

**AN ORDINANCE**

**REGULATING SMOKING IN PUBLIC PLACES TO  
PROTECT THE PUBLIC FROM SECONDHAND SMOKE**

WHEREAS, it has been shown that the smoke produced by the smoking of cigarettes, cigars and pipes is both hazardous and detrimental to the health, welfare and comfort of smokers and nonsmokers; and

WHEREAS, the United States' Surgeon General has reported that smoking is a significant cause of cancer, heart disease and lung disorders in smokers and passive smokers (those inhaling the smoke of others); and

WHEREAS, the County of Charleston ("Charleston County" or the "County") in furtherance of its duty to provide such regulations as may be necessary to protect the health of its citizens and minimize the incidents of disease of its population, and to provide a working environment for its employees and the general public which is reasonably free of hazards and distractions, such as smoke, and in furtherance of the objectives of the Clean Indoor Air Act of 1990, deems it to be in the public's interest to regulate smoking in the County;

NOW, THEREFORE, be it ordained by Charleston County Council ("County Council"), in meeting duly assembled, as follows:

**SECTION 1. FINDINGS INCORPORATED**

In addition to the recitals set forth above, which Charleston County Council hereby adopts as findings of fact, County Council specifically finds that the County is a political subdivision and as such possesses all powers granted to political subdivisions by the South Carolina Constitution and the laws of South Carolina, including the powers enumerated in Title 4, Chapter 9, County Government, S.C. Code Ann. Section 4-9-10, *et seq.*, Code of Laws of South Carolina, 1976, as amended, relating to regulating health and order in counties.

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute has determined that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. The Surgeon General has declared that (i) secondhand smoke causes disease and premature death in nonsmokers exposed to smoke; (ii) children exposed to secondhand smoke have an increased risk for sudden death syndrome, acute respiratory infections, ear problems, and more severe asthma; (iii) adults exposed to secondary smoke have a higher risk of coronary heart disease and lung cancer; (iv) there is no safe level of exposure to secondhand smoke; and (v) separating smoking and nonsmoking sections of indoor areas does not sufficiently remove the threats of secondhand smoke in enclosed areas.

A significant amount of secondhand smoke exposure occurs in the Workplace. Studies have shown that employees who work in smoke-filled businesses suffer a twenty-five (25) to fifty (50) percent higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

Studies have also shown that smoke-filled Workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke.

There are laws, ordinances and regulations in place that protect workers from other environmental hazards, including Class A carcinogens, asbestos, arsenic and benzene, but none which regulate exposure to environmental tobacco smoke.

Prohibiting smoking in the Workplace increases public awareness of the negative health effects of smoking, reduces the social acceptability of smoking and reduces harm to children and other nonsmokers.

The South Carolina General Assembly adopted the Clean Indoor Air Act, Title 44, Chapter 95, S.C. Code Ann. Section 44-95-10, *et seq.*, Code of Laws of South Carolina, 1976, as amended, in 1990 that imposed certain limitations on smoking. It limits smoking in government buildings (the definition of which includes county-owned buildings), except where the owner of such building shall designate smoking areas.

Prior to the adoption of the Clean Air Indoor Act by the General Assembly, Charleston County Council adopted Code of Ordinances, Chapter 6, Article 1, Section 6-1 (“Section 6-1”) in 1988 prohibiting smoking in certain portions of county buildings consistent with the Clean Indoor Air Act. County Council has now determined that additional regulation of smoking in areas beyond those addressed in the Clean Indoor Air Act and Section 6-1 is appropriate to protect the health of its citizens and employees in the Workplace and therefore enacts this Ordinance.

County Council finds that it is in the best interest of the people of this County to protect nonsmokers from involuntary exposure to environmental tobacco smoke in the Workplace. Therefore, County Council declares that the purpose of this Ordinance is to preserve and improve the health, comfort and environment of the people of this County by limiting exposure to tobacco smoke.

## **SECTION 2. DEFINITIONS**

Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall, for all purposes of this Ordinance and other documents referenced herein, have the meanings specified herein. Definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined.

- (1) *Business agent* means an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.
- (2) *Cigar bar* means any establishment in existence as of the date of the adoption of the

ordinance from which this section derives which (a) serves alcohol for consumption by patrons on the premises; (b) either itself or in conjunction with an affiliated entity operating within the same premises derives thirty (30) percent or more of its gross revenue from the sale of tobacco products or related paraphernalia; (c) shall permit the smoking of cigars and other tobacco products by patrons on the premises; and (d) prohibits the entry of persons under the age of twenty-one (21) at all times. For purposes of this section, affiliated entity shall be defined as a commercial entity with which the Cigar Bar has a business relationship, including but not limited to a lease or sublease, contract, service agreement or sharing of expenses and/or profits.

