

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
TOWN OF ATLANTIC BEACH)

**AN ORDINANCE TO ADD ARTICLE IV TO CHAPTER 7
ENTITLED PROHIBITION OF SMOKING**

WHEREAS, Atlantic Beach Town Council hereby finds that it is necessary and proper and in the best interests of the community relative to the personal health, safety and welfare of its citizens to pass this Ordinance pertaining to the regulation of smoking and tobacco products within the Town.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Councilmembers of the Municipality of Atlantic Beach, in Council assembled, that *the findings hereinbelow are adopted*, and Title Health and Sanitation of the Atlantic Beach Code of Ordinances shall be and is hereby amended by adding Article IV to Chapter 7 thereunder, to specifically read as follows:

**CHAPTER 7: HEALTH AND SANITATION
ARTICLE IV: PROHIBITION OF SMOKING IN THE WORKPLACE**

Section 7-107 Findings.

Atlantic Beach Town Council makes the following findings relative to the adoption of this Chapter:

- (A) The Town 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

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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; 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 25-50% 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; and

(D) 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; and

(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; and

(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; and

(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. 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.

Section 7-108 Intent.

Town Council finds that it is in the best interest of the people of this Town to protect nonsmokers from involuntary exposure to environmental tobacco smoke. 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.

Section 7-109 Definitions.

(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.

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(C) "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 1 or more persons.

(D) "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.

(E) "Environmental tobacco smoke" (ETS) or "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 ETS is also frequently referred to as "passive smoking," "secondhand smoking" or "involuntary smoking."

(F) "Court" means the Town of Atlantic Beach Municipal Court

(G) "Police Department" means the Town of Atlantic Beach Police Department.

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

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

(J) "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.

(K) "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, cabarets, cafes, public or private clubs, pool halls and bowling alleys.

(L) "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 7-110 Prohibition of Smoking.

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

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(C) 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.

(D) Smoking shall be prohibited on the beaches and beach walkovers in the Town of Atlantic Beach, recreation facilities in the Town of Atlantic Beach and public parks within the Town of Atlantic Beach.

(E) Smoking shall be prohibited within thirty (30) feet of all public buildings.

Section 7-111 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 listed pursuant to Sub-article 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 Town is authorized therein;

(5) Elevators;

(6) Public transportation vehicles, except for taxicabs;

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

Section 7-112 Exceptions.

Notwithstanding the provisions of Section 7-110 herein, smoking may be permitted in the following places and/or circumstances:

(A) Private residences;

(B) Hotel, motel, inn, bed and breakfast and lodging home rooms that are rented to guests, designated as "smoking room" ("Rooms") provided that the total percentage of such

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Rooms does not exceed 25% 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 7-113 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.

Section 7-114 Jurisdiction, Enforcement and Penalties.

- (A) The Municipal Court shall have jurisdiction over prosecuting violations of the provisions of this Chapter.
- (B) The Police Department shall enforce the provisions of this Chapter.
- (C) The Police Department shall seek to obtain voluntary compliance with this Chapter by means of publicity and education programs, and the issuance of warnings, where appropriate.
- (D) Any person who violates any provision of this Chapter shall be subject to a maximum fine of not more than \$25.00 plus all other state assessments, court charges and fees.
- (E) A separate offense shall be deemed committed on each day that a violation occurs or continues.

Section 7-115 Severability.

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

Section 7-116 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 Chapter or exercises any right conferred by this Chapter.

Dated this _____ day of _____, 2011.

ATLANTIC BEACH TOWN COUNCIL

Charlene Taylor, Acting Mayor

Jake Evans, Councilmember

Josephine Isom, Councilmember

L. Donnell Thompson, Councilmember

Attest:

Town Clerk

Date of First Reading: _____

Date of Second Reading: _____