

ARTICLE II. SMOKING REGULATIONS IN PUBLIC BUILDINGS AND VEHICLES*

***Editor's note:** Ord. No. CC-2008-01, adopted Jan. 14, 2008, was not specifically amendatory of the Code. The editor has treated these new provisions as superseding art. II, which contained similar provisions and which derived from Ord. No. CC-87-020, § 1, adopted Oct. 19, 1987.

Sec. 10-11. Use of tobacco products prohibited in all enclosed city-owned buildings.

It shall be unlawful for any person to use any tobacco product, including a lit cigarette, cigar, pipe or other lighted smoking material or equipment, chewing tobacco, "dip" or snuff, in any enclosed city-owned building. "No Smoking" signs shall be conspicuously displayed near all entrances to all enclosed city-owned or occupied buildings.

For purposes of this section, "enclosed" means a structure or building that is bound on all sides by any combination of walls, half walls, windows or doorways which extend from floor to ceiling, regardless of whether the windows or doorways are open or closed.

(Ord. No. CC-2008-01, 1-14-08)

Sec. 10-12. Use of tobacco products prohibited in city-owned vehicles.

It shall be unlawful for any person to use any tobacco product, including a lighted cigar, cigarette, or other lighted smoking material or equipment, chewing tobacco, "dip" or snuff, in a city-owned or leased vehicle.

(Ord. No. CC-2008-01, 1-14-08)

Sec. 10-13. Smoking in public places.

Harmful effects from exposure to exhaled smoke and smoke from the end of a burning cigarette, cigar or pipe, commonly referred to as secondhand smoke, being well documented, it is in the interest of the health, safety and welfare of the general public that exposure to secondhand smoke be minimized in indoor places where it is usual and customary for members of the general public to convene to work, conduct business or recreate. It is the purpose of this article to foster and promote public health by decreasing citizens' exposure to secondhand smoke by regulating smoking in enclosed places normally accessible to the public at large, and in enclosed places normally accessible to and utilized by employees.

(Ord. No. CC-2008-01, 1-14-08)

Sec. 10-14. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

City attorney means the city attorney for the City of Clemson, South Carolina, or his designee.

Chief of police means the chief of police of the City of Clemson, South Carolina, or his designee.

Employee means any person who performs services for an employer, with or without compensation.

Employer means any person, partnership, association, corporation, trust, or other organized group of individuals or entity, whether public or private, which utilizes the services of one or more employees.

Enclosed area means a space in any structure or building that is bound on all sides by any combination of walls, half walls, windows, or doorways extending from floor to the ceiling, regardless of whether the windows or doors are open or closed.

Person(s) means an employer, an employee or a customer or other visitor on the premises regulated herein.

Place of employment means any enclosed area under the control of an employer which employees normally frequent during the course of employment, including, but not limited to, common work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, and hallways and stairways and other common areas of a building or structure.

Private club or Lodge means a bona fide organization, whether incorporated or not, which is the occupant of a building or a portion of a building that has a different address, a separate entrance and not connected by common doors or passageways with any other business within the building, and which is used solely and exclusively for social, benevolent, patriotic, recreational or fraternal purposes, and not pecuniary gain or profit, and no part of the net earnings of which inures to the direct benefit of any member or shareholder, and if engaged in the sale of beer, wine, porter, ale or alcoholic beverages, such is incidental to its main purpose, and which maintains on the premises a complete membership list showing the date of application of the proposed member, the date of admission after election, the date initiation fees and dues are paid, the amount paid by each member and each member's correct mailing address. No organization shall qualify as a private club or lodge under this section if it admits members on demand by payment of a nominal fee.

Private office means an independent work space or area separated from the remainder of a place of employment by four walls and a door, from floor to ceiling, and which is not immediately accessible to the general public or employees not assigned to work therein. Cubicle work spaces do not constitute a private office.

Public place means any enclosed area to which the public is invited or in which the public is permitted to convene, conduct business or recreate, including but not limited to, banks, educational facilities, health facilities, laundromats, public transportation facilities, recreational facilities, restaurants, establishments engaged in the sale or distribution of beer, wine, ale, porter or alcoholic beverages for on-premises consumption, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, waiting rooms and service lines.

Service line means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

Smoking means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other tobacco product in any manner or in any form.

(Ord. No. CC-2008-01, 1-14-08; Ord. No. CC-2008-10, 7-7-08)

Sec. 10-15. Prohibition of smoking in enclosed places.

(a) Except within a private office, the possession of lighted smoking materials in any form, including but not limited to the possession of lighted cigarettes, cigars, pipes or other tobacco products, is prohibited in all enclosed areas of places of employment within the city.

(b) The possession of lighted smoking materials in any form, including but not limited to the possession of lighted cigarettes, cigars, pipes or other tobacco products, shall be prohibited in all public places within the city.

(c) No person shall possess lighted smoking materials in any form, including but not limited to lighted cigarettes, cigars, pipes or other tobacco products, at an entrance to or exit from a building where smoking is prohibited pursuant to this section.

(Ord. No. CC-2008-01, 1-14-08)

Sec. 10-16. Publication of smoking regulations in places of employment.

The prohibition on smoking as set forth in subsection 10-15(a) shall be communicated by employers to all existing employees by the effective date of this article and to all prospective employees upon their application for employment.

(Ord. No. CC-2008-01, 1-14-08)

Sec. 10-17. Responsibilities of proprietors, owners and managers.

