

There came on for consideration at a duly constituted meeting of the Mayor and Members of the City Council of the City of Long Beach, Mississippi, the following Ordinance:

ORDINANCE NO. 464

AN ORDINANCE OF THE CITY OF LONG BEACH, MISSISSIPPI, PROHIBITING THE PURCHASE AND/OR POSSESSION AND/OR USE OF TOBACCO AND/OR TOBACCO PRODUCTS BY PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS, PROHIBITING THE MISREPRESENTATION OF AGE BY PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS FOR THE PURPOSE OF OBTAINING TOBACCO AND/OR TOBACCO PRODUCTS, AND PROHIBITING THE PURCHASE AND/OR POSSESSION AND/OR USE OF TOBACCO AND/OR TOBACCO PRODUCTS ON SCHOOL PROPERTY AND/OR AT SCHOOL SPONSORED ACTIVITIES BY STUDENTS AND PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS.

WHEREAS, the Mayor and City Council of the City of Long Beach ("Governing Authority"), pursuant to Miss. Code Ann. §21-17-5 (Supp. 1998), is authorized to adopt ordinances with respect to municipal affairs which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi; and,

WHEREAS, the Governing Authority, pursuant to Miss. Code Ann. §21-19-1 (Supp. 1998), is authorized to make regulations to secure the general health of the municipality; and,

WHEREAS, federal and state law, specifically Miss. Code Ann. §97-32-1 (Supp. 1998), make it unlawful for persons under the age of eighteen (18) years to purchase and/or possess and/or use tobacco and/or tobacco products; and,

WHEREAS, the Governing Authority has the duty to protect and promote the public health, safety and welfare of its citizenry, especially those citizens under the age of eighteen (18) years; and,

WHEREAS, the Governing Authority, in order to promote and protect the health of its citizenry, finds that addiction to tobacco and/or tobacco products by persons under the age of eighteen (18) years is a serious public health problem with grave personal health consequences; and,

WHEREAS, the Governing Authority finds that the Surgeon General of the United States has declared that nicotine addiction from tobacco and/or tobacco products is similar to addiction to cocaine and is the most widespread example of drug dependency in the United States; and,

WHEREAS, the Governing Authority finds that widely accepted medical research has determined that the use of and addiction to tobacco and/or tobacco products results in serious health problems, and that the use of and addiction to such is particularly harmful to persons under the age of eighteen (18) years; and,

WHEREAS, the Mississippi Department of Health and the Partnership for a Healthy Mississippi has compiled statistics for Mississippi smokers in their youth anti-tobacco campaign, and some of those statistics are as follows:

- (1) OVER 30% OF MISSISSIPPI YOUTH ARE REGULAR SMOKERS;
- (2) APPROXIMATELY 60 MISSISSIPPI YOUTHS BEGIN USING TOBACCO PRODUCTS EVERY DAY;
- (3) 58% OF MISSISSIPPI YOUTH HAVE SMOKED AN ENTIRE CIGARETTE AT LEAST ONCE, AND AMONG THESE, 48% WERE AGE 13 OR YOUNGER WHEN THIS EVENT OCCURRED;
- (4) 90% OF ADULT DAILY SMOKERS BEGAN BEFORE THE AGE OF 18;
- (5) YOUTHS WHO START SMOKING ARE MORE LIKELY TO GET LOWER GRADES AND BECOME INVOLVED IN DRUG USE;
- (5) 18.1% OF MISSISSIPPI MALES IN GRADES 9-12 USE SMOKELESS TOBACCO.

WHEREAS, the Governing Authority has reviewed and considered information compiled by federal, state, and local authorities demonstrating the need for enacting an ordinance regulating the purchase and/or possession and/or use of tobacco and/or tobacco products by persons under the age of eighteen (18) years inside the corporate limits of Long Beach and at educational facilities and events within the corporate limits of Long Beach; and,

WHEREAS, the Governing Authority, based on such information, hereby finds and determines as herein provided; and,

WHEREAS, the Governing Authority finds that this ordinance prohibiting the purchase and/or possession and/or use of tobacco and/or tobacco products by persons under the age of eighteen (18) years, prohibiting the misrepresentation of age by persons under the age of eighteen (18) years, and prohibiting the purchase and/or possession and/or use of tobacco and/or tobacco products on school property and/or at school sponsored activities by persons under the age of eighteen (18) years, including students over the age of eighteen (18) years,

is rationally related to these aforementioned purposes, is narrowly tailored to be only as restrictive as needed to effect these purposes, is not arbitrary and capricious, and is necessary to the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LONG BEACH, MISSISSIPPI, THAT AN ORDINANCE PROHIBITING THE PURCHASE AND/OR POSSESSION AND/OR USE OF TOBACCO AND/OR TOBACCO PRODUCTS BY PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS, AND RELATED MATTERS, BE ADOPTED AS FOLLOWS, TO-WIT;

