

Chapter 3

ALCOHOLIC BEVERAGES* & TOBACCO

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Article I. In General

Sec. 3-1. Adoption of state law.

It shall be unlawful for any person, firm or corporation to sell or offer for sale, or otherwise dispense alcoholic beverages of any kind, or to have such in his or her possession within the City of Hattiesburg in violation of any of the terms and provisions of any statute of the State of Mississippi, or in violation of any rules and regulations promulgated by the Mississippi State Tax Commission, or ordinance of the City of Hattiesburg. (Ord. 1582, sec. 7, 9-14-66)

Sec. 3-2. Securing rear door of storage buildings; burglar alarms.

The rear door, if any, to any building where intoxicating beverages are stored or dispensed shall be equipped with a lock so that the same cannot be opened from the outside without the use of a key which shall be kept at all times by the owner or operator thereof, and further equipped with a panic device so that the same may be readily opened from the interior of the building. Such building shall also be equipped with a burglar alarm system. The interior and exterior premises of such building may be inspected at any reasonable time by the police or fire department of the city and may be closed upon order of the chief of police or fire official, if found out of compliance with any provision hereof and shall remain closed until such compliance is re-established. (Ord. 1582, sec. 5, 9-14-66)

Cross reference--see also sec. 3-5 - for hours of consuming, selling, giving away or dispensing.

Sec. 3-3. Public drunkenness.

It shall be unlawful for any person to appear in any public place or on any public street in a drunken condition. (Ord. 1582, sec. 15, 9-14-66)

Cross reference--see section 1-11 - enhanced penalties

**State law references--Authority, regulations regarding local option for sale, distribution of beer and light wine, Mississippi Code of 1972, Annotated as Amended secs. 67-3-7, 67-3-9 & 67-3-13; municipal authority to regulate sale, sec. 67-3-65; license tax, sec. 27-71-303; municipal authority to levy privilege tax, limit on same, sec. 27-71-345; regulations as to intoxicating liquors, secs. 67-3-71, 97-31-21 et seq., 97-29-47 et seq., 99-27-1 et seq., & 99-7-29 et seq., as to wine and beer, sec. 67-3-5 et seq.*

Sec. 3-4. Restrictions during emergencies; duty of chief of police.

In the event of any disturbance, uprising or riot, or any other emergency endangering life, property or public safety, it shall be the duty of the chief of police to promptly close any and all places in the City of Hattiesburg where alcoholic beverages are consumed, sold or otherwise dispensed, and to require such place to remain closed for the period of such emergency. (Ord. 1582, sec. 16, 9-14-66)

Sec. 3-5. Hours of Consumption.

No person, partnership, or corporation, nor any agent or employee thereof, operating a public or private commercial establishment shall permit the consumption of alcoholic beverages, beer or light wine on the premises of such establishment between the hours of 2:00 a.m. and 8:00 a.m., provided, however, that nothing in this section shall be construed to permit the sale, distribution, giving away, or storage of alcoholic beverages, beer or light wine anytime on Sunday, except between the hours of 12:00 noon and 12:00 midnight.(Ord. 2927, sec. 1, 10-19-06;Ord. 2610, sec. 3, 10-7-97, Ord. 2389, sec. 1, 11-19-91; Ord. 1582, sec. 17, 9-14-66)

**Amendment Note---Ord. 2610, Sec. 3, enacted 10-7-97, repealed section 1 of Ord.2389, enacted 11-1-91. establishing the hours of sale and consumption*

State law reference---Authority to establish opening and closing hours, Miss. Code Ann. 1972, sec. 67-3-65.

Cross reference--see sections 3-16 through 3-20 - for selling, giving away or dispensing in any business establishment which features live performances, etc.

Sec. 3-6. Owners and employees of package stores to register with police department; fee.

