

## ORDINANCE # 413

### AN ORDINANCE OF THE TOWN OF MT. OLIVE, MISSISSIPPI, PROHIBITING SMOKING LIGHTED OR HEATED TOBACCO, ELECTRONIC SMOKING DEVICES AND THE USE OF SMOKELESS TOBACCO IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE TOWN OF MT. OLIVE, MISSISSIPPI, in regular council convened:

#### **Section 1: The Board of Aldermen find that:**

**WHEREAS** 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; and

**WHEREAS** establishing smoke-free 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

**WHEREAS** evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry;<sup>1</sup> and

**WHEREAS** according to the 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke leads to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke;<sup>2</sup> and

**WHEREAS** according to the 2014 U.S. Surgeon General's Report, *The Health Consequences of Smoking—50 Years of Progress*, secondhand smoke exposure causes stroke in non-smokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke;<sup>3</sup> and

**WHEREAS** 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.<sup>4</sup> The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen;<sup>5</sup> and

WHEREAS there is 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.<sup>6</sup>

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 the citizens of Mt. Olive, by prohibiting smoking in outdoor public places and places of employment where nonsmokers are likely to be exposed to secondhand smoke.

## **Section 2: Short Title:**

This ordinance shall be known and may be cited as “The Town of Mt. Olive, Mississippi Smoke Free Air Ordinance of 2022.

## **Section 3. Definitions**

The following words and phrases, whenever used in this Article, 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. “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.
- d. “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or 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. “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.
- g. “Partially Enclosed” means an area closed in by a roof or overhang or by permanent or temporary walls or windows (exclusive of doorways), on at least two sides, including but not limited to, courtyards, patios, and covered walkways.
- h. “Place of Employment” means an area under the control of a public or private employer, including, but not limited to, work areas, construction sites, temporary offices, restroom facilities, and vehicles.
- 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 Mt. Olive grounds.
- j. “Public Event” means an event which is open to and may be attended by the 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.
- k. “Public Place” means an area to which the public is invited or in which the public is permitted.
- l. “Recreational Area” means any public or private area open to the public for recreational purposes, whether any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.
- m. “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.
- n. “Service Line” means an outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether 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.
- o. “Shopping Mall” means any parcel of land zoned and used for retail sales by more than one retailer that is jointly operated, or which includes shared parking facilities.
- p. “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” 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 Article.

**Section 4. Application of Ordinance to City Owned Facilities**

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

**Section 5. General Prohibition of Smoking on Outdoor Property/Public Places**

Smoking shall be prohibited on all outdoor property owned, leased, or operated by the Town of Mt. Olive.

Smoking shall be prohibited in the following outdoor public places:

- a) Within a reasonable distance of 25 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 50 feet of, outdoor seating or serving areas of restaurants and bars.
- c) In outdoor shopping malls, including parking structures.
- d) In outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 50 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- e) In outdoor recreational areas, including parking lots.
- f) In, and within 50 feet of, all outdoor playgrounds.
- g) In, and within 50 feet of, all outdoor public events.
- h) In, and within 50 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the Town of Mt. Olive.
- i) In outdoor service lines, such as service that is provided by ATM bank machines, food vendor lines, movie ticket lines, and sporting event lines, smoking is prohibited.
- j) In partially enclosed areas.

**Section 6. 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. Childcare facilities

- c. City buildings
- d. Common areas in bed and breakfast establishments, hotels and motels and common areas of buildings.
- e. Convention facilities.
- f. Educational facilities
- g. Elevators and enclosed stairwells.
- h. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- i. Health care facilities.
- j. Hotel and motel lobbies.
- k. Indoor shopping malls.
- l. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks,
- m. retirement facilities, nursing homes, and other multiple-unit residential facilities.
- n. Polling places.
- o. Public forms of transportation, including but not limited to motor buses, taxicabs, or other public passenger vehicles.
- p. Public Events
- q. Retail stores
- r. Restaurants.
- s. Restrooms, chambers, places of meeting and public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the Town of Mt. Olive.
- t. Self-service laundry facilities.
- u. Service lobbies, waiting areas, and the common areas open to the public of financial institutions,
- v. businesses and professional offices, and multi-unit commercial facilities.
- w. Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.

### **Section 7. Specific Prohibition of Smoking in Outdoor Residential Facilities**

Smoking shall be prohibited 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 50 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

### **Section 8. Declaration of Outdoor Public Place as Nonsmoking**

Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of an outdoor public place or place of employment may declare that entire outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 9 is posted.

### **Section 9. Posting of Signs**

- 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.

### **Section 10. 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.

### **Section 11. 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 Town of Mt. Olive.
- d. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

### **Section 12. 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 Town 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 Town of Mt. Olive 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 Article occurs shall be considered a separate and distinct violation.

### **Section 13. 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.

### **Section 14. 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 Town of Mt. Olive in conflict with the provisions of this ordinance be, and the same are hereby, repealed and all other provisions of the ordinances of the Town of Mt. Olive 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.

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

### **REFERENCES**

1. 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.
2. U.S. Department of Health and Human Services. How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General. Atlanta, GA: 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, 2010.

3. U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress. 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, 2014.
4. 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.
5. 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.
6. World Health Organization (WHO), "Protection from exposure to secondhand smoke: policy recommendations," World Health Organization (WHO), 2007.

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 June 7, 2022, whereupon, **Alderman Terry Barron** made a motion which was seconded by **Alderman Willie P. McCullum** 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 Terry Barron  
Alderman Willie P. McCullum  
Alderman Mary P. Norman  
Alderman Marcia Hull

VOTING NAY: None

NOT PRESENT: Alderman John Larry Sullivan

**WHEREUPON**, the motion was duly carried by majority vote and declared duly adopted and enacted on this the 7<sup>TH</sup> day of June, 2022.



*Breyon Magee*  
Breyon Magee  
CITY CLERK

*James C. Kelly, III*  
James C. Kelly, III  
MAYOR




STATE OF MISSISSIPPI  
COUNTY OF COVINGTON

CERTIFICATE

I, Breyon Magee, City Clerk in and for the Town of Mt. Olive, Mississippi, do hereby certify that the above and foregoing is a true and correct copy of ORDINANCE NUMBER 413 ADOPTED BY THE Mayor and Board of Aldermen at its Regular Meeting of June 7, 2022, and is duly of record in the office of the City Clerk, City Hall, 501 Main Street, Mt. Olive, Mississippi, in Minute book #30.

WITNESS MY SIGNATURE AND OFFICIAL SEAL OF OFFICE ON THIS THE 7<sup>th</sup> DAY OF June, 2022.

  
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BREYON MAGEE, CITY CLERK  
TOWN OF MT. OLIVE, MISSISSIPPI

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