(3) *Employee* means any person who performs services for an employer in return for wages, profit or other valuable consideration.

(4) *Employer* means any person, partnership, association, corporation, trust, school, college, university or other educational institution, nonprofit entity or other organization, including any public or private employer that employs one (1) or more persons.

(5) *Enclosed* means a space bounded by walls (with or without windows) continuous from floor to ceiling and enclosed by doors, including but not limited to, offices, rooms, foyers, waiting areas and halls.

(6) *Environmental tobacco smoke (ETS)* or *secondhand smoke* is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as "sidestream smoke") and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as "passive smoking," "secondhand smoking" or "involuntary smoking."

(7) *Public building* means any building owned, operated or leased by the County, and shall not include those buildings (or any portions thereof) which are under lease to other organizations or corporations.

(8) *Retail tobacco store* means any establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and related paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of eighteen (18) years is prohibited at all times.

(9) *Sheriff's Office* means the Charleston County Sheriff's Office.

(10) *Smoking* means the inhaling, exhaling, burning, lighting or carrying of a lighted cigarette, cigar, pipe, or similar device or any other lighted tobacco product.

(11) *Smoking materials* includes cigars, cigarettes and all other manner of smoking devices intended to be used for the purpose of inhaling, burning, carrying, or exhaling lighted tobacco products.

(12) *Workplace* means any enclosed indoor area, structure, building or facility or any portion thereof at which one (1) or more employee(s) perform services for their employer, including but not limited to: offices; retail food stores; retail stores; restaurants; bars; cabarets, cafes; public or private clubs; pool halls and bowling alleys.

(13) *Work space* or *work spaces* means any enclosed area occupied by an employee during the

course of his or her employment, including but not limited to: offices, customer service areas; common areas; hallways; waiting areas; restrooms; lounges and eating areas.

### **SECTION 3. PROHIBITION OF SMOKING IN THE WORKPLACE**

(1) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed Workplace. Each employer shall adopt, distribute and implement a written policy prohibiting smoking in the Workplace in accordance with this Section.

(2) Smoking shall be prohibited in all work spaces in a Workplace. This includes all common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms and all other enclosed areas in the Workplace.

(3) The written smoking policy shall be adopted and distributed to all employees within four weeks of the effective date of this section or within four weeks of the commencement of business operations. A copy of the policy shall be conspicuously posted in all facilities or areas of the Workplace.

### **SECTION 4. SMOKING RESTRICTIONS INAPPLICABLE**

In providing for the inapplicability of this Section to the following subsections (1) through (7), it is specifically recognized that such locations are addressed in the Clean Indoor Air Act. Therefore, this Section shall not apply to:

- (1) Public schools and preschools where routine or regular kindergarten, elementary, or secondary educational classes are held including libraries;
- (2) All other indoor facilities providing children's services to the extent that smoking is prohibited in the facility by federal law and all other child day care facilities, as defined in S.C. Code Ann. Section 20-7-2700, which are licensed pursuant to Title 20, Chapter 7, Children's Code, Article 13, Subarticle 11, Code of Laws of South Carolina, 1976, as amended.
- (3) Health care facilities as defined in South Carolina Code Ann. Section 44-7-130;
- (4) Government buildings as defined in South Carolina Code Ann. Section 44-95-20(4), except to the extent regulation by the County is authorized therein;
- (5) Elevators;
- (6) Public transportation vehicles, except for taxicabs;
- (7) Arenas and auditoriums of public theaters or public performing art centers;

*Exceptions.* Notwithstanding the provisions contained herein, smoking may be permitted in the following places and/or circumstances:

- (1) Private residences;
- (2) Hotel, motel, inn, bed and breakfast and lodging home rooms that are rented to guests, designated as "smoking rooms" ("rooms") provided that the total percentage of such rooms does not exceed twenty-five (25) percent in such establishment. A room so designated shall have signs posted indicating that smoking is allowed therein;
- (3) Retail tobacco stores;
- (4) Cigar bars, provided that the cigar bar has not expanded its size or changed its location from its size or location after the date of the adoption of the ordinance from which this section derives, and it or its affiliated entity operating within the same premises continues to derive thirty (30) percent or more of its gross revenue from the sale of tobacco products or related paraphernalia;
- (5) Performers upon a stage, provided that the smoking is part of the theatrical production being performed;
- (6) Religious ceremonies where smoking is part of the ritual; and
- (7) Medical research facilities.

