

## Section 14-29 (SIC 30) Smoking of Tobacco Products in the Town of Sullivan's Island

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(A) Findings. As an incident to the adoption of this Ordinance, the Town Council ("Town Council") of the Town of Sullivan's Island, South Carolina (the "Town") makes the following findings:

(1) Secondhand smoke as defined herein includes both smoke exhaled and smoke from the end of a burning cigarette, cigar or pipe; and includes a complex mixture of nearly 5,000 chemical compounds, including 43 chemicals that are known human carcinogens; and

(2) 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

(3) The U.S. Surgeon General has concluded that a simple separation of smokers and nonsmokers within the same airspace does not eliminate the exposure of non-smokers; and

(4) Secondhand smoke has been classified by the Environmental Protection Agency (EPA) as a known cause of cancer in humans (Group A Carcinogen) like asbestos, arsenic, hexavalent chromium; and

(5) The National Institutes of Health, Centers for disease Control and Prevention, National Toxicology Program, Report on Carcinogens and the International Agency for Research and Cancer have all reported that secondhand smoke is a human carcinogen; and

(6) 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

(7) Secondhand smoke inhaled by a pregnant woman can increase the risk for low weight babies; and

(8) Exposure to secondhand smoke by children leads to decreased lung function, asthma, pneumonia, ear infections, bronchitis and even sudden infant death syndrome; and

(9) Exposure to secondhand smoke nearly doubles the risk of heart attack; and

(10) 460,000 annual deaths in the United States directly attributed to tobacco use, of which 55,000 are involuntary tobacco users; and

(11) Workplaces have been shown to be locations of significant exposure to secondhand tobacco smoke by employees working in the Town of Sullivan's Island; and

(12) Both the Public Health Services National Toxicology Program and the World Health Organizations' International Agency for Research on Cancer identify secondhand smoke as a human Class A carcinogen and state that there is no safe level of exposure; and

(13) 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

(14) 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; and

(15) 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 Town-owned buildings) except where the owner of such building shall designate smoking areas.

Town 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 therefore enacts this ordinance.

(B) Intent. Town Council finds that it is in the best interest of the people of this Town to protect nonsmokers from involuntary exposure to secondhand smoke in the workplace. Therefore, Town Council declares that the purpose of this act is to preserve and improve the health, comfort and environment of the people of this Town by limiting exposure to tobacco smoke in the workplace.

(C) Definitions.

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

(2) "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 Work Place, Work Space, or Work Spaces as defined herein, that employs 1 or more persons.

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

(4) "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 secondhand smoke is also frequently referred to as "passive smoking," "secondhand smoking" or "involuntary smoking".

(5) "Person(s)" means a customer or other visitor on the premises regulated herein.

(5-20-08)

(6) "Police Department" means the Town of Sullivan's Island Police Department.

(7) "Public building" means any building owned, operated or leased by the Town.

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

(9) "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.

(10) "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.

(11) "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.

(D) Prohibition of Smoking in the Workplace.

(1) The employer shall provide a smoke free environment for all employees working in all Work Space, Work Spaces and Work Places as those terms are defined herein. Further, the employer and all employees shall prohibit any persons present in said Work Space, Work Spaces and Work Places from smoking tobacco products therein.

(2) Smoking shall be prohibited in all Work Space, Work Spaces and Work Places 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.

(E) 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, enacted by the General Assembly of South Carolina and codified in South Carolina Code section 44-95-10, et. seq. 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 Section 20-7-2700, which are licensed pursuant to Subarticle 11, Article 13, Chapter 7, of Title 20 of the South Carolina Code;

(3) Health care facilities as defined in South Carolina Code Section 44-7-130;

(4) Government buildings as defined in South Carolina Code Section 44-95-20(4), except to the extent regulation by the City is authorized therein;

(5) Elevators;

(6) Public transportation vehicles, except for taxicabs;

(7) Arenas and auditoriums of public theaters or public performing art centers;

(F) Exceptions. Notwithstanding the provisions of Section D 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 25% in such establishment. A Room so designated shall have signs posted indicating that smoking is allowed therein;

(3) Religious ceremonies where smoking is part of the ritual.

(G) Posting of Signs. The owner, manager or person in control of an establishment or area in which smoking is prohibited pursuant to this section 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.