The owner or operator of any package store or establishment where alcoholic beverage is sold and all employees thereof in such establishment directly engaged in the sale or dispensing of alcoholic beverages shall furnish to the police department of the City of Hattiesburg, and permit such department to retain on file, a photograph, copy of fingerprints, Hattiesburg police department completed identification form and health certificate from a licensed physician or the county health agent and shall be charged and collected thereof from each of such persons a fee of ten dollars (\$10.00) plus such other reasonable sum as the city council may hereafter from time to time prescribe. (Ord. 1582, sec. 18, 9-14-66)

Sec. 3-7. Possession, consumption of alcoholic beverages, beer or light wine in certain places prohibited; exception.

Public places. It shall be unlawful for any person, group, association, or any and all legal entities recognized by law to possess or consume alcoholic beverages, beer or light wine, as defined by any statute of this state, in the city hall, municipal school buildings, stadiums, any public playgrounds, or public parks, or clubhouses situated therein, or any fire station, or on any and all other public grounds, buildings, parks and places owned, maintained or operated by the city; except, that this section shall not apply to any individuals, groups or associations utilizing any municipally owned building under a written lease or rental agreement granted by the city; and it shall be unlawful for any person to consume any alcoholic beverage on any public street, sidewalk or alley owned, maintained or operated by the city. (Ord. 2103, sec. 1, 2-8-83; Ord. 1582, secs. 12--14, 9-14-66)

Cross reference--see section 1-11 - enhanced penalties

Cross reference--see sections 3-16 through 3-20 - for possessing or consuming in any business establishment which features live performances, etc.

Sec. 3-8. Prohibited places to manufacture, sale, or store for sale any alcoholic beverage, light wine or beer in any zoning district.

“Territory surrounding churches and schools.

It shall be prohibited to manufacture, sell, or store for sale any alcoholic beverage, light wine or beer in any zone within **four hundred (400) feet** of any church or school where said manufacture, sale or storage for sale is the primary source of revenue/income of said business. Alcoholic beverage, light wine and beer shall each have a meaning as those terms are used in Sections 67-1-5 and 67-3-3, et seq of the Mississippi Code of 1972, as annotated and amended.(Ord. 2962, sec. 1, 8-10-07)

Secs. 3-9 --- 3-11. Reserved.

Sec. 3-12. Falsifying age records.

It shall be unlawful for any person under applicable ages, as defined by any statute of this state, to make false statements, or to furnish, present or exhibit any fictitious or false registration card, identification card or note or other document, or to furnish, present or exhibit such document or documents issued to a person other than the one presenting the same, for the purpose of gaining admission to prohibited places or for the purpose of procuring the sale, gift or delivery of beer, light wine or alcoholic beverage. (Ord. 1599, sec. 5, 3-8-67)

Sec. 3-13. Engaging services of another for procurement of Alcoholic beverages by minors prohibited.

It shall be unlawful for any person under applicable ages, as defined by any statute of this state, to engage or utilize the services of any other person, whether for remuneration or not, to procure for such under age person any article which the under age person is forbidden by law to purchase, possess or consume. (Ord. 1599, sec. 6, 3-8-67)

Cross reference--see section 1-11 - enhanced penalties

Sec. 3-14. Consumption in moving vehicle prohibited.

No person, while a driver or passenger in a moving vehicle, shall consume beer, light wine or alcoholic beverage. (Ord. 1599, sec. 7, 3-8-67)

Cross reference--see section 1-11 - enhanced penalties

Sec. 3-15. Reserved.

Amendment Note--Ord. 2389, enacted 11-19-91, and codified as Sec. 3-5, repealed sec. 8 of Ord. 1599, enacted 3-8-67, codified as Sec. 3-15, establishing the hours of sale and consumption. This section was reserved to maintain sequence.

State law reference---Authority to establish opening and closing hours, Miss. Code Ann. 1972, sec. 67-3-65.

Article II. Live Performances

Sec. 3-16. Definitions.

