AN ORDINANCE TO ELIMINATE SMOKING AT ALL WORKPLACES AND PUBLIC PLACES WITHIN THE CITY OF DIAMONDHEAD, MISSISSIPPI (100% SMOKEFREE)

WHEREAS, scientific studies have found that tobacco smoke is a major contributor to indoor air pollution; and

WHEREAS, scientific evidence, including studies conducted by the Surgeon General of the United States, demonstrate that (1) secondhand or involuntary exposure to tobacco smoke, also known as "environmental tobacco smoke," 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 smoke-free environments and work places is the only effective way to ensure that secondhand smoke exposure does not occur in the public and in the workplace; and (6) evidence from peer-reviewed studies shows that smoke-free 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); and

WHEREAS, scientific studies have further found that each year 9,700 to 18,600 low birth weight babies born in the United States are causally related to exposure to secondhand smoke (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, irritants in secondhand or involuntary smoke annually cause nearly 150,000 cases of bronchitis and pneumonia and 700,000 cases of ear infections in children in the United States (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, the Surgeon General of the United States has further found that there is a causal relationship between exposure to secondhand smoke and increased risks of coronary heart disease morbidity and mortality among both men and women. (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, p. 15); and

WHEREAS, non-smoking sections in buildings do not eliminate non-smokers' exposure to second-hand smoke (U.S. Environmental Protection Agency Office of Air and Radiation IARC Scientific Publications 81:25-41, 1987; and 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, p.11) and sitting in a smoke-free section of a restaurant for two (2) hours is similar to smoking 1Y. cigarettes (Presentation by Katherine Hammond, Ph.D., University of California School of Public Health); and

WHEREAS, on average nine (9) out of ten (10) non-smokers are involuntarily exposed to secondhand smoke or environmental tobacco smoke at least once every two (2) to three (3) days (Journal of the American Medical Association, January 1998); and

WHEREAS, involuntary exposure to secondhand smoke is a significant health hazard and threat and visitors to enclosed areas where smoking is prohibited should not be forced to endure exposure to smoke upon entry to or exit from locations or enclosed areas where smoking is prohibited and where people may congregate to smoke; and

WHEREAS, the Mayor and City Council find and declare that the purposes of this Ordinance are to protect the public health and welfare of its citizens by prohibiting smoking at City facilities, public places, and places of employment and to provide a smoke-free environment; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DIAMONDHEAD, MISSISSIPPI, AS FOLLOWS:

SECTION 1. That the matters and things set forth in the above preamble are hereby accepted as stated as the findings of the Diamondhead City Council. The Council further specifically finds and declares that one of the prevailing purposes of this Ordinance is to protect the public health and welfare by prohibiting smoking at all enclosed public places and to provide a smoke-free environment within said enclosed public places.

SECTION 2. That the Code of Ordinances of the City of Diamondhead, Mississippi be and the same are hereby amended to add this Smoke-Free Air Ordinance, to read as follows:

SMOKE-FREE AIR ORDNANCE-ALL ENCLOSED PUBLIC PLACES

SECTION 1. Definitions.

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

A. "Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, including those fulltime, part-time, temporary or contracted from a third party, and any person who volunteers his or her services.

B. "Employer" means any person, business, partnership, association, limited liability company, corporation, trust, or other entity, whether for profit or non-profit, that employs the services of one (1) or more individual persons.

C. "Enclosed Area" means all space between a floor and ceiling which is predominately or totally bounded, comprised of, or enclosed on all sides by walls, physical barriers, and/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, "office landscaping," or similar features or structures, regardless of whether such walls, barriers, or windows consist of screened or otherwise partially covered openings, open or closed windows, jalousies, open or closed doors or doorways, uncovered openings, or the like.

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

E. "Place of employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. This also includes elevators, medical facilities, stairs, and all enclosed facilities. A private residence is not a "place of employment" unless used as a childcare, adult day care, or health care facility.

F. "Private residence" means premises owned, rented or leased for permanent or semi-permanent habitation and which complies with the City's zoning ordinances pertaining to residential zones or areas.

G. "Proprietor" shall mean the party, regardless of whether or not the party is owner or lessee of the public place, who ultimately controls, governs, or directs the activities within the public place. The term does not mean the owner of the property, unless the owner ultimately controls, governs, or directs the activities within the public place. The term "proprietor" may apply to a corporation as well as to an individual.

H. "Restaurant" includes every building or other structure and facility, or any part thereof, and all buildings, structures, and facilities in connection therewith, regardless of situs or location, that are kept, used, maintained, advertised, or held out to the public as a place where food is served or which gives or offers for sale food to the public, guests, or employees, including, but not limited to, fast food eateries, doughnut shops, coffee shops, cafeterias, private and public school cafeterias, kitchens, and catering facilities, child care facilities or health care facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant as well as outdoor dining areas, including, without limitation, patios, decks, balconies, and wherever food is sold, served, and/or consumed on the premises. "Restaurant" shall include all restaurants in resorts, hotels, and motels. Where a restaurant is situated or located does not affect its applicability with this Article.

