

## ORDINANCE 2008-8

### AN ORDINANCE PROHIBITING SMOKING IN THE WORKPLACE

BE IT ORDAINED AND ENACTED BY THE MAYOR AND COUNCIL MEMBERS OF THE CITY OF ISLE OF PALMS, SOUTH CAROLINA, IN CITY COUNCIL ASSEMBLED:

SECTION 1. Findings. As an incident to the adoption of this Ordinance City Council makes the following findings:

A. The city is an incorporated municipality and as such possesses all powers granted to municipalities by the Constitution and the laws of the State of South Carolina, including the powers enumerated in S.C. Code Section 5-7-30 relating to regulating streets, markets, and public health; and

B. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing second hand 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 second hand 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 (v) separating smoking and nonsmoking sections of indoor areas does not sufficiently remove the threats of secondhand smoke in enclosed areas; and

C. 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.

D. Studies have also shown that smoke-filled workplaces result in higher work 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.

E. 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.

F. 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.

G. 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. City Council has determined that additional regulation of smoking in areas not covered by 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.

SECTION 2. Definitions. For purposes of this Ordinance the following words or phrases shall have the following meanings:

A. "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.

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

C. "Employer" means any person, partnership, association, limited liability company, corporation, trust, school, governmental agency, college, university or other educational institution, nonprofit entity or other organization, whether public or private, that employs one (1) or more employees.

D. "Enclosed area" means all space between a floor and ceiling that is enclosed on two or more sides by temporary or permanent walls of any type of material including but not limited to plastic, wood, sheet rock, or particle board, or windows which extend from the floor to the ceiling, including but not limited to, offices, rooms, foyers, waiting areas, porches, halls and mobile public conveyance. Facilities having only partial exterior walls but otherwise enclosed by ceilings and floors shall also be included in this definition; provided, however, that porches which have fifty (50%) percent or more of open space or screening on all but one side shall be excluded from this definition .

E. "Environmental tobacco smoke" (ETS) or secondhand smoke is the complex mixture formed from 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.

F. "Livability court" means that certain division of the City of Isle of Palms Municipal Court.

G. "Police department" means the City of Isle of Palms Police Department.

H. "Smoking" means the inhaling, exhaling, burning, lighting or carrying of a lighted cigarette, cigar, pipe, or similar device or any other lighted tobacco product.

I. "Workplace" means any enclosed 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, government buildings, restaurants, bars, cabarets, cafes, public or private clubs, pool halls or bowling alleys.

J. "Workspace" or "workspaces" means any enclosed area occupied by an employee at any time during the course of the employee's 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.

A. 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.

B. The written smoking policy shall be adopted and distributed to all employees within four (4) weeks of the commencement of business operations. A copy of the policy shall be conspicuously posted in all facilities or areas of the workplace.

C. Smoking is prohibited in all workspaces in a workplace. This includes all common work areas, auditoriums, gymnasiums, classrooms, conference and meeting rooms, private offices, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms and all other enclosed areas in a workplace. Furthermore, the employer, business agent, and all employees shall prohibit any persons from smoking tobacco products in any workplace or workspace.

SECTION 4. Smoking restrictions inapplicable. In providing for the inapplicability of this Ordinance to the following subsections (1) through (7), it is specifically recognized that such locations are addressed in the Clean Indoor Air Act, enacted by the General Assembly of South Carolina and codified in South Carolina Code section 44-95-10, et. seq. Therefore, this Ordinance shall not apply to:

A. Public schools and preschools where routine or regular kindergarten, elementary, or secondary educational classes are held including libraries;

B. 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 Section 20-7-2700, which are licensed pursuant to Subarticle 11, Article 13, Chapter 7, of Title 20 of the South Carolina Code;

C. Health care facilities as defined in South Carolina Code Section 44-7-130;

D. Government buildings as defined in South Carolina Code Section 44-95-20(4), except

to the extent regulation by the City is authorized therein;

E. Elevators;

F. Public transportation vehicles, except for taxicabs;

G. Arenas and auditoriums of public theaters or public performing art centers;

SECTION 5. Exceptions. Notwithstanding the provisions of Section 3 of this Ordinance, smoking may be permitted in the following places or circumstances:

A. Private residences;

B. Hotel, motel, inn, bed and breakfast, and lodging homes that are rented to guests, designated as smoking 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;

C. Performers upon a stage, provided that the smoking is part of the theatrical production being performed;

D. Religious ceremonies where smoking is part of the ritual; and

E. Medical research facilities.

SECTION 6. Posting of signs. The owner or business agent 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 7. Reasonable distance. Smoking outside a workplace, workspace or any other enclosed area where smoking is prohibited shall be permitted, provided that no such smoke enters the enclosed area through entrances, windows, doors, openings, ventilation systems or any other means.

SECTION 8. Jurisdiction, enforcement and penalties.

A. The City's municipal court shall have jurisdiction over prosecuting violations of the provisions of this Ordinance.

B. The Police Department shall enforce the provisions of this section. In addition, designated code enforcement employees of the city shall have power to enforce the provisions of this Ordinance.

C. The Police Department shall seek to obtain voluntary compliance with this Ordinance

by means of publicity and education programs, and the issuance of warnings, where appropriate.

D. Any person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of a civil infraction, punishable by a fine of not more than Fifty (\$50.00) Dollars.

E. Any person who owns, manages, operates, is a business agent of, or otherwise controls a place of employment and who fails to comply with the provisions of this Ordinance shall be guilty of a civil infraction, punishable by:

(i) A fine not exceeding One Hundred (\$100.00) Dollars for a first violation.

(ii) A fine not exceeding Two Hundred (\$200.00) Dollars for any subsequent violation within one (1) year.

F. In addition to the fines set forth in this Section, repeated violations of this Ordinance by a person who owns manages, operates, is a business agent of, or otherwise controls a place of employment may result in the suspension or revocation of any business license issued to the premises on which the violations occurred.

G. Each day of a continuing violation of this Ordinance shall be considered a separate and distinct offense.

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 other person because such employee, applicant, customer or other person takes any action in furtherance of the enforcement of this Ordinance or exercises any right conferred by this Ordinance.

SECTION 10. That should any part of this Ordinance be held invalid by a court of competent jurisdiction, the remaining parts shall be severable therefrom and shall continue to be in full force and effect.

SECTION 11. That all ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed insofar as the same affect this Ordinance.

SECTION 12. That this Ordinance shall take effect and be in full force on January 1, 2009.

SECTION 13. Codification. The Municipal Code Corporation, as codifier of the City Code, shall in conjunction with the City Attorney have discretion to make such assignments of or adjustments to the numbering and sequencing of the Chapter, Article and Section numbers of the City Code as will reasonably assure compliance with standard practices in the codification of this Ordinance and to codify the new provisions as soon as feasible after the effective date of this Ordinance.

PASSED AND APPROVED BY THE CITY COUNCIL FOR THE CITY OF ISLE OF PALMS, SOUTH CAROLINA, ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2008.

\_\_\_\_\_  
F. Michael Sottile, Mayor

(Seal)

Attest:

\_\_\_\_\_  
Marie B. Copeland, City Clerk

First Reading: \_\_\_\_\_

Second Reading: \_\_\_\_\_

Ratification: \_\_\_\_\_