

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)
CITY OF CAYCE)

ORDINANCE
Amending the Cayce City Code to
Add a New Chapter 35 Regulating
Smoking in Places of Employment

WHEREAS, the City Council, based on the findings below and on the legislative efforts of other governments in this State, has determined that it is in the interest of the general public and of employees in the workplace within the City to regulate, by ordinance, smoking in places of employment so as to address the harmful effects of secondhand tobacco smoke; and

WHEREAS, the City Council has determined that additional regulation of smoking in areas beyond those addressed in the State Clean Indoor Air Act of 1990 is appropriate in the furtherance of its duty to preserve the health of the general public and of employees in the workplace; and

WHEREAS, the City Council, as an incident to the adoption of this Ordinance, makes the following findings:

- (1) 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
- (2) 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
- (3) 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
- (4) Exposure to secondhand smoke by children leads to decreased lung function, asthma, pneumonia, ear infections, bronchitis and even sudden infant death syndrome; and
- (5) 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
- (6) Workplaces have been shown to be locations of significant exposure to secondhand tobacco smoke by employees working in the City of Cayce; and

- (7) 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
- (8) 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 except where the owner of such building shall designate smoking areas; and

WHEREAS, the City Council declares that the purposes of this Ordinance are (1) to preserve and improve the health, comfort, and environment of the people of the City of Cayce by limiting exposure to secondhand smoke in the workplace, and (2) to facilitate the right of nonsmokers to breathe smoke-free air, recognizing that the need to breathe smoke-free air should have priority over the desire to smoke,

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Council of the City of Cayce, in Council, duly assembled, as follows:

Section I. The Code of Ordinances of the City of Cayce is hereby amended to add a new Chapter to be numbered as Chapter 35 and entitled "Smoking in Places of Employment" which shall read as follows:

Chapter 35 Smoking in Places of Employment

Section 35-1. Smoking in Places of Employment.

(a) Definitions.

- (1) "Employee" means any person who performs services for an employer in return for wages, profit or other valuable consideration, and/or a person who volunteers his or her services for a non-profit entity.
- (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 Workplace, Work Space, or Work Spaces as defined herein, that employs one or more persons.
- (3) "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.
- (4) "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, 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 primarily for the pecuniary benefit of the owner or chief operating officer shall not be treated as private clubs under this definition. A private club will not be considered a private club for the purposes of this definition when being used for a function for which the general public is allowed to enter.

- (5) "Retail tobacco store" means any establishment which does not possess a retail food or retail beer/wine/alcohol 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 (defined as less than 5% of gross sales for all other products combined), and in which the entry of persons under the age of eighteen (18) is prohibited at all times.
- (6) "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."
- (7) "Smoking" means the inhaling, exhaling, burning, lighting or carrying of a lighted cigarette, cigar, pipe, or similar device or any other lighted tobacco product.
- (8) "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.
- (9) "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.
- (10) "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.

(b) Prohibition of Smoking in the Workplace.

- (1) 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 or workplace from smoking tobacco products therein.
- (2) No person shall smoke or possess a lighted tobacco product in any work space or workplace.

- (3) Notwithstanding any other provision in this Section, an owner, operator, manager, or other person in control of an establishment, facility or outdoor area may declare the entire establishment, facility or outdoor area as a nonsmoking location. Smoking shall then be prohibited in any place in which a sign conforming to the requirements of subsection (d) is posted.

(c) Exceptions. Notwithstanding the provisions of subsection (b) herein, smoking may be permitted in the following places in the City and under the following circumstances:

- (1) Private residences.
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate areas where smoking is prohibited under provisions of this Section. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- (3) Retail tobacco stores as defined herein.
- (4) Private clubs that have no employees, except when being used for a function to which the general public is admitted.
- (5) Religious ceremonies where smoking is part of the ritual.

(d) Posting of Signs. The owner, manager or person in control of a Workplace shall post a conspicuous sign at the main entrance to the Workplace, which shall contain the words "No Smoking" and the universal symbol for no smoking.

(e) Reasonable Distance. Smoking is prohibited within a distance of ten (10) feet from any door which is used as an entrance to or exit from an enclosed area where smoking is prohibited so as to insure that tobacco smoke does not enter the area through the entry. This distance shall be measured from the center of the door in question.

(f) Jurisdiction, Enforcement and Penalties.

- (1) A person who owns, manages, operates, or otherwise controls a Workplace or Work Space and who fails to comply with the provisions of this Section shall be deemed guilty of an infraction for each occurrence of noncompliance.
- (2) A person smoking or possessing a lighted tobacco product in any Work Space or Workplace shall be guilty of an infraction for each occurrence of smoking or possession.
- (3) An infraction is punishable by a fine of twenty five dollars (\$25). Each occurrence of a violation of this Section shall be considered a separate and distinct infraction. A violation of this Section is further declared to be a public nuisance.
- (4) In addition to the fines established by this Section, four (4) or more violations of this Section by a person who owns, manages, operates, or

otherwise controls a place of employment shall be a reason for and may result in the suspension or revocation of any occupancy permit or business license issued to the person for the premises on which the violation occurred.

SECTION II. Severability. If any section, subsection, or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION III. Effective Date. This Ordinance shall be enforced from and after June 1, 2010.

DONE IN MEETING DULY ASSEMBLED, this ____ day of _____, 2010.

Elise Partin, Mayor

ATTEST:

Tammy P. Barkley, Municipal Clerk

First reading: _____

Public Hearing: _____

Second reading and adoption: _____

Approved as to form: _____
Danny C. Crowe, City Attorney