#### **SECTION 5. POSTING OF SIGNS**

The owner, manager or person in control of an establishment or area in which smoking is prohibited pursuant to this Ordinance shall post a conspicuous sign at the main entrance to the establishment or area. The sign shall contain the words "No Smoking" and the universal symbol for no smoking.

#### **SECTION 6. REASONABLE DISTANCE**

Smoking outside a Workplace, Work space or work spaces and any other indoor area where smoking is prohibited, shall be permitted provided that tobacco smoke does not enter the Workplace, Work space or work spaces through entrances, windows, ventilation systems or other means.

#### **SECTION 7. ENFORCEMENT, VIOLATIONS AND CIVIL PENALTIES**

- (1) The Sheriff's Office shall enforce the provisions of this section. In addition, designated code enforcement employees of the County shall have the power to enforce the provisions of this Ordinance.
- (2) The Sheriff's Office shall seek to obtain voluntary compliance with this section by means of publicity and education programs, and the issuance of warnings, where appropriate.
- (3) Any person who desires to register a complaint under this section may initiate enforcement with the office of the director of the zoning and planning department or his designee.
- (4) Any person who smokes in an area where smoking is prohibited by any provision of this

section shall be guilty of an infraction, punishable by a fine of not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00).

(5) Any employer, owner, manager or other person who has control of a Workplace and who fails to comply with any provision of this section shall be guilty of an infraction, punishable by a fine of not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00).

(6) Violation of this Ordinance is declared to be a public nuisance, which may be abated by the County by restraining order, preliminary and permanent injunction, or other means provided for by law, and the County may take action to recover the costs of the nuisance abatement.

(7) Each day of a continuing violation of this section shall be considered a separate and distinct offense.

(8) a. *Suspension or revocation of license.* In addition to the fines established by this subsection, whenever the director of the zoning and planning department or his designee determines that any employer, owner, manager or other person who has control of a Workplace has repeated violations of the provisions of this Ordinance, he/she may give written notice to the licensee or the person in control of the business by personal service or certified mail of a hearing before the Business License/User Fee Appeals Board for the purpose of determining whether the license should be suspended or revoked. The notice shall state the time and place at which the hearing is held, which shall be at a regular or special Business License/User Fee Appeals Board meeting within thirty (30) days from the date of service of the notice, unless continued by agreement. The notice shall contain a brief statement of the reasons for the proposed suspension or revocation and the applicable provisions of the Ordinance from which this Section derives.

b. *Business License/User Fee Appeals Board.* At a hearing held before the Business License/User Fee Appeals Board, all parties shall have the right to be represented by counsel, to present testimony and evidence and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The Business License/User Fee Appeals Board with a quorum of members in attendance shall by majority vote of members present render a written decision based on findings of fact and the application of this Ordinance which shall be mailed to the parties or their representatives within twenty (20) days from the date of the hearing.

c. *Appeal to Circuit Court.* Any person aggrieved by a final decision of the Business License/User Fee Appeals Board recommending a suspension or revocation of a business license may appeal the decision of the Business License/User Fee Appeals Board to the Circuit Court by filing with the Charleston County Clerk of Court and the director of the zoning and planning department or his designee a Notice of Appeal setting forth plainly, fully, and distinctly the basis for the appeal. The appeal must be filed within thirty (30) days after the decision of the Business License/User Fee Appeals Board is mailed.

(9) In addition to the remedies provided by the provisions of this subsection, the County or any person aggrieved by the failure of the employer, owner, manager or other person who has control of a Workplace to comply with the provisions of this Section may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

**SECTION 8. SEVERABILITY**

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

**SECTION 9. NON-RETALIATION**

No person or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this Section or exercises any right conferred by this section.

**SECTION 10. REPEAL OF OTHER ORDINANCE**

This Ordinance supersedes and replaces the existing Section 6-1, which is hereby repealed.

**SECTION 11. EFFECTIVE DATE**

This Ordinance shall be effective thirty (30) days from and after the date of its adoption.

CHARLESTON COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Teddie E. Pryor, Sr.  
Chairman of Charleston County Council

ATTEST:

By: \_\_\_\_\_  
Beverly T. Craven  
Clerk to Charleston County Council

First Reading: July 24, 2012  
Second Reading: August 21, 2012  
Third Reading: September 4, 2012