The following phrases or terms whenever used or referred to in this chapter shall have the following respective meanings:

Specified Anatomical Areas means less than completely and opaquely covered human genitals, pubic region, buttocks, anus or less than fifty percent (50%) of the female breast below a point immediately above the top of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

Specified Sexual Activities means human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse, or sodomy; fondling or other erotic touching of human genitals, pubic regions, buttocks or female breasts; flagellation or torture in the context of a sexual relationship; masochism, erotic or sexually oriented torture, beating or the infliction of physical pain; erotic touching, fondling or other such contact with an animal by a human being; or human excretion, urination, menstruation, vaginal or anal irrigation as part of or in connection with any of the activities set forth in this ordinance. (Ord. 2662, sec. 1, 9-8-98; Ord. 2419, sec. 1, 8-27-92)

Sec. 3-17. Selling, giving away, dispensing, possessing or consuming in certain places.

It shall be unlawful for any person, group, association, or any and all legal entities recognized by law to sell, give away, dispense, possess or consume any alcoholic beverage, beer or light wine in any part of the business premises designated for public access which features adult entertainment characterized by the exposure of "specified anatomical areas" or by "specified sexual activities", or where any employee, operator or owner exposes his/her "specified anatomical area" for viewing by patrons, within the corporate limits of the City of Hattiesburg, Mississippi. Nor may any such establishment be located within two hundred fifty (250) yards of any establishment which is recognized by law to sell, give away, dispense, or otherwise allow the possession and/or consumption of alcoholic beverages, beer or light wine. (Ord. 2662, sec. 2, 9-8-98; Ord. 2419, sec. 2, 8-27-92)

Cross reference--see also sec. 3-5 - for selling, giving away or dispensing, and sec. 3-7 - for possession and consumption

Sec. 3-17.1. Booths, stalls, or individual rooms for purpose of viewing of adult entertainment requirements.

No person shall own, operate, manage, rent, lease, or exercise control of any commercial building which features adult entertainment characterized by the exposure of specified anatomical areas or by specified sexual activity which contains booths, stalls, or partitioned portions of a room or individual rooms, used for the viewing of adult entertainment. (Ord. 2662, sec. 3, 9-8-98)

Sec. 3-18. Lighting and Seating requirements.

A. Business establishments which feature adult entertainment characterized by the exposure of specified anatomical areas or by specified sexual activities shall have an interior lighting of not less than fifteen (15) candle intensity per square foot.(Ord. 2662, sec. 4, 9-8-98)

B. The parking area designated for patrons of business establishments which feature adult entertainment characterized by the exposure of specified anatomical areas or by specified sexual activity shall have a minimum of ten (10) foot candle intensity, per square foot and shall be responsible for maintaining the level of illumination required.(Ord. 2662, sec. 5, 9-8-98)

C. All employees, operators, owners and any non-employees who exposes his/her specific anatomical area for viewing by patrons of business establishments which feature adult entertainment shall perform only upon designated fixed immovable stages and that audience members may not be seated within three (3) feet of the edge of the stage or go onto the stage. (Ord. 2662, sec. 6, 9-8-98)

Sec. 3-18.1. Patrons interaction restrictions.

No employee, owner or operator of any business establishment which features adult entertainment characterized by the exposure of specified anatomical areas or by specified sexual activity or where any employee, operator or owner exposes his/her specified anatomical areas for viewing by patrons shall interact with the patrons while unclothed or while leaving any specified anatomical areas exposed, nor shall any owner, operator or employee encourage or knowingly permit any person upon the premises to touch, caress, or fondle such specified anatomical areas or any person. (Ord. 2662, sec. 7, 9-8-98)

Sec. 3-19. Viewing of live performances by minors prohibited.

No business establishment which features live performances characterized by the exposure of specific anatomical areas or by specific sexual activities or where an employee, operator or owner exposes his/her specific anatomical area for viewing by patrons, shall employ or allow on its premises as a patron during such periods as it is open for business any person under the age of twenty-one (21) years. (Ord. 2662, sec. 8, -8-98)

Sec. 3-20. Penalties for violation of this chapter.

Any person violating the provisions of this chapter shall upon conviction thereof be fined not more than \$1,000.00, or imprisoned not to exceed ninety (90) days, or subjected to all such fine and imprisonment. (Ord. 2662, sec. 9, 9-8-98; Ord. 2610, sec 5, 10-7-97; Ord. 2419, sec. 3, 8-27- 92)

Sec. 3-21. Reserved.

