

ORDINANCE NO. 2011-13
As Amended at First Reading on April 11, 2011

AN ORDINANCE TO ESTABLISH REGULATIONS AND REQUIREMENTS RELATED TO SMOKING IN ENCLOSED BUILDINGS AND SPACES WITHIN THE CITY OF FLORENCE

WHEREAS, the City of Florence, upon assessing current conditions and more recent medical findings made by authoritative sources, Council has determined that the City's existing code does not sufficiently address the pressing public health issues and the quality of life considerations arising from the harmful effects of secondhand smoke, and additional action by the City Council is necessary and proper; and

WHEREAS, The city council (the "council") of the City of Florence, South Carolina, hereby finds and determines:

(a) The City of Florence, South Carolina (the "City"), is an incorporated municipality located in Florence County, South Carolina, 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 § 5-7-30 (2005 Supp) relating to regulating streets, markets, and public health.

(b) 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. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.). The Surgeon General has declared that:

- (1) Secondhand smoke causes disease and premature death in nonsmokers exposed to smoke;
- (2) Children exposed to secondhand smoke have an increased risk for sudden death syndrome, acute respiratory infections, ear problems, and more severe asthma;
- (3) Adults exposed to secondary smoke have a higher risk of coronary heart disease and lung cancer;
- (4) There is no safe level of exposure to secondhand smoke; and
- (5) Separating smoking and nonsmoking sections of indoor areas does not sufficiently remove the threats of secondhand smoke in enclosed areas.

(c) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25--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. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental

tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study, "Tobacco Control 11(3): 220-225, September 2002.)

(d) 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. ("The high price of cigarette smoking, "Business & Health 15(8), Supplement A: 6-9, August 1997.)

(e) When there is a presence of secondhand smoke in enclosed spaces inevitably results in persons who do not smoke being forced to bear unwarranted health risks and inappropriate deprivation of peaceful enjoyment of the premises to which they have been invited or permitted to enter, even when steps have been taken to separate "smoking" and "nonsmoking" areas within the confined space.

(f) The city recognizes that smoke creates a danger to the health and safety of the public at large and that, in order to protect the health and welfare of the public, it is necessary to restrict smoking in the manner provided for in this article (the "article").

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FLORENCE, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED, AND BY THE AUTHORITY THEREOF AS FOLLOWS:

Section 1. Enactment and effective dates.

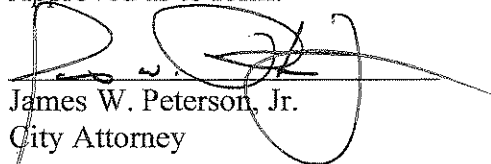
The provisions contained in the attached Exhibit A shall be enacted as the new smoking ordinance for the City of Florence, which shall be titled "Smoking in Public Places and Places of Employment," and contained in Chapter 10 of the City Code. The attached exhibit is incorporated herein by reference. The effective date shall be November 1, 2011.

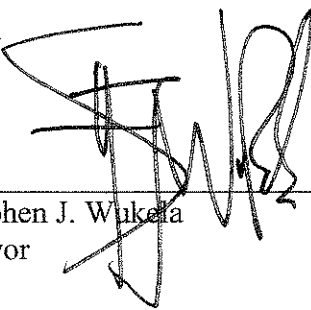
Section 2. Codification

The Municipal Code Corporation as codifier of the City of Florence Code shall in consultation with the City of Florence Attorney have discretion to make such adjustments in the numbering and sequencing of the article numbers and sections numbers as will reasonably assure compliance with standard practices in codification and to codify the new provisions as soon as feasible after their effective dates.

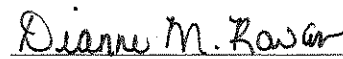
ADOPTED THIS 9th DAY OF May, 2011.

