
- D. Private automobiles or private enclosed vehicles; or public roadways or public walkways that do not fall under any enunciated prohibited area.

**Sec. 1010. Declaration of Establishment as Nonsmoking**

Notwithstanding any other provision of this Ordinance, 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.

**Sec. 1011. Removal of Ashtrays**

The owner, operator, manager or other person in control of a public place or place of employment where smoking is prohibited by this Ordinance shall:

- A. Remove all ashtrays from any area where smoking is prohibited by this Ordinance, except for ashtrays displayed for sale and not for immediate use.

**Sec. 1012. 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, customer or resident of a multiple-unit residential facility because that employee, applicant, customer or resident exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance. Notwithstanding Section 1014, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$1000.00 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.

### **Sec. 1013. Enforcement**

- A. This Ordinance shall be enforced by the Town of Belmont Police Department or an authorized designee.
- B. All applicants for a business license in the Town of Belmont are considered on notice of the provisions of this Ordinance.
- C. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Town of Belmont Police Department.
- D. The Health Department, Fire Department or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.
- E. An owner, manager, operator or employee of an establishment regulated by this Ordinance shall direct a person who is smoking in violation of this Ordinance to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator or employee shall contact a law enforcement agency.
- F. Notwithstanding any other provision of this Ordinance, an employee or private citizen may bring legal action to enforce this Ordinance.
- G. In addition to the remedies provided by the provisions of this Section, the Town of Belmont Police Department 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 Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

### **Sec. 1014. Violations and Penalties**

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

- B. Except as otherwise provided in Section 1012(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 Ordinance 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.
- C. In addition to the fines established by this Section, violation of this Ordinance 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 Ordinance is hereby declared to be a public nuisance, which may be abated by the Town of Belmont Police Department by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Town 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.

**Sec. 1015. Public Education**

The Town of Belmont Police Department shall endeavor to explain and clarify the purposes and requirements of this Ordinance to citizens affected by it, and to guide owners, operators and managers in their compliance with it for a reasonable time.

**Sec. 1016. Other Applicable Laws**

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

**Sec. 1017. Liberal Construction**

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

**Sec. 1018. Severability**

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

**Sec. 1019. Effective Date**

This Ordinance shall be effective thirty (30) days from and after the date of its passage.

On the 4<sup>th</sup> of October, 2016, this Ordinance was introduced in writing at the regular meeting of the Mayor and Board of Aldermen and, thereafter, remained on file with the Municipal Clerk for public inspection for at least two (2) weeks before final passage or adoption thereof.

As required by law, this Ordinance shall be published one (1) time in the Belmont and Tishomingo Journal, a legal weekly newspaper having a general circulation in the Town of Belmont, Tishomingo County, Mississippi, area, and shall take effect and become enforceable as provided by law in accordance with the laws and statutes of the State of Mississippi.

Thereupon, upon motion duly made, Alderman Brandon Pharr,  
moved for the passage and adoption of the above and foregoing Ordinance and was  
seconded by Alderman Craig Bell, to pass and adopt the  
foregoing Ordinance and received the following votes:

Steve Ratliff  
Craig Bell  
Mike Harris  
Sonya Harris  
Brandon Pharr

yea  
yea  
yea  
yea  
yea

**NOW THEREFORE**, this Ordinance being passed and being necessary to  
ensure the immediate and temporary preservation of the public peace, health and  
safety. It is hereby carried, passed, approved, ratified and adopted on this the  
1, November, 2016.



ATTEST:

Lynn Maroon  
**LYNN MAROON - CITY CLERK**

Buddy Wiltshire  
**BUDDY WILTSHIRE - MAYOR**