Article III. Hattiesburg Brown Bag Ordinance

Sec. 3-22. Title - Hattiesburg Brown Bag Ordinance.

Sec. 3-23. Definitions.

The following phrases or terms whenever used or referred to in this chapter shall have the following meaning:

Alcoholic Beverage shall mean any intoxicating, alcoholic liquid as defined by Section 67-1-5 of the Mississippi Code of 1972, as annotated and amended and wines and beer as those terms are used in Section 67-3-1, et. seq of the Mississippi code of 1972, as annotated and amended.

Consume or Consumption shall mean any ingestion of alcoholic beverages, beer and light wine or the possession of any alcoholic beverages, beer and light wine in any type of drinking container or in any bottle, can or other container upon which the seal, cork or cap has been opened.

Premises shall mean the building in which the public or private commercial establishment is located and the land, parking lot and improvements connected with or serving such establishment, which land, parking lot and improvements are under the possession or control of the proprietor of such establishment.

Public or Private Commercial Establishment shall mean any store, restaurant, bar, lounge, club, lodge, fraternal order meeting place, or any other business, whether for profit or not-for-profit, and whether or not said business is a holder of a permit issued by the Alcoholic Beverage Control Division of the Mississippi State Tax Commission or a beer privilege license from the City of Hattiesburg, which charges or accepts revenue of any type in exchange for goods, sources, membership or admittance.

Store or Storage shall mean to accept, hold, refrigerate, mix, pour or receive any alcoholic beverage, beer or light wine or container thereof not owned or sold by the proprietor of a public or private commercial establishment as defined herein.
(Ord. 2610, sec. 2, 10-7-97)

Sec. 3-24. Hours of Consumption.

No person, partnership, or corporation, nor any agent or employee thereof, operating a public or private commercial establishment shall permit the consumption of alcoholic beverages, beer or light wine on the premises of such establishment between the hours of 2:00 a.m. and 8:00 a.m., provided, however, that nothing in this section shall be construed to permit the sale, distribution, giving away, or storage of alcoholic beverages, beer or light wine anytime on Sunday, except between the hours of 12:00 noon and 12:00 mid-night.(Ord. 2927, sec.1,10-19-06)

Sec. 3-25. Storage.

No person, partnership, corporation, or employer or agent thereof, which operates a public or private commercial establishment shall store any alcoholic beverage, beer or light wine not owned by said person, partnership or corporation, between the hours of 2:00 a.m. and 8:00 a.m., unless otherwise permitted by the laws of the Sate of Mississippi or the ordinances of the City of Hattiesburg; provided, however, that nothing in this section shall be construed to permit the ale, distribution, giving away, or storage of alcoholic beverages, beer or light wine at any time on Sunday except between the hours of 12:00 noon and 12:00 p.m.(Ord. 2927, sec.1, 10-19-06;Ord. 2610, sec. 4, 10-7-97)

Sec. 3-26. Penalties.

Any person or entity which shall be found to have violated this section shall be subject to a fine not exceeding One Thousand Dollars (\$1,000), or imprisonment not exceeding ninety (90) days, or both. (Ord. 2610, sec 5, 10-7-97)

Sec. 3-27. Limitation.

Nothing in this section shall be construed to authorize, legalize, protect or condone the sale, distribution, possession, storage, consumption or giving away of any alcoholic beverage, beer or light wine which are controlled or not permitted by the owner or proprietor or any public or private commercial establishment.(Ord. 2610, sec. 6, 10-7-97)

Sec. 3-28. Enforcement.

The Hattiesburg Police Department is hereby authorized, ordered and directed to enforce this chapter.(Ord. 2610, sec. 7, 10-7-97)

Sec. 3-29. Severability.

In the event that any portion of this section is ruled invalid by a court of competent jurisdiction, the remainder of this chapter shall remain in full force and effect. (Ord. 2610, sec. 8, 10-7-97)

Sec. 3-30 --- 3-32. Reserved.

