

ORDINANCE NO.: 2019-012

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 8, Environmental Health and Sanitation, Article IV, Pollution, Division 5, Regulations and Requirements Relating to Smoking of Tobacco Products, Sec. 8-215 Findings and intent, Sec. 8-216, Definitions, Sec. 8-217 Prohibition of smoking in the workplace; Sec. 8-218 Exceptions, Sec. 8-219 Reasonable distance of entry, Sec. 8-220 Jurisdiction, enforcement and penalties

BE IT ORDAINED by the Mayor and Council this 7th day of May, 2019 that the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 8, Environmental Health and Sanitation, Article IV, Pollution, Division 5, Regulations and Requirements Relating to Smoking of Tobacco Products, Sec. 8-215 Findings and intent, Sec. 8-216, Definitions, Sec. 8-217 Prohibition of smoking in the workplace; Sec. 8-218 Exceptions, Sec. 8-219 Reasonable distance of entry, Sec. 8-220 Jurisdiction, enforcement and penalties, are amended to read as follows:

Sec. 8-215. Findings and intent.

(a) *Findings* . As an incident to the adoption of the ordinance from which this division derives, the city council ("city council") of the City of Columbia, South Carolina (the "city") makes the following findings:

- (1) Secondhand smoke is the third leading cause of preventable death in the United States, killing 53,000 Americans prematurely each year; and
- (2) The U.S. Environmental Protection Agency, U.S. Centers for Disease Control and Prevention, National Toxicology Program's Report on Carcinogens, National Cancer Institute, and the International Agency for Research and Cancer have all reported that secondhand smoke is a Group A human carcinogen, a cancer causing substance, of which there is no safe level of exposure; and
- (3) The health consequences of involuntary smoking have been reported by the U.S. Surgeon General to be a cause of disease, including lung cancer, in healthy non-smokers; and
- (4) The U.S. Surgeon General has concluded that a simple separation of smokers and non-smokers within the same airspace does not eliminate the exposure of non-smokers; and
- (5) Numerous medical and scientific studies show substantial levels of exposure to secondhand smoke among the United States population, and over the past two decades, the health hazards resulting from exposure to secondhand smoke have been increasingly recognized; and
- (6) Secondhand smoke increases the risk of developing breast cancer in younger, premenopausal women; and when inhaled by pregnant women, secondhand smoke increases the risk for low-weight babies, pre-term delivery, and Sudden Infant Death Syndrome(SIDS); and
- (7) Exposure to secondhand smoke by children leads to decreased lung function, asthma, pneumonia, ear infections, bronchitis and even sudden infant death syndrome; and
- (8) Studies of hospital admissions for acute myocardial infarction in Helena, Montana and Pueblo, Colorado before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and
- (9) Workplaces have been shown to be locations of significant exposure to secondhand smoke by employees working in the City of Columbia; and
- (10) 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 secondhand smoke; and
- (11) The South Carolina General Assembly at Section 44-95-10 et seq. (the "Clean Indoor Air Act of 1990") imposed certain limitations on smoking. For example, it limited smoking in government buildings (the definition of which includes city-owned buildings) except where the owner of such building shall designate smoking areas.

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City Council has now determined that additional regulation of smoking in areas beyond those addressed in the Clean Indoor Air Act of 1990 is appropriate in furtherance of its duty to protect the health of its citizens and employees in the workplace and public places and therefore enacts this division.

(b) Intent. City council finds that it is in the best interest of the people of this city to protect nonsmokers from involuntary exposure to secondhand smoke in the workplace and public places. Therefore, city council declares that the purpose of this act is to preserve and improve the health, comfort and environment of this city by limiting exposure to secondhand smoke in the workplace and public places; 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.

Sec. 8-216. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Electronic smoking device means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

Employee means any person who performs services for an employer in return for wages, profit or other valuable consideration, and a person who volunteers his or her services for a non-profit entity.

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, any manager, supervisor, and all other persons charged with control, supervision, and operation of any workplace, work space, or work spaces as defined herein, that employs one (1) or more persons.

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

Medical 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, and wards within medical facilities.

Medical research facility means an enclosed indoor workplace where tobacco smoking is an integral part of a smoking cessation program approved by a university, college or hospital.

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, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, 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.