Approved as to form:


James W. Peterson, Jr.
City Attorney


Stephen J. Wukela
Mayor

Attest:


Dianne M. Rowan
Municipal Clerk

APPROVED ON FIRST READING AT A MEETING OF FLORENCE CITY COUNCIL DATE 4-11-2011

ADOPTED ON SECOND READING DATE 5-9-2011

COPY TO Stephen J. Wukela; Jim Peterson; Octavia Williams-Blake

EXHIBIT A

Smoking in Public Places and Places of Employment

10-50. Prohibition of Smoking in Enclosed Public Places.

Smoking shall be prohibited in all enclosed buildings and spaces which are open to the public or have employees, and are within the City of Florence.

10-51. Where Smoking Not Regulated.

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Section 10-50 of this Ordinance:

- A. Private residences, except when used as a licensed childcare, adult day care, or health care facility.
- B. Hotel and motel rooms that are rented to guests and are designated as smoking rooms.
- C. Retail tobacco stores.
- D. Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
- E. Private clubs, except when being used for a function to which the general public is admitted.
- F. Privately owned and operated motor vehicles.
- G. Warehouse/work shop areas which are separated from the general public areas that have drive-in entrance door(s) and an outside fan ventilation system when the owner exercises the option to allow employee smoking in the shop/warehouse areas when it is ventilated through the use of the ventilation system and opened garage type door(s).
- H. A dedicated smoking area that is contained within a building provided the smoking area is not open to the public, employees are not required to be present in the smoking area for any work related activities, the smoking area is separated from the remainder of the building by walls and/or doors, and the smoking area is equipped with adequate ventilation which effectively ventilates smoking area air to the exterior of the building, provided said area has been certified by the city on petition by the owner as meeting the requirements of this paragraph.

10-52. Nonretaliation: Nonwaiver of Rights.

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

10-53. Enforcement.

- A. This Ordinance shall be enforced by the office of the City Manager or an authorized designee.
- B. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City.
- C. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the office of the City Manager.
- D. An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.

10-54. Violations and Penalties.

- A. A person 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 dollars (\$10) nor no more than twenty-five dollars (\$25).
- B. A person who owns, manages, operates, or otherwise controls a public place or place of employment 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 dollars (\$10) nor no more than twenty-five dollars (\$25).
- C. In order to enforce such infractions, the city shall serve a uniform ordinance summons upon the infractor.
- D. In the event the infractor fails to pay the civil fine or fails to appear pursuant to uniform ordinance summons, the city may utilize the Set-Off Debt Process provided for under Section 12-56-50, *et. seq.* of the South Carolina Code of Laws, as Amended.
- E. A violation of provisions of this ordinance shall not constitute a nuisance in the City of Florence.

10-55. Interpretation for Intent.

It is the intent of Council to prohibit smoking whenever the private choice of smoking intrudes or has the capacity to intrude upon the right of persons concerned about protecting their own rights to be free from the hazards and inconvenience of secondhand smoke. All provisions shall be construed to achieve these purposes.

10-56. Definitions.

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

A. "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, or for purposes of benefiting particular club members and their guests, 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 is exempt from the payment of federal income tax. Establishments which are in fact operating as bars, restaurants, or entertainment venues primarily for the pecuniary benefit of the owner, or chief operating officer, or other person having substantial control shall not be treated as private clubs under this article.

B. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. The term specifically includes cigar bars, which are establishments licensed for the on-premises sale of beer, wine, and alcoholic beverages as well as some food service, but the term does not include any establishment which is primarily a bar or restaurant and which undertakes to make retail offerings of tobacco products as a means of circumventing the purposes of this article.

C. "Enclosed buildings and spaces" means all space between a floor and ceiling that is enclosed on all sides by walls or windows (exclusive of doorways), which extend from the floor to the ceiling, including stationary structures and mobile public conveyances.

D. "Open to the public" means an area to which the public is invited or to which the public is permitted to have access, including but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, theaters, waiting rooms, sports arena, stadiums and ball parks. A private club is "open to the public" when being used for a function to which the general public is allowed entry. A private residence is not "open to the public" unless it is used as a childcare, adult day care, or health care facility.