

AN ORDINANCE

TO AMEND THE CODE OF THE CITY OF SPARTANBURG 1988, CHAPTER 13, ARTICLE X, "SMOKING IN PUBLIC PLACES" BY DELETING SAID ARTICLE IN ITS ENTIRETY AND REPLACING IT WITH "SMOKING REGULATIONS IN PUBLIC PLACES AND VEHICLES."

BE IT ORDAINED by the Mayor and Members of Council of the City of Spartanburg, South Carolina, in Council assembled:

Section 1. To amend Article X, "Smoking in Public Places" by deleting said Article in its entirety and inserting in lieu thereof the following:

ARTICLE X. SMOKING REGULATIONS IN PUBLIC PLACES AND VEHICLES

Sec. 13-500. Findings and Determinations.

- (1) 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 non-smokers, including heart disease, stroke, respiratory disease, and lung cancer.
- (2) The National Cancer Institute has determined that second-hand smoke is responsible for early death of up to Sixty-five Thousand (65,000) Americans annually.
- (3) The Surgeon General has declared that:
 - (a) Second-hand smoke causes disease and premature death in non-smokers exposed to smoke;
 - (b) Children exposed to second-hand smoke have an increased risk for sudden death syndrome, acute respiratory infections, ear problems, and more severe asthma;
 - (c) Adults exposed to second-hand smoke have a higher risk of coronary heart disease and lung cancer;
 - (d) There is no safe level of exposure to second-hand smoke; and
 - (e) Separating smoke and non-smoking sections of indoor areas does not sufficiently remove the threats of second-hand smoke in enclosed areas;
 - (f) The 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.

- (g) 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.

Sec. 13-501. Use of tobacco products prohibited in all enclosed City-owned building.

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 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.

Sec. 13-502. 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 in a City-owned or leased vehicle.

Sec. 13-503. Use of tobacco products on City-owned property and during City-sponsored special events such as festivals and parades.

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 on City-owned property and during City-sponsored special events, such as festivals and parades, within the event boundaries as established by the City, subject to the exceptions provided herein.

Sec. 13-504. 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 Spartanburg, South Carolina, or their designee.

Confined commercial public place means any enclosed area, including but not limited to common lobbies, offices, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias, hallways and stairways, restrooms, and other areas of a building or structure, to which the public, including any employee, is invited, solicited or permitted access to convene, conduct business including, but not limited to, the following types of facilities: restaurants; establishments engaged in the sale or distribution of beer, wine, ale, porter or alcoholic beverages for on-premises consumption; offices; educational, health, warehouse, distribution, automotive sales; automotive repair, retail, theaters; public transportation; recreational; manufacturing; marketing; banking; finance; professional services; or entertainment.

Director of Public Safety means the director of public safety of the City of Spartanburg, South Carolina, or their 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 service 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.

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 workplace means any location that would not in its normal course of business activity permit access to the general public, is limited to an employer with no paid or unpaid employees of any type, and with such

location being in a confined space that does not share ventilation or HVAC equipment with any other confined space or smoke does not infiltrate into areas where smoking is prohibited under the provisions of this Article.

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.

Sec. 13-505. Prohibition of smoking in confined commercial public places.

- (1) Except within a private workplace, 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 confined commercial public places.
- (2) 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 confined commercial public places within the City.
- (3) No person shall possess lighted smoking materials in any form, including but not limited to lighted cigarettes, cigars, pipes or other tobacco products, within a sufficient distance of not less than fifteen (15) feet from an entrance to or exit from a building to prevent smoke infiltration where smoking is prohibited pursuant to this section and provided no person has to walk through the smoking area to enter or exit the building.

Sec. 13-506. Prohibition of smoking in other certain outdoor areas.

Smoking shall also be prohibited in areas where food is served in encroachment areas on public sidewalks, plazas, and parks and where food is served on decks, balconies, and patios of restaurants and bars. If a private restaurant or bar does not serve food on its plazas, parks, decks, balconies or patios, smoking is permitted if it is a sufficient distance of not less than fifteen (15) feet from the entrance or exit of a building and there is no smoke infiltration where smoking is prohibited pursuant to this section and provided no person has to walk through the smoking area to enter or exit the building.

Sec. 13-507. Responsibilities of proprietors, owners and managers.

- (1) A person having control of a confined commercial public place shall not knowingly permit, cause, suffer or allow any person to violate

the provisions of section 13-506; provided it shall be an affirmative defense to an alleged violation of this subsection that the person having control of a place of employment or confined public place if that person has failed or refused to extinguish the lighted cigarette, cigar, pipe or other tobacco products.