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Article IV. Tobacco

A. **Tobacco Product** means any substance that contains tobacco including, but not limited to, cigarettes, cigars, pipes, snuff, smoking tobacco or smokeless tobacco or any other form which may be used for smoking, chewing, inhaling or ingesting by any other means.

B. **Use** means the smoking of tobacco products. The possession of a lighted cigarette, cigar, pipe tobacco or other tobacco product, the chewing, oral consumption, spitting, inhaling or other ingesting of any tobacco product or the possession of any container of tobacco spittle.

C. **Possession** means to own, be in control of, possessing or being possessed; or to hold as property on ones person; or in clothing; or bags or purses, any tobacco and/or tobacco product or products.

D. **Person** means any natural person.

E. **Juvenile** shall mean any person under the age of eighteen (18).

F. **Educational Property** means any public or private elementary or secondary school building or bus, public or private school campus, grounds,, recreational area, athletic field, or other property owned, used or operated by a school board or board of trustees or directors for the administration of any public or private educational institution.

G. **Educational Activity or Function** means a school sponsored event within the corporate city limits of Hattiesburg, Mississippi for athletics, academics, social or entertainment purposes, attended by students, including school transportation to and from, regardless of whether such activity is held on educational property.

H. **Photographic Identification** means any government issued card that includes a photograph of the person seeking to purchase tobacco products and that is accepted as proof of age under Mississippi law.

I. **School Property** shall mean any public or private school building or bus, public or private school campus, grounds, recreational area, athletic field or other property owned, used or operated by and local school board, school, board of trustees or for directors for the administration of any public or private education institution.

J. **School Sponsored Activity** shall mean any sponsored event for athletic, academic, musical, social or entertainment purpose, attended by students, including any transportation to and from provided by the school, regardless of whether such activity is held on school property.

K. **Student** shall mean any student of a public or private elementary, middle, junior high or high school, regardless of whether such person is eighteen (18) years of age or older. (Ord. 2706, sec. 1, 10-19-99)

Sec. 3-34. Possession - Persons Under Age 18 Prohibited.

It shall be unlawful for any person under the age of eighteen (18) to possess any tobacco and/or tobacco products within the corporate limits of the City of Hattiesburg, Mississippi.(Ord. 2706, sec. 2, 10-19-99)

Sec. 3-35. Use - Persons Under Age 18 Prohibited.

It shall be unlawful for any person under the age of eighteen (18) to use any tobacco and or tobacco products within the corporate limits of the City of Hattiesburg, Mississippi. (Ord. 2706, sec. 3, 10-19-99)

Sec. 3-36. Possession of Tobacco/Tobacco Products on School Property and at School Sponsored Events Prohibited.

It shall be unlawful for any person under the age of eighteen (18), including students over age eighteen (18) and older, to possess any tobacco and/or tobacco products within the corporate limits of the City of Hattiesburg, Mississippi.(Ord. 2706, sec. 4, 10-19-99)

Sec. 3-37. Use of Tobacco/Tobacco Products on School Property and at School Sponsored Activities by Persons Under Age Eighteen (18) Prohibited.

It shall be unlawful for any person under the age of eighteen (18), including students age eighteen (18) or older, to use tobacco and/or tobacco products on school property and or at any school sponsored activity within the corporate limits of the City of Hattiesburg, Mississippi.(Ord. 2706, sec. 5, 10-19-99)

Sec. 3-38. Use of Tobacco/Tobacco Products on School Property and at School Sponsored Activities by Persons Over Age Eighteen (18) Prohibited.

It shall be unlawful for any person age eighteen (18) or older, who is not a student, to use tobacco and/or tobacco products on school property and/or at any school sponsored activity within the corporate limits of the City of Hattiesburg, Mississippi, when such use is not in accordance with school policy on adult tobacco and/or tobacco product use. (Ord. 2706, sec 6, 10-19-99)

Sec. 3-39. Misrepresentation of Age for Purchase/Possession of Tobacco/Tobacco Products Prohibited.