I. "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.

J. "Smoking" or "to smoke" means inhaling, exhaling, burning, carrying, or possessing any lighted or ignited tobacco product, including, but not limited to, cigarettes, cigars, pipes, hookahs, and any lighted or ignited combustible plant or plant substance and any synthetic derivation thereof, in any manner or in any form including E-Cigarettes. It shall be presumed that a lighted or ignited cigarette, cigar, pipe, or hookah contains tobacco.

SECTION 2. Smoking Prohibited in All WORKPLACES AND INDOOR PUBLIC PLACES.

Except as otherwise specifically provided in this Ordinance, smoking is prohibited from all enclosed Work Places and Public Places located within the City and it shall be unlawful for any person to smoke in any such enclosed workplace and public place.

SECTION 3. Smoking Prohibited in Certain Outdoor areas.

Smoking is prohibited from the following outdoor areas of enclosed workplaces and enclosed public places located within the City and it shall be unlawful for any person to smoke in any such area or place:

A. Within ten (10) feet of outside entrances and exits that are used for ingress and egress by patrons, guests, or customers as well as operable windows and ventilation systems that are a part of or otherwise service enclosed areas of all enclosed public places where smoking is prohibited.

B. In outdoor and outdoor seating or serving areas of restaurants. "Outdoor seating or serving area" herein means an area that is attached to, contiguous with, or otherwise part of a restaurant and which has no more than one solid wall or partition.

C. Covered and/or partially covered outdoor areas of all enclosed public places that fifty percent (50%) or more of the perimeter of the outside area or place is walled or otherwise closed to the outside.

SECTION 4. Outdoor Smoking Distances.

A. Smoking is prohibited and it shall be unlawful for any person to smoke within ten (10) feet of all entrances to and exits from enclosed areas of enclosed public places that are used for ingress and egress by patrons, guests, or customers well as ten (10) feet from operable windows and ventilation systems which are part of or affixed to any such enclosed public place. The main public entrances of all enclosed public places cannot serve as entrances or exits to areas where smoking is not regulated.

B. This ten (10) foot restriction shall be measured along a straight line from nearest point of the entrance, exit, operable window or door, stairwell leading to or from the entrance or exit, or ventilation system.

SECTION 5. Where Smoking Not Regulated.

The following areas and places shall not be subject to and are exempt from the smoking restrictions and prohibitions of this Ordinance:

A. Private clubs. This exemption shall not apply to any organization that is established for the purpose of avoiding compliance with this Ordinance.

B. Private residences, except when any part thereof is used as a restaurant as defined in this Ordinance.

SECTION 6. Declaration of Establishment as Nonsmoking.

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, business, facility, or outdoor area may prohibit smoking from or otherwise restrict smoking in areas in addition to those where smoking is prohibited or otherwise restricted in this Ordinance. Smoking shall be prohibited in any place in which a sign conforming to the requirements of this Ordinance is posted.

SECTION 7. Signs.

A. Every enclosed public workplace and public places, where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. Signs shall be posted by the owner, operator, proprietor, employer, or other person having control of the premises or structure. These signs shall include 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) and be no smaller than four (4) inches tall and four (4) inches in width and be placed at a height of between four (4) and six (6) feet above the floor or ground. For those restaurants where smoking is altogether prohibited, a further sign, which can be included with the universal "no smoking" symbol, shall be conspicuously posted at the main entrance to each such place stating, "This workplace or public place is smoke-free."

B. Signs Where Smoking Permitted.

C. It shall be unlawful for any person to remove, deface, or destroy any sign required by this Ordinance, or to smoke in the immediate area where any such sign is posted.

SECTION 8. Other Responsibilities of Owners, Proprietors, Managers, and Employers of Workplaces and Public Places.

A. The owner, proprietor, manager, employer, or other person in charge or control of premises, facilities, or areas of any workplace or public place 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 or tobacco product and refrain from smoking and can contact or notify the Police Department for enforcement hereunder.

B. The owner, proprietor, manager, employer, or other person in charge or control of such workplace or public place premises shall post signage as required by this Article.

C. The owner, proprietor, manager, employer, or other person in charge or control of such workplace or public place 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, proprietor, manager, employer, or other person in charge or control of the area.

SECTION 9. Non-retaliation; Non-waiver of Rights.

A. No person or employer shall refuse to hire or in any manner retaliate against an employee, applicant for employment, customer, or patron because that employee, applicant, customer, or patron exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance. Notwithstanding Section 11 of this Ordinance, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed $1,000 for each violation.

B. Any individual who works in and/or is invited to a workplace or public place which may be excepted from the prohibitions of this Ordinance and where the owner, proprietor, manager, employer, or other person in charge of such premises or area of any workplace or public place in which smoking is allowed, whether as a

customer, shopper, patron, client, employee, contractor, or otherwise, does not waive or otherwise limit or surrender any legal or equitable rights such individual may have against the owner, proprietor, manager, employer, or other person in charge or control of areas or places or against any other party.