Private club 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 purpose, but not for pecuniary

gain, and which only sells alcoholic beverages incidental to its operation. The 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 an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501. Establishments which are in fact operating as bars, restaurants or entertainment venues primary for the pecuniary benefit of the owner or chief operating officer shall not be treated as private clubs under this division. A private club is not a private club for the purposes of this division when being used for a function to which the general public is allowed to enter.

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 paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times.

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

Smoking means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product, or liquid, gel or substance in any form, intended for inhalation, including but not limited to nicotine and/or marijuana products or derivatives, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device which creates an aerosol or 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.

Smoking materials includes cigars, cigarettes pipes, hookah, electronic smoking devices, or any other lighted or heated tobacco or plant product, or liquid, gel or substance in any form, including but not limited to nicotine and/or marijuana products or derivatives, whether natural or synthetic, in any form and all other manner of smoking devices intended to be used for the purpose of smoking as defined in this division.

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: retail food stores; retail stores; restaurants; bars; cabarets, cafes; public or private clubs; pool halls and bowling alleys.

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.

Sec. 8-217. Prohibition of smoking in the workplace and City-owned facilities and property.

- (a) All employers shall provide a smoke free environment for all employees working in any work space or workplace as those terms are defined herein. Further, the employer shall prohibit any persons present in any work space and workplace from smoking or possessing lighted smoking materials therein.
- (b) No person shall smoke or possess a lighted tobacco product in any work space and workplace.
- (c) All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Columbia, as well as all outdoor property adjacent to such buildings and under the control of the City, shall be subject to the provisions of this division.

Sec. 8-218. Exceptions.

Notwithstanding the provisions of section 8-217 herein, smoking may be permitted in the following places or under the following circumstances:

- (1) Private residences unless used as a childcare, adult day care, or health care facility;

- (2) Private clubs;
- (3) Retail tobacco stores as defined herein;
- (4) Religious ceremonies where smoking is part of the ritual;
- (5) Medical research facilities;
- (6) Smoking by performers during a theatrical event which requires smoking in the context of the performance;

Sec. 8-219. Reasonable distance of entry.

Smoking shall be prohibited in the following outdoor places:

- (a) Within a reasonable distance of 25 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 by those or any other means.
- (b) On all outdoor property that is adjacent to buildings owned, leased, or operated by the City of Columbia and that is under the control of the City.
- (c) In, and within 25 feet of, outdoor seating or serving areas of restaurants, bars, and gambling facilities.
- (d) In outdoor shopping malls, including parking structures.
- (e) In all outdoor arenas, stadiums, and amphitheatres. Smoking shall also be prohibited in, and within 25 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- (f) In outdoor recreational areas, including parking lots.
- (g) In, and within 25 feet of, all outdoor playgrounds.
- (h) In, and within 25 feet of, all outdoor public events.
- (i) In, and within 25 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City.
- (j) 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 25 feet of the point of service.
- (k) 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 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 8-220. Jurisdiction, enforcement and penalties.

- (a) An infraction of this division is hereby declared to be a public nuisance.
- (b) A manager, supervisor or any other person who owns, operates, or otherwise controls a workplace or work space and who fails to comply with the provisions of this division shall be guilty of an infraction.
- (c) A person smoking or possessing a lighted smoking materials in any workspace or workplace shall be guilty of an infraction.
- (d) Each infraction shall be punishable by a civil penalty of:
 - (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.
 - (3) A fine not exceeding five hundred dollars (\$500) for each additional violation.

The city shall serve a uniform ordinance summons upon the infractor.

- (e) The city, in addition to or in lieu of assessing or collecting a civil penalty, may institute a civil action in the circuit court in the county in which the infraction occurred seeking (i) a mandatory injunction requiring compliance with this division, (ii) a declaration that the infraction is a public nuisance and an order requiring abatement of the public nuisance, or (iii) if violation of this division is 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, and/or (iv) for any other remedy permitted by law.

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(f) If three or more infractions occur within a six-month period at a workspace or workplace subject to this division, such shall be deemed to be a nuisance related to the business.

(g) Appeals. The filing of an appeal shall not act as a stay of the city's right to institute any civil action as described above.

(h) Each infraction and on each day which an infraction of this division occurs, shall be considered a separate and distinct infraction.

This ordinance is effective as of final reading.

Requested by:

Councilmember Duval



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:


City Clerk

Public Hearing: 3/19/2019

Introduced: 4/2/2019

Final Reading: 5/7/2019