It shall be unlawful for any person under the age of eighteen (18) within the corporate limits of the City of Hattiesburg, Mississippi, for the purpose of purchasing and/or possessing tobacco and/or tobacco products, to falsely state he or she is eighteen (18) years of age or older or to present any form or means of identification which falsely states he or she is eighteen (18) years of age or older.(Ord. 2706, sec. 7, 10-19-99)

Sec. 3-40. Possession, Purchase and Use of Tobacco/Tobacco Products by Persons Under the Age Eighteen (18) Prohibited.

It shall be unlawful for any person under the age of eighteen (18) to possess, purchase or attempt to purchase and/or use tobacco and/or tobacco products within the corporate limits of the City of Hattiesburg, Mississippi.(Ord. 2706, sec. 8, 10-19-99)

Sec. 3-41. Penalties - Juveniles.

Any juvenile, person under the age of eighteen (18), who is found guilty of violating this article, shall be punished as follows:

For a first conviction, a fine of no more than \$100.00 or 30 hours of community service or both.

1a.) As an alternative to imposing community service as punishment on a first offense, any person under the age of eighteen (18) who is found guilty of violating this article may be punished by requiring such person to attend Program. Those persons found guilty of violating this article who are required to attend one or both of the programs provided above, may be required to pay for the reasonable cost of their attendance and completion of such program in lieu of a fine of one hundred dollars (\$100.00).

For a second conviction, a fine of \$150.00 or 40 hours of community service, or both.

For any third or subsequent conviction, a fine of \$200.00 or 50 hours of community service, or both.(Ord. 2706, sec. 9, 10-19-99)

Sec. 3-42. Penalties - Persons Age 18 and older.

Any person age eighteen (18) or older, who is found guilty of violating this article shall be punished by a fine of one hundred dollars (\$100.00), or no more than thirty (30) hours of community service, or both.(Ord. 2706, sec. 10, 10-19-99)

Sec. 3-43---3-46. Reserved.

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Article V. Smoking Ban

In General

The purpose of this ordinance is to protect the public health and welfare of its citizens by prohibiting smoking in public places and places of employment.

Sec. 3-47. Public Education

The City of Hattiesburg shall engage in a continuing program to explain and clarify the purposes and requirements to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance (Ord. 2931, Sec. 14, 11-21-06)

Sec. 3-48. Definitions

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

A. **Bars** means any premises where non-alcoholic or alcoholic beverages are sold or consumed, including but not limited to, taverns, nightclubs, and cocktail lounges.

B. **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.

C. **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.

D. **City buildings** means all City--owned and operated buildings and those portions of buildings leased and operated by the City.

E. **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.

F. **Employee** means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, including those full time, part-time, temporary or contracted from a third party; employee also means any person who serves as a volunteer for a business or nonprofit entity.

G. **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.

H. **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.

I. "**Entrance**" means a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk or parking lot.

J. "**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 therapists, 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.

K. "**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.

L. "**Mall**" means an enclosed, indoor area containing common areas and discrete businesses primarily devoted to the retail sale of goods and services.

M. "**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. 12A private residence is not a 'place of employment' within the meaning of this ordinance unless used as a childcare facility.

N. "**Private Club**" means facilities owned or operated by an association or corporation, which does not operate for pecuniary gain or may or may not have employees and which may sell alcoholic beverages incidental to its operation. Private Club may be (a.) non-regulated private club which means a private club that does not have employees, therefore is not a place of employment or (b.) regulated private club which means a private club that have employees, therefore is a place of employment. 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, political, benevolent, or athletic purposes, but not for pecuniary gain.

O. "**Private residence**" means premises owned, rented or leased for temporary or permanent habitation.

P. "**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, health care 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 child care, adult day care, health care facility or bed and breakfast.

Q. "**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

R. "**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.

S. "**Smoking**" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, hookah, or other lighted tobacco product in any manner or in any form.

T. "**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 other events(Ord. 2931, Sec. 1, 11-21-06).

Sec. 3-49 Application of Article to City-Owned Facilities.

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

Sec. 3-50. Smoking Prohibited in Indoor Public Places.

Except as otherwise provided, it shall be unlawful for any person to smoke 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, and retail service establishments.
- 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. Hotels and motels
- 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. Polling places.