(a) A person having control of a place of employment or public place shall not knowingly permit, cause, suffer or allow any person to violate the provisions of section 10-15; provided it shall be an affirmative defense to an alleged violation of this subsection that the person having control of a the place of employment or public place has asked that the lighted cigarette, cigar, pipe or other tobacco product be extinguished and asked the person to leave the place of employment or public place if that person has failed or refused to extinguish the lighted cigarette, cigar, pipe or other tobacco products.

(b) A person having control of a place of employment or public place shall conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) near all entrances to a building or structure where smoking is prohibited by this article. Such signage shall consist of letters not less than two inches in height. The sign shall be a minimum of eight and one-half inches by 11 inches and shall include a statement of the minimum fine imposed by the city for violations of the "No-Smoking" ordinance.

(c) All ashtrays shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person in control of the area. Appropriate receptacles for cigarette may shall be provided in all areas exempted from this article.

(d) It shall be the responsibility of employers to provide a smoke-free workplace for all employees in accordance with the provisions of this article.

(e) Each employer having any place of employment located within the city shall adopt, implement, make known and post in a prominent location, a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment, to include common work areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities or common areas.

(f) The smoking policy shall be communicated to all employees within four weeks of the adoption of this article.

(g) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

(Ord. No. CC-2008-01, 1-14-08; Ord. No. CC-2008-10, 7-7-08)

Sec. 10-18. Where smoking is not regulated.

Notwithstanding any other provision of this article to the contrary, the following shall not be subject to the smoking restrictions of this article:

(1) Private residences.

(2) Hotel and motel rooms and bed and breakfast rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 25 percent of rooms rented to guests in a hotel or motel or bed and breakfast may be so designated. All smoking rooms on the same floor must be contiguous and smoke from those rooms must not infiltrate into areas where smoking is prohibited under the provisions of this article. The status of smoking rooms may not be changed, except to add additional nonsmoking rooms.

(3) Establishments where more than 50 percent of the revenue, volume of trade or business activity is derived from the blending of tobaccos, or sale of tobaccos, pipes, cigars or smokers' sundries, provided that smoking areas in these establishments are enclosed and smoke does not infiltrate into areas where smoking is prohibited under the provisions of this article.

(4) Religious ceremonies where smoking is part of a ritual.

(5) Private club or lodge operating within a building or portion of a building owned or leased by the club.

(6) Any location where smoking is regulated under S.C. Code 1976, § 44-95-10 et seq., as amended, the Clean Indoor Air Act, to include:

a. Public schools and preschools where routine or regular kindergarten, elementary or secondary educational classes are held, including libraries, but excluding private offices and teacher lounges which are not adjacent of classrooms or libraries, unless smoking is prohibited in private offices or teacher lounges by directive of the local school board or a smoke-free campus mandate by a district board of trustees;

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 S.C. Code 1976, § 20-7-2700, which are licensed pursuant to S.C. Code 1976, Subarticle 11, Article 13, Chapter 7 of Title 20, as amended;

c. Health care facilities as defined in S.C. Code 1976, § 44-7-130, as amended, but excluding designated smoking areas in employee break areas, unless the governing board of the facility has determined to maintain a smoke free environment;

d. Government buildings, as defined in S.C. Code 1976, § 44-95-20(4), except health care facilities as provided for in subpart c. hereof, and except for buildings owned or occupied by the City of Clemson;

e. Elevators;

f. Public transportation vehicles that are not owned or operated by the City of Clemson, excluding taxicabs;

g. Arenas and auditoriums of public theaters or public performing art centers, excluding areas that may be designated for smoking in foyers, lobbies or other common areas, and excluding smoking as part of a legitimate theatrical performance.

(Ord. No. CC-2008-01, 1-14-08)

Sec. 10-19. Enforcement.

(a) This article shall be enforced by the City of Clemson Police Department and any code enforcement personnel of the City of Clemson.

(b) Notice of the provisions of this article shall be given to all applicants for a business license in the city.

(c) The building codes officer, fire marshal, or their designees shall, while an establishment is undergoing otherwise mandated or voluntary inspections, inspect for compliance with this article.

(d) An owner, manager, operator, or employee of an establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.

(e) Any citizen who desires to register a complaint under this article may initiate enforcement with the office of the chief of police.

(Ord. No. CC-2008-01, 1-14-08; Ord. No. CC-2008-10, 7-7-08)

Sec. 10-20. Penalty for violation of this article.

(a) The City of Clemson Municipal Court shall collect the penalties due hereunder for any infraction(s) of the provisions of this Article.

(b) The City of Clemson Police Department, as well as any code enforcement personnel of the City, shall have the power to enforce the provisions of this Article by issuing a Uniform Ordinance Summons.

(c) Any person violating the provisions of this Article shall be guilty of an infraction and subject to a civil fine of not less than \$10 or more than \$25.00.

(d) Any person who owns, manages, operates, or otherwise controls a Public Place or Place of Employment who fails to adhere to the provisions of this Article shall be guilty of an infraction and subject to a civil fine of not less than \$10 or more than \$25.00.

(e) Each violation of this article shall be considered a separate and distinct offense.

(Ord. No. CC-2008-01, 1-14-08; Ord. No. CC-2008-10, 7-7-08; Ord. No. CC-2008-20, 12-15-08, Ord. No. CC-2009-09, 6-08-09)

Sec. 10-21. Other applicable laws.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ord. No. CC-2008-01, 1-14-08)

Sec. 10-22. 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 choice of others to be free from the hazards and inconvenience of second and smoke in places where they work, stand, sit, dine, drink, read, study or engage in entertainment and recreation in an enclosed public places or places of employment. All provisions of this article shall be construed to achieve these purposes.

(Ord. No. CC-2008-01, 1-14-08)