

ORDINANCE REGULATING SMOKING IN CERTAIN PUBLIC
PLACES IN THE CITY OF BRANDON

BE IT ORDAINED BY THE MAYOR AND THE BOARD OF ALDERMEN OF THE
CITY OF BRANDON, MISSISSIPPI, that the Code of Ordinances of the City of Brandon should
be and is hereby amended to include Article VI, Section 35-1 et. seq., as follows, regulating
smoking in certain public places in the City of Brandon:

Section 1:

ARTICLE VI. SMOKING PROHIBITION IN CERTAIN PUBLIC PLACES AND
ESTABLISHMENTS

Sec. 35-1. Title.

This Ordinance shall be known as the "The Phase 2010 Smoke-Free Ordinance".

Sec. 35-2. Findings and intent.

Whereas, the City of Brandon, Mississippi pursuant to section 21-17-5 of the Mississippi Code,
is authorized to make regulations to secure the general health of the municipality;

Whereas, the City of Brandon, Mississippi has the duty to protect and promote the health of its
citizenry;

Whereas, the governing authority of the City of Brandon has been provided extensive data and
information from *The Americans for Nonsmokers' Rights*, in support of the adoption of such an
Ordinance which is included in a Model Ordinance prohibiting smoking in workplaces and
public places and provided to public bodies such as the City of Brandon for consideration and
assistance in adopting such Ordinances, and the City of Brandon does hereby incorporate such
findings, as provided by said group, set forth herein-below, in the adoption of this Ordinance:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to
Tobacco Smoke*, has 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
problems, ear infections, and asthma attacks, and that. smoking by parents causes 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

smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in 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 smokefree 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.)

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*, August 1999.) The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," *U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP*, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.)

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death. (Appendix II Findings of the Scientific Review Panel: Findings of the Scientific Review Panel on Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant as adopted at the Panel's June 24, 2005 Meeting," *California Air Resources Board (ARB)*, September 12, 2005.)

Scientific evidence has firmly established that there is no safe level of exposure to second-hand tobacco smoke, a pollutant that causes serious illness in adults and children. There is also indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke. (World Health Organization (WHO), "Protection from exposure to secondhand smoke: policy recommendations," *World Health Organization (WHO)*, 2007.)

A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smokefree workplaces and public places may be associated

with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.) Similar studies have been conducted in Bowling Green, Ohio; Monroe County, Indiana; Pueblo, Colorado; New York State; France; Greece; Italy; and Scotland. All of these studies have reached the conclusion that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smokefree laws. ([n.a.], "Bibliography of Secondhand Smoke Studies." *American Nonsmokers' Rights Foundation*, February 26, 2008.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.) Studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in hospitality workers find dramatic reductions in the levels of these biomarkers after a smokefree law takes effect. Average cotinine levels of New York City restaurant and bar workers decreased by 85% after the city's smokefree law went into effect. ([n.a.], "The State of Smoke-Free New York City: A One Year Review," *New York City Department of Finance, New York City Department of Health & Mental Hygiene, New York City Department of Small Business Services, New York City Economic Development Corporation*, March 2004). After the implementation of Ontario, Canada's Smokefree Indoor Air Law, levels of NNAL were reduced by 52% in nonsmoking casino employees and cotinine levels fell by 98%. (Geoffrey T. Fong, et. al., "The Impact of the Smoke-Free Ontario Act on Air Quality and Biomarkers of Exposure in Casinos: A Quasi-Experimental Study," *Ontario Tobacco Control Conference*, Niagara Falls, Ontario, December 2, 2006.)

Following a Health Hazard Evaluation of Las Vegas casino employees' secondhand smoke exposure in the workplace, which included indoor air quality tests and biomarker assessments, the National Institute of Occupational Safety & Health (NIOSH) concluded that the casino employees are exposed to dangerous levels of secondhand smoke at work and that their bodies absorb high levels of tobacco-specific chemicals NNK and cotinine during work shifts. NIOSH also concluded that the "best means of eliminating workplace exposure to [secondhand smoke] is to ban all smoking in the casinos." (*Health hazard evaluation report: environmental and biological assessment of environmental tobacco smoke exposure among casino dealers*, Las Vegas, NV. By Achutan C, West C, Mueller C, Boudreau Y, Mead K. Cincinnati, OH: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health, NIOSH HETA No. 2005-0076 and 2005-0201-3080, May 2009.)

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with

obstructive airway disease. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.) The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" *British Medical Journal* 328: 980-983, April 24, 2004.)

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coultas, D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.; Callaway, C.A., "ASHRAE position document on environmental tobacco smoke," *American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)*, 2005.)

During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations. (Klepeis, N.; Ott, W.R.; Switzer, P., "Real-time measurement of outdoor tobacco smoke particles," *Journal of the Air & Waste Management Association* 57: 522-534, 2007.) Residual tobacco contamination, or "thirdhand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings. Gases can be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds. (Singer, B.C.; Hodgson, A.T.; Nazaroff, W.W., "Effect of sorption on exposures to organic gases from environmental tobacco smoke (ETS)," *Proceedings: Indoor Air 2002*, 2002.) Tobacco residue is noticeably present in dust throughout places where smoking has occurred. (Matt, G.E.; Quintana, P.J.E.; Hovell, M.F.; Bernert, J.T.; Song, S.; Novianti, N.; Juarez, T.; Floro, J.; Gehrman, C.; Garcia, M.; Larson, S., "Households contaminated by environmental tobacco smoke: sources of infant exposures," *Tobacco Control* 13(1): 29-37, March 2004.)