Q. Non-regulated private clubs when being used for a function to which the general public is invited.

R. Public forms of transportation, including but not limited to motor buses, taxicabs, or other public passenger vehicles.

S. Public bus transfer point shelters, public places including parking garages and jails.

T. Retail stores.

U. Restaurants.

V. Restrooms, chambers, places of meeting or 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.

W. Service lobbies, waiting areas, and the common areas open to the public of financial institutions, businesses and professional offices, and multi-unit commercial facilities,

X. Sports arenas and venues,

Y. Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider(Ord. 2931, Sec. 3, 11-21-06).

Sec. 3-51. Smoking Prohibited in Places of Employment

Smoking shall be prohibited in all enclosed facilities within 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.

Sec. 3-52 Smoking Prohibited in Certain Outdoor areas

It shall be unlawful for any person to smoke in certain outdoor areas:

- A. Immediately preceding or blocking the entrance and / or exit of an area where smoking is prohibited.
- B. Covered outdoor areas of public places and places of employment that 50% or more of the perimeter of the outside is walled or otherwise closed to the outside.
- C. Seating areas of outdoor sports arenas and venues (Ord. 2931, sec.5, 11-21-06)

Sec. 3-53. Reasonable Distance

Smoking is prohibited within fifteen (15) feet of main public entrances to said enclosed areas of public places and places of employment. The main public entrances cannot serve as entrances or exits to outdoor areas where smoking is not regulated (Ord. 2931, sec.6, 11-21-06)

Sec. 3-54. Where Smoking Not Regulated

The following areas shall not be subject to the smoking 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 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 Article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking 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 when used as a childcare, adult day care, health care facility or bed and breakfast lodges.
- D. Outdoor areas of public places and places of employment including restaurant patios, courtyards, balconies, porches, or other open air areas except those covered by the Reasonable Distance and Smoking Prohibited in Certain Outdoor Areas provisions of this article (Ord. 2931, sec.7, 11-21-06).

Sec. 3-55. Declaration of Establishment as Nonsmoking

Notwithstanding any other provision of this Article, 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 this ordinance is posted(Ord. 2931, sec.8,11-21-06).

Sec. 3-56. Signage

- A. Signs prohibiting smoking shall be posted conspicuously at all customer and employee entrances of the premises by the proprietor, employer or other person in charge of the building.
- B. Signage shall include the international no smoking symbol and be no smaller than 4:x4".
- C. It shall be unlawful for any person to remove, deface, or destroy any sign required by this article, or to smoke in the immediate area where any such sign is posted (Ord. 2931, sec. 9, 11-21-06).
- D. The proprietor, employer or other person in charge of premises, shall communicate this prohibition on smoking to all existing employees by the effective date of this Article and to all future employees upon their hire. After communicating the provisions this Article to employees, the proprietor, employer or other person in charge may have employees sign a statement acknowledging of such communication and place a copy of said statement in employee's employment folder
- E. The proprietor, employer or other person in charge of premises, shall be deemed in compliance of this Article if proprietor responsibilities listed above are met(Ord. 2931, sec. 10,11-21-06).

Sec, 3-57. 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 article and request that they extinguish their cigarette or tobacco product and refrain from smoking.

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 areas where smoking is prohibited. All ashtrays shall be removed from any area where smoking is prohibited by this Article by the owner, operator, manager, or other person having control of the area.

Sec.3-58. - Enforcement

A. The Chief of Police or his designee, the Fire Chief or his designee, or the designees of the Code Enforcement Department 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 Police Department or the Code Enforcement Office of the City of Hattiesburg.

C. Notice of the provisions of this Article shall be given to all applicants for a business license in the City of Hattiesburg.

D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article (Ord. 2931, sec.11,11-21-06)

Sec. 3-59. Non-retaliation; Non-waiver of Rights

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.

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(Ord.2931, sec13,11-21-06)

Sec. 3-60. Jurisdiction Clause

This article shall be subject to all other governmental jurisdictions rules and regulations and laws pertaining to smoking.

