ORDINANCE NO. M-C SERIES

ORDINANCE AMENDING CHAPTER 13.5, ARTICLE II OF THE CODE OF ORDINANCES OF THE CITY OF SULPHUR TO ALLOW FOR THE ADOPTION OF A SMOKE FREE AIR ORDINANCE

BE IT ORDAINED by the City Council of the City of Sulphur, Louisiana, the governing authority thereof, that they do hereby amend Chapter 13.5, Article II of the Code of Ordinances of the City of Sulphur to allow for the adoption of a Smoke Free Air ordinance as follows:

ARTICLE II. SMOKE FREE AIR

Sec. 13.5-21. Smoke –free air

(a) Accordingly, the City Council 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.

(b) Definitions. The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

(1) "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.

(2) "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.

(3) "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.

(4) "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.

(5) "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.

(6) "Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two 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 and whether or not containing openings of any kind.

(7) "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.

(8) "Place of Employment" means an 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, construction sites, temporary offices, 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.

(9) "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on city grounds.

(10) "Public Place" means an 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.

(11) "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.

(12) "Retail Tobacco Business" is any establishment or business, including but not limited to cigar shops, that are utilized primarily for the sale of tobacco products and accessories and in which the sale of other items is incidental.

(13) "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.

(14) "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(15) "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 Article.

(16) "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.

(c) Application of Article to City of Sulphur Facilities and Property

All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Sulphur, as well as all outdoor property adjacent to such buildings and under the control of the City of Sulphur, shall be subject to the provisions of this Article.

(d) Prohibition of Smoking in Enclosed Public Places

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

1. Aquariums, galleries, libraries, and museums.

2. 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.

3. Bars.

4. Bingo facilities.

5. Child care and adult day care facilities.
6. Convention facilities.
7. Educational facilities, both public and private.
8. Elevators.
9. Gaming facilities.
10. Health care facilities.
11. Hotels and motels: including all rooms rented to guests, restrooms, lobbies, reception areas, hallways, and other common-use areas; provided that a maximum of fifty percent of the hotel rooms, at the discretion of the hotel owner or general manger, available for rent to guests in a hotel or motel may be designated as smoking rooms as provided by the Louisiana Smoke-Free Air Act, Act 815.
12. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, and other multiple-unit residential facilities.
13. Nursing homes: common-use, public areas. To remain consistent with the Louisiana Smoke-Free Air Act, Act 815, smoking is allowed in private and semiprivate rooms or apartments in assisted living residences, and other long-term care facilities that are occupied by one or more persons, who are all smokers and who have requested in writing to be placed in a room where smoking is permitted; provided that smoke from such rooms or apartments does not infiltrate into areas where smoking is prohibited.
14. Polling places.
15. Public transportation vehicles, including buses and taxicabs, under the authority of the City of Sulphur, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
16. Restaurants.
17. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
18. Retail stores.
19. Retail tobacco business, including cigar shops.
20. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of Sulphur or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Sulphur.

21. Service lines.
22. Shopping malls.

23. Sports arenas, including enclosed places in outdoor arenas.

24. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

(e) Prohibition of Smoking in Enclosed Places of Employment

1. Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, 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.

2. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

(f) Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor places:

1. Within a reasonable distance of [*recommended 15-20*] 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.

2. On all outdoor property that is adjacent to buildings owned, leased, or operated by the City of Sulphur and that is under the control of the City of Sulphur.

3. In, and within [*recommended 15-20*] feet of, outdoor seating or serving areas of restaurants and bars.

4. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within [*recommended 15-20*] feet of, bleachers and grandstands for use by spectators at sporting and other public events.

5. In, and within [*recommended 15-20*] feet of, all outdoor playgrounds.

6. In, and within [*recommended 15-20*] feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City of Sulphur.

7. In all outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles, but only within [*recommended 15- 20*] feet of the point of service.

8. 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 [*recommended 15-20*] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

(g) Prohibition of Smoking in Outdoor Places of Employment

1. Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, temporary offices such as trailers, restroom facilities, and vehicles.

2. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

(h) Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility.

(i) Declaration of Establishment or Outdoor Area 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 Section 1012(A) is posted.

(j) Posting of Signs and 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 Article shall:

1. Clearly and conspicuously post “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) in that place.

2. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.

3. Clearly and conspicuously post on every vehicle that constitutes a place of Employment under this Article at least one sign, visible from the exterior of

the vehicle, stating that smoking is prohibited.

4. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

(k) Non-retaliation; Non-waiver of Rights

1. 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 Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 1015, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed $1000 for each violation.

2. 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.

(l) Enforcement

1. This Article shall be enforced by the City of Sulphur or an authorized designee (Stuart is checking with Billy Guidry).

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

3. Any citizen who desires to register a complaint under this Article may initiate enforcement with the City of Sulphur (which department ??????).

4. City of Sulphur Code Enforcement officials may enforce this ordinance while an establishment is undergoing otherwise mandated inspections.

5. An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article 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.

6. Notwithstanding any other provision of this Article, an employee or private citizen may register a non-emergency complaint to law enforcement.

(m) Violations and Penalties

1. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of a misdemeanor, punishable by:

a. A fine not exceeding one hundred dollars ($100) for a first violation.

b. A fine not exceeding two hundred fifty dollars ($250) for a second violation within one (1) year.

c. A fine not exceeding five hundred dollars ($500) for each additional violation within one year.

2. Except as otherwise provided by this Section, 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 Section shall be guilty of a misdemeanor, punishable by:

a. A fine not exceeding one hundred dollars ($100) for a first violation.

b. A fine not exceeding two hundred fifty dollars ($250) for a second violation within one (1) year.

c. A fine not exceeding five hundred dollars ($500) for each additional violation within one (1) year.

3. In addition to the fines established by this Ordinance, violation of this Section 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.

4. Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.

(n) Public Education

Louisiana Campaign for Tobacco Free Living, shall engage in a continuing program to explain and clarify the purposes and requirements of this Article 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.

(o) Governmental Agency Cooperation

The City of Sulphur shall annually request other governmental and educational agencies having facilities within the City of Sulphur to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, Parish and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

(p) Other Applicable Laws

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

(q) Liberal Construction

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

(r) Severability

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

(s) Effective Date

This Article shall become effective _____ (recommended thirty (30) days from and after the date of its adoption).

APPROVED AND ADOPTED by
the City Council of the City of
Sulphur, Louisiana on this _____
day of _____, 2015.

_____
STUART MOSS, Chairman

I HEREBY CERTIFY that the
foregoing Ordinance has been
presented to the Mayor on this
____ day of _____,
2015, at _____ o'clock ____.m.

_____
ARLENE BLANCHARD, Clerk

I HEREBY CERTIFY that I have received
from the Mayor at _____ o'clock ___.m.
on this _____ day of _____,
2015, the foregoing ordinance which has
approved/vetoed by the Mayor.

_____
ARLENE BLANCHARD, Clerk