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke

exposure and \$4.6 billion in lost productivity. (Behan, D.F.; Eriksen, M.P.; Lin, Y., "Economic Effects of Environmental Tobacco Smoke," *Society of Actuaries*, March 31, 2005.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States. *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

Hundreds of communities in the U.S., plus numerous states, including Arizona, Delaware, Illinois, Iowa, Massachusetts, New Jersey, New York, Ohio, Utah, and Washington, have enacted laws requiring all workplaces, restaurants, bars, and other public places to be smokefree, as have numerous countries, including Bhutan, France, Iceland, Ireland, New Zealand, Norway, Singapore, Uruguay, and the United Kingdom constituent countries of England, Northern Ireland, Scotland, and Wales.

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

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), Supplement A: 6-9, August 1997.)

The smoking of tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

Accordingly, the City of Brandon finds and declares that the purposes of this Ordinance are to: (1) protect the public health and welfare by prohibiting smoking; and (2) to recognize that the need to breathe smoke free air shall have priority over the desire to smoke.

The City of Brandon further finds that based upon anecdotal observations of the governing authorities, comments by the citizenry, and other pertinent factors, that the most chronic problem currently occurring in the City of Brandon in this respect is within restaurants, hotels and motels, and retail stores, and accordingly, at this time, the City of Brandon implements this Ordinance to directly and specifically address this chronic problem, reserving unto it the right to amend this Ordinance to include other public places, businesses, and facilities as deemed appropriate and required under the circumstances.

Sec. 35-3. Definitions.

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

"Attached bar" means a bar area of a restaurant where beer, light wine and/or alcohol is sold and/or consumed.

"Hotel or Motel" A building or buildings where lodging is provided for more than 12 persons, who are usually but not always transients, for compensation.

"Restaurant" means any eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and cafeterias, which gives or offers for sale to the public, as its primary business, prepared food and/or beverages, or both. The term "restaurant" shall include an attached bar.

"Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

Sec. 35-4. Application of Ordinance to city-owned facilities.

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

Sec. 35-5. Prohibition of smoking in enclosed public places.

Smoking shall be prohibited in the following enclosed public places within the City of Brandon:

- (1) Restaurants, hotels, and motels.
- (2) Retail stores.

Sec. 35-6. Reasonable distance.

Smoking is prohibited within a reasonable distance of 15 feet outside an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.

Sec. 35-7. Where smoking not regulated.

- (1) Any private or public place or facility, enclosed or otherwise, not expressly prohibited in Sections 35-4 or 35-5.

(2) Not more than twenty (20%) percent of hotel and motel rooms that are rented to guests and are 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.

Sec. 35-8. 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. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 35-9 is posted.

Sec. 35-9. 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 where smoking is prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place.

(b) Every public place where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.

Sec. 35-10. Enforcement.

(a) This Ordinance shall be enforced by the Director of Community Development, or an authorized designee or through private affidavits.

(b) Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Brandon subject to the prohibitions herein.

(c) The Director of Community Development, or an authorized designee, may issue guidelines for the implementation of this Ordinance, including but not limited to definitions of terms as used in this Ordinance and in the guidelines. In the event of a conflict between this Ordinance and the guidelines, as either may be amended, the Ordinance shall control.

(d) Citizens who desire to file a complaint under this Ordinance may initiate enforcement with the municipal court services. At least two persons filing separate individual affidavits will be required for each violation.

(e) The Director of Community Development and the Chief of the Brandon Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.

(f) An owner, manager, operator, or employee of an establishment where smoking is prohibited by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.

(g) Notwithstanding any other provision of this Ordinance, a private citizen may bring legal action to enforce this Ordinance.

(h) In addition to the remedies provided by the provisions of this section, the City or any private citizen aggrieved by the failure of any owner, operator, manager, or other person in control of a public place where smoking is prohibited by this Ordinance to comply with the provisions of this Ordinance may seek injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 35-11. 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 \$50.00 per violation.

(b) 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 \$100.00 for a first violation.

(2) A fine not exceeding \$200.00 for a second violation within one year of any prior violation.

(3) A fine not exceeding \$500.00 for a third or more violation within one year of the first.

(c) In addition to the fines established by this section, two or more violations of this Ordinance in any one calendar year, by a person who owns, manages, operates, or otherwise controls a public place where smoking is prohibited by this Ordinance may result in the suspension or revocation of any city permit or license issued for the premises wherein which the violation occurred.

(d) Each day on which an infraction of this Ordinance occurs shall be considered a separate and distinct violation.

Sec. 35-12. Public education.

The Department of Community Development shall provide information to citizens affected by this Ordinance, and to guide owners, operators, and managers in their compliance with it. The

information may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance.

Sec. 35-13. Other applicable laws.

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

Sec. 35-14. Liberal construction.

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

Section 2: This Ordinance shall be in force and effect 30 days after its adoption. All Ordinances in conflict herewith are repealed.

Section 3: This Ordinance having been reduced to writing and no request for the same to be read by the Clerk having been made, the same was introduced by Alderman

_____, seconded by Alderman _____ and was adopted by the

following vote, to wit:

James Morris, Alderman at Large	_____
Monica Roland, Alderman Ward 1	_____
Cris Vinson, Alderman Ward 2	_____
Harry Williams, Alderman Ward 3	_____
Lu Coker, Alderman Ward 4	_____
Yvonne Bianchi, Alderman Ward 5	_____
Butch Lee, Alderman Ward 6	_____

The Mayor thereby declared the Motion carried and the Ordinance adopted and approved
on this the _____ day of _____ A.D., 2010.

TIM COULTER, MAYOR

ATTEST:

ANGELA BEAN, CITY CLERK