SECTION 10. Enforcement.

A. Except as otherwise provided in this Section, this Ordinance shall be enforced by the Chief of Police or an authorized designee or by the Office of Code Enforcement.

B. The Chief of Police or his or her designee shall have the power and authority, subject to law, 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.

C. The Fire Department, Office of Code Enforcement and/or Office of Building Inspector, or their designees shall, while an establishment or premises is undergoing otherwise mandated or authorized inspections, inspect for compliance with this Ordinance.

D. Any person who desires 'to register a complaint under this Ordinance may initiate enforcement with the Police Department and/or Code Enforcement.

E. Notwithstanding any other provision of this Ordinance, any individual, including, but not limited to, customers, patrons, guests, and employees, may bring legal action to enforce this Ordinance or to otherwise pursue a violation hereof. As such, enforcement of this Ordinance may be by any method permitted under state law for the prosecution of misdemeanor offenses, provided that such violations are brought before the Municipal Court unless otherwise required by state law.

F. In addition to the remedies provided by the provisions in this Ordinance, the Police Chief or any person aggrieved by the failure of an owner, operator, proprietor, manager, or other person in charge or control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

G. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Diamondhead.

SECTION 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 a misdemeanor, punishable by a fine not exceeding one hundred dollars ($100).

B. A person who owns, manages, operates, or otherwise controls a workplace or public place and who fails to comply with the provisions of this Ordinance 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 (1) year.
3. A fine not exceeding five hundred dollars ($500) for the third and for each subsequent violation within one (1) year.

C. In addition to the fines established by this Section, for a second violation of this Ordinance and for each subsequent violation of this Ordinance within one (1) calendar year by a person who owns, operates, manages, or otherwise controls a workplace or public place may result in the suspension or revocation of any business or privilege license or permit or any other applicable license or permit issued to the person for the premises or area where the violation occurred or for the premises, business, establishment, or place where the violation occurred. Prior to such suspension or revocation, a hearing shall be held by the Municipal Court Judge, to determine a second or subsequent violation of this Ordinance occurred within the time period set forth herein and whether such license or permit should be suspended or revoked in response thereto. Advance written notice of this hearing shall be sent or delivered to the licensee or permittee at the address identified in or associated with said license or permit. At this hearing, the licensee or permittee shall have the opportunity to respond to the charges that a second or subsequent violation of this Ordinance occurred and that their license or permit should be suspended and/or revoked in response thereto. The licensee or permittee shall be notified in writing of a decision following this hearing.

D. Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by the Police Department or Department of Code Enforcement or their designee by restraining order, preliminary and/or permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

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

SECTION 12. Other Applicable Laws.

A. This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or regulations nor shall this Ordinance be interpreted or construed to create or confer any right to smoke or any right to smoke in any location or place.

B. This Ordinance shall not be interpreted or construed to preempt further or more restrictive limitations or prohibitions on smoking by any other governmental entity or regulatory authority.

SECTION 13. Liberal Construction.

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

SECTION 14. Other Ordinances; Severability.

A. All provisions of the ordinances of the City of Diamondhead in conflict with the provisions of this Ordinance are hereby repealed and all other provisions of the ordinances of the City of Diamondhead not in conflict with the provisions of this Ordinance shall remain in full force and effect.

B. If any sentence, paragraph, subdivision, clause, phrase, or section of this ordinance or the application thereof to any person or circumstances be adjudged or held to be unconstitutional, illegal, invalid, or unenforceable by a court of competent jurisdiction, such finding or such invalidity shall not serve as an

invalidation or affect the validity or enforceability of any other section or provision of this Ordinance and to this end, the provisions of this Ordinance are declared to be severable. Such an invalid sentence, paragraph, subdivision, clause, phrase, or section shall also not affect the validity of the Code of Ordinances as a whole.

SECTION 15. Effective Date.

This Ordinance shall become effective thirty (30) days after its adoption and publication by the Mayor and City Council of the City of Diamondhead, Hancock County, Mississippi.

SO ORDAINED, THIS THE _____ DAY OF _____, 2015.

_____

Thomas E. Schafer, IV, Mayor

	Aye	Nay
Mayor Schafer	_____	_____
Councilmember Lopez	_____	_____
Councilmember Knobloch	_____	_____
Councilmember Rech	_____	_____
Councilmember Sislow	_____	_____
(Vancancy) Ward 2		

ATTEST:_____ SEAL

Kristin Ventura, City Clerk

SEAL

THIS IS TO CERTIFY THAT THE FOREGOING ORDINANCE WAS ADOPTED BY THE CITY OF DIAMONDHEAD, MISSISSIPPI, ON THE _____ DAY OF _____, 2014.

_____

CITY CLERK