A. That all provisions of the ordinances of the City of Hattiesburg in conflict with the provisions of this ordinance be, and the same are hereby, repealed and all other provisions of the article of the City of Hattiesburg not in conflict with the provisions of this ordinance shall remain in full force and effect.

B. That should any sentence, paragraph, subdivision, clause, phrase or section of the article be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this article 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(Ord. 2931, sec.15,11-21-06)

Sec. 3-61. Violations and Penalties

Any person who violates any provision of this Article may be subject to:

- A. A fine not exceeding one hundred dollars (\$100) for a first violation.
- B. A fine not exceeding two hundred dollars (\$200) for a second violation
- D. A fine not exceeding five hundred dollars (\$500) for the third and subsequent violations.
- E. The City Council shall suspend or revoke any business license, or permit issued by the City for 3 or more violations of this ordinance involving the licensed premises within a twelve (12) month period.
- F. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation(Ord. 2931, sec.12,11-21-06).

Sec. 3-62—3-65.Reserved.

Article VI. Prohibiting Synthetic Products Used as Alternatives for Marijuana and Other Controlled Substances.

Sec. 3-66 No person shall use, possess, purchase, distribute or sale, or attempt to use, possess, purchase, distribute or sale, or publicly display for sale, any one or more of the following substances within the City limits of the City of Hattiesburg, Mississippi:

- A. Salvia divinorum or Salvinorum A: all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, an extract from any part of such plant, and compound, salt, derivative, mixture or preparation of such plant;
- B. [(6aR, 10aR)-9(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)—6a, 7, 10, 10a – tetrahydrobenzo [c] (chromen -1-ol)], known by trade name or other names such as HU-210 or Spice or K2;
- C. 1 – Pentyl -3-(1-naphthoyl) indole, known by trade name or other names such as JWH-018 or Spice or K2;
- D. 1-Butyl-3-(1 –naphthoyl) indole, known by trade name or other names such as JWH-073 or Spice;
- E. 1-(3-trifluoromethylphenyl) piperazine, known by trade name or other names such as TFMPP or MDMA/Ecstasy;
- F. 4 Methylmethcathinone, Nethylcathinone;
- G. 3, 4-Methylenedioxyprovalerone, and related analogs, known by trade name or other names such as MDPV;
- H. 2-[(1R, 3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl) Phenol, and related homologues known by trade name or other names such as CP 47, 497 or Spice;
- I. Any structural analogs similar to those specified in (A) through (H); and
- J. Any other synthetic cannabinoid including, but not limited to, those substances known by the trade names of Spice or K2.(Ord.3054, sec. 1, 8/09/10)

Sec. 3-67. Confiscate and destroy.

If any of the aforementioned substances shall be found in the possession of any person, unless specifically excluded herein, the substances shall be confiscated and destroyed by law enforcement officials.(Ord.3054, sec. 2, 8/09/10)

Sec. 3-68. Enforcement.

It shall not be an offense of this chapter if a person shall be acting at the direction of an authorized agent of the City of Hattiesburg, Mississippi, to enforce or ensure compliance with this law prohibiting the use, possession, purchase, distribution or sale; or the attempt to use, possess, purchase, distribute or sale; or the public display for sale of the aforementioned substances.(Ord.3054, sec. 3, 8/09/10)

Sec. 3-69. Exception.

1. This chapter shall not apply to any person who shall Commit any act described in this section pursuant to the direction or prescription of a duly licensed physician or dentist authorized to direct or prescribe such act.
2. This chapter shall not apply to the inhalation of anesthesia for a medical or dental purpose which inhalation of anesthesia shall be administered by or under the supervision of a duly licensed physician or dentist, or by an advanced practice nurse or any duly licensed health care provider.(Ord. 3054, sec 4,8/9/10)

Sec. 3-70. Penalties.

Any person found to be guilty of violating this Ordinance shall be deemed guilty of a misdemeanor and shall be punished by a fine not to exceed One Thousand and 00/100 Dollars (\$1,000.00) or imprisoned in the county jail not to exceed six (6) months or both.(Ord.3054, sec. 5, 8/09/10)

Sec.3-71 – 3-73. Reserved.

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