SECTION 1. Definitions:

A. "Dealer" shall mean every person, firm, corporation, or association of persons, except retailers as defined herein, who receives the product from the manufacturer of tobacco and/or tobacco products for distribution, for sale, for use, or for consumption in the State of Mississippi.

B. "Retailer" shall mean every person, company, corporation, partnership, business association, joint venture, estate, trust, or any other combination acting as a unit or legal entity other than a wholesale dealer as defined in Miss. Code Ann. §97-32-2 (Supp. 1998), whose business is that of selling merchandise at retail, who shall sell or offer for sale tobacco and/or tobacco products to the consumer.

C. "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 any local school board, school board of trustees, or board of directors for the administration of any public or private education institution. School property, for the purposes of this Ordinance, shall not include any public or private junior college, college, or university, or any sixteenth section school land or lieu land on which there is not located a school building, school campus, recreational area, or athletic field.

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

E. "Seller" shall mean any natural person, company, corporation, firm, partnership, organization, or other legal entity who sells, dispenses, distributes, or issues tobacco and/or tobacco products for commercial purposes.

F. "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.

G. "Tobacco and/or Tobacco Product" shall mean any substance that contains tobacco, including but not limited to, cigarettes, cigars, pipes, snuff, chewing tobacco, pipe tobacco, smoking tobacco, smokeless tobacco, spit tobacco, or tobacco spittle.

H. "Use and/or Possession " shall mean the smoking of any tobacco and/or tobacco product, the possession of lighted cigarette, cigar or other tobacco product, the chewing, oral consumption, spitting, inhaling or other ingestion of any tobacco and/or tobacco product, the possession of any container of tobacco spittle, or the possession of any tobacco paraphernalia, such as rolling papers, pipes, or any other item used in the smoking, chewing, oral consumption, spitting, inhaling, or other ingestion of any tobacco product.

I. "Wholesaler" shall mean dealers whose principal business is that of wholesale dealer or jobber, who is known to the retail trade as such, and whose place of business is located in Mississippi or in a state which affords reciprocity to wholesalers domiciled in Mississippi, who shall sell any taxable tobacco and/or tobacco product to retail dealers only for the purpose of resale.

SECTION 2. Possession of Tobacco and/or Tobacco Products by Persons Under the Age of Eighteen

It shall be unlawful for any person under the age of eighteen (18) years to possess any tobacco and/or tobacco product within the corporate limits of the City of Long Beach.

SECTION 3. Possession of Tobacco and/or tobacco product on School Property and at School Sponsored Events Prohibited.

It shall be unlawful for any person under the age of eighteen (18) years or any student, to possess any tobacco and/or tobacco product on school property and/or school sponsored activity within the corporate limits of the City of Long Beach.

SECTION 4. Use of Tobacco and/or Tobacco Products by Persons Under the Age of Eighteen (18) Years Prohibited.

It shall be unlawful for any person under the age of eighteen (18) years to use any tobacco and/or tobacco product within the corporate limits of the City of Long Beach.

SECTION 5. Use of Tobacco and/or Tobacco Products on School Property and/or at School Sponsored Activities by Persons Under the Age of Eighteen (18) Years Prohibited.

It shall be unlawful for any person under the age of eighteen (18) years or any 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 Long Beach.

SECTION 6. Misrepresentation of Age for Purchase and/or Possession of Tobacco and/or Tobacco Products Prohibited.

It shall be unlawful for any person under the age of eighteen (18) years to falsely state that he or she is eighteen (18) years of age or older, or to present any form or means of identification which falsely states that he or she is eighteen (18) years of age or older, for the purpose of purchasing and/or possessing tobacco and/or tobacco products within the corporate limits of the City of Long Beach.

SECTION 7. Purchase of Tobacco and/or Tobacco Products by Persons Under the Age of Eighteen (18) Years Prohibited.

It shall be unlawful for any person under the age of eighteen (18) years to purchase or attempt to purchase tobacco and/or tobacco products within the corporate limits of the City of Long Beach.