(H) Reasonable Distance. Smoking outside a Work Space, Work Spaces and Work Places, and any other indoor area where smoking is prohibited shall be permitted, provided that tobacco smoke does not enter the Work Space, Work Spaces and Work Places through entrances, windows, ventilation systems or other means.

(I) Jurisdiction, Enforcement and Penalties.

(1) The Municipal Court of the Town of Sullivan's Island shall collect the fines due hereunder for any infraction(s) of the provisions of this Ordinance. (5/20/08)

(11/18/08) (7/21/09)

(2) The Police Department, as well as all code enforcement personnel of the Town, shall have the power to enforce the provisions of this Ordinance by issuing a Uniform Ordinance Summons. (5/20/08) (7/21/09)

(3) Penalties for Infractions:

A. A person, employee or employer who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by a civil fine of not less than ten (\$10.00) dollars or more than twenty-five (\$25.00) dollars. (5/20/08) (11/18/08) (7/21/09)

B. A person, employee or employer who owns, manages, operates, or otherwise controls a workplace or work space and who fails to comply with the provisions of this Ordinance shall be guilty of an infraction, punishable by a civil fine of not less than ten (\$10.00) or more than twenty-five (\$25.00) dollars. (5/20/08) (11/18/08) (7/21/09)

C. In addition to the civil fines established by this Section, repeated violations of this Ordinance by a person, employee or employer who owns, manages, operates, or otherwise controls a workplace or work space, or the failure of a person, employee or employer who owns, manages, operates, or otherwise controls a workplace or work space to timely pay the civil fine for an infraction may result in the suspension or revocation of any occupancy permit or business license issued to the person, employee or employer for the premises on which the violation occurred. (5/20/08) (11/18/08) (7/21/09)

D. Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by the Town by restraining order, preliminary and permanent injunction, or other means provided for by law, and the Town may take action to recover the costs of the nuisance abatement. (5/20/08)

E. Each violation of this Ordinance shall be considered a separate and distinct infraction. (5/20/08) (11/18/08) (7/21/09)

F. In addition to or in lieu of assessing a civil fine, the Town may institute an action in the Court of Common Pleas for Charleston County for an injunction to require compliance with this Ordinance or pursue any other remedy as may be permitted by law. (5/20/08) (11/18/08) (7/21/09)

(4) A business license shall not be renewed if there are delinquent fines owed hereunder by an employer. (7/21/09)

(5) If any provision, clause, sentence or paragraph of this Section (I) or the application thereof to any person or circumstance shall be held invalid, that invalidity shall not affect the other provisions of this Section (I) which can be given effect without the invalid provision, clause,

sentence or paragraph or application thereof, and to this end, the provisions of this Section (I) are declared to be severable. (11/18/08) (7/21/09)

(J) 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 the 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.

(K) 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.

(L) Conflict with Other Laws, Ordinances or Regulations. Nothing in this section shall be deemed to amend or repeal any applicable fire, health or other, law, ordinance or regulation so as to permit smoking in areas where it is prohibited by such applicable fire, health or other law, ordinance or regulation.

(M) Waivers.

(1) Any employer, owner, manager or other person having control of a workplace subject to this section may apply to the Town of Sullivan's Island's Director of the Department of Budget, Finance and Revenue Collection or his designee for a waiver of any provision of this regulation for a period not to exceed ninety (90) days.

(2) All waivers shall be submitted to Town of Sullivan's Island's Director of the Department of Budget, Finance and Revenue Collection or his designee, on an application form provided by such Director along with a \$100 non-refundable filing fee.

(3) The decision to grant such a waiver shall be in the sole discretion of Town of Sullivan's Island's Director of the Department of Budget, Finance and Revenue Collection or his designee, based upon his determination that such waiver is in the public interest. In do determining, the Town of Sullivan's Island's Director of the Department of Budget, Finance and Revenue collection or his designee may take into account, but is not limited to the following:

(a) The efforts that the employer, owner, manager or other person having control of a workplace has made toward compliance with this section;

(b) Whether or not the workplace will be in compliance with all terms of this section within ninety (90) days; and

(c) Whether or not the granting of the waiver will result in an appreciable danger to the health of the public.

(4) No employer, owner, manager or other person having control of a workplace shall be granted more than one (1) waiver.

(June 20, 2006)

(Amended May 15, 2007)

(Amended May 20, 2008)

(Amended Nov. 18, 2008)

(Amended July 21, 2009)