- (2) A person having control of a place of employment or confined commercial 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 eleven inches and shall include a statement of the minimum fine imposed by the City for violations of the "No-Smoking" ordinance.
- (3) 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 shall be provided in all areas exempted from this Article.
- (4) Smoking shall be prohibited in all aspects of enclosed spaces within a confined commercial public place, to include common areas, auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, cafeterias, lounges, stairs, restrooms, and all other enclosed facilities or common areas.

Sec. 13-508. 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 except when used as a licensed child care, adult day care, or any other health care facility or home occupation to which the public visits.
- (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 twenty-five percent (25%) 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 fifty percent (50%) 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 provided there is a separate ventilation or HVAC system and smoke does not infiltrate into areas where smoking is prohibited under the provisions of this Article.**
- (6) Designated outdoor smoking areas provided that the tobacco smoke does not enter the confined public space through entrances, windows, ventilation systems or other means and provided that no persons have to pass through the smoking area to enter the confined public space. Designated outdoor areas must provide containers for the disposal of the tobacco products.**
- (7) 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;**
 - (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 § 20-7-200, which are licensed 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 Spartanburg;**
 - (e) Elevators;**
 - (f) Public transportation vehicles that are not owned or operated by the City of Spartanburg, excluding taxicabs;**
 - (g) Arenas and auditoriums of public theaters or public performing art centers, excluding areas that may be designated for smoking in foyers, lobby or other common areas, and excluding smoking as part of a legitimate theatrical performance.**

Sec. 13-509. Enforcement.

- (1) This Article shall be enforced by the City of Spartanburg Department of Public Safety as authorized by the City Manager.**
- (2) Notice of the provisions of this Article shall be given to all applicants for a business license in the City.**
- (3) An owner, manager, operator, or employee of an establishment regulated by this Article shall inform persons violating this Article of the appropriate provisions thereof.**
- (4) Any citizen who desires to register a complaint under this Article may initiate enforcement with the office of the Director of Public Safety.**
- (5) Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.**

Sec. 13-510. Penalty for violation of this Article.

- (1) The City of Spartanburg Municipal Court shall collect the penalties due hereunder for any infraction(s) of the provisions of this Article.**
- (2) The City of Spartanburg's Department of Public Safety shall have the power to enforce the provisions of this Article by issuing a Uniform Ordinance Summons.**
- (3) Any person violating the provisions of this Article shall be guilty of an infraction and subject to a civil fine of not less than \$10.00 or more than \$25.00.**
- (4) Any person who owns, manages, operates, or otherwise controls a confined public place 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 \$10.00 or more than \$25.00.**
- (5) In addition to the fines established by this section, repeated violations of this Article by a person who owns, manages, operates, or otherwise controls a confined public place 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.**

(6) Each violation of this Article shall be considered a separate and distinct offense.

Sec. 13-511. Other applicable laws.

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

Sec. 13-512. Nonretaliation.

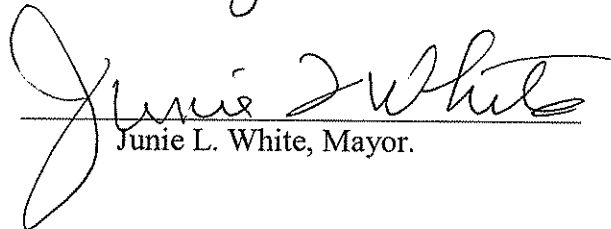
No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.

Sec. 13-513. Interpretation for intent.

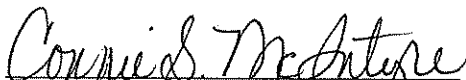
It is the intent of Council to prohibit smoking whenever the private choice of smoking intrudes or has the capacity to intrude upon the choice of others to be free from the hazards and inconvenience of second and smoke in places where they work, stand, sit, dine, drink, read, study or engage in entertainment and recreation in a confined public place. All provisions of this Article shall be construed to achieve these purposes.

Section 2. This Ordinance to become effective September 1, 2011.

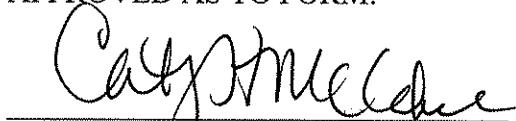
DONE AND RATIFIED this 9 day of May, 2011.


Junie L. White, Mayor.

ATTEST:


Connie S. McIntyre, City Clerk

APPROVED AS TO FORM:


Cathy Hoefler McCabe, City Attorney.

04/25/11 1st Reading

05/09/11 2nd Reading