SECTION 8. Violation of Ordinance by Persons Under the Age of Eighteen

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

1st Offense- \$25.00 fine, or up to thirty (30) hours of community service, or both;

2nd Offense- attend and complete a Tobacco Education Program or Tobacco Use Cessation Program approved by the Court, and pay for the cost of attending and completing said program up to One Hundred Dollars (\$100.00);

3rd Offense- \$50.00 fine, or up to thirty (30) hours of community service, or both;

4th and Subsequent Offenses- \$100.00 fine, or up to 30 (30) hours of community service, or both.

These punishments shall be as ordered by any Judge of the Municipal, Justice, County, Circuit, or Youth Courts, or by any Judge of any other Court of competent jurisdiction.

SECTION 9. Alternative to Punishment by Community Service for Persons Under the Age of Eighteen (18) Years.

As an alternative to imposing community service as punishment upon any person under the age of eighteen (18) years who is found guilty of violating this ordinance, such person may be punished by requiring such person to attend and complete a Tobacco Education Program or Tobacco Use Cessation Program approved by the Court. Such person found guilty of violating this ordinance who is required to attend one of the programs provided above, may be required to pay for the reasonable cost of his or her attendance and completion of such program up to One Hundred Dollars (\$100.00) in lieu of payment of a fine, with the payment of the cost of attendance and completion of such program to be placed into the Long Beach Police Department tobacco education program.

SECTION 10. Violation of Ordinance by Persons Over the Age of Eighteen (18) Years.

Any person over the age of eighteen (18) years who is a student and who is found guilty of violating this ordinance shall be punished by a fine of up to One Hundred Dollars (\$ 100.00), or up to thirty (30) hours of community service, or both, as ordered by any Judge of the Municipal, Justice, County, or Youth Courts, or by any Judge of any other Court of competent jurisdiction.

Punishment for the sale and/or transfer of tobacco and/or tobacco products to persons under the age of eighteen (18) years by any dealer, retailer, seller, wholesaler, or any other person will be pursuant to Miss. Code Ann. §97-32-1 et seq. (Supp. 1998).

SECTION 11. Conflicting Ordinances, Resolutions, and Orders Revealed.

All ordinances, resolutions, and orders in conflict with this Ordinance are hereby repealed to the extent of the conflict on the effective date of this Ordinance.

SECTION 12. Effective Date of Ordinance.

This Ordinance shall become effective thirty (30) days after its adoption and enactment according to law and is published in accordance with the law.

The above and foregoing Ordinance No. 464 was introduced in writing by Alderman McNary, who moved its adoption. Alderman Levens seconded the motion to adopt said Ordinance; and after discussion, no member of the Board having requested that the Ordinance be read by the City Clerk, and the question being put to a roll call vote, the result was as follows:

Alderman Louis Elias	voted	<u>Present</u> , Not Voting
Alderman Tim Pierce	voted	<u>Aye</u>
Alderman Jimmy Levens	voted	<u>Aye</u>
Alderman Mike Bohlke	voted	<u>Aye</u>
Alderman Joseph McNary	voted	<u>Aye</u>
Alderman Billy Skellie	voted	<u>Aye</u>
Alderman Richard Bennett	voted	<u>Aye</u>

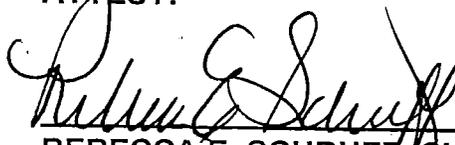
The motion having received the affirmative vote of the Aldermen present and voting, the Mayor declared the motion carried and the said Ordinance No. 464 adopted this the July day of 16th, 1999.

APPROVED:



 ROBERT E. BASS, JR., Mayor

ATTEST:



 REBECCA E. SCHRUFF, City Clerk

C E R T I F I C A T E

STATE OF MISSISSIPPI
COUNTY OF HARRISON
CITY OF LONG BEACH

I, the undersigned, Rebecca E. Schruff, City Clerk within and for the City of Long Beach, Mississippi, do hereby certify that the above and foregoing is a true and correct copy of that certain Ordinance Number 464 adopted by the Mayor and Board of Aldermen of the City of Long Beach at a regular meeting duly convened and held on Tuesday, July 6, 1999, as the same appears of record in my office at the City Hall in said City.

Given under my hand and the official seal of my office this the 6th day of July, 1999.

(SEAL)


Rebecca E. Schruff, City Clerk