

Sponsor(s) : Smith
First Reading : January 9, 2007
Committee Referral : Judicial & Public Safety Committee
Committee Consideration Date : August 22, 2006 September 19, 2006 December 12, 2006 February 20, 2007
Committee Recommendation : Approval Approval
Second Reading : February 6, 2007
Public Hearing : February 6, 2007
Third Reading : February 20, 2007
Effective Date : June 1, 2007

ORDINANCE NO. 07-02-07

COUNCIL ADMINISTRATOR FORM OF GOVERNMENT FOR AIKEN COUNTY

(To Amend the Aiken County Code of Ordinances to Add Article V, Regulation of Smoking to Chapter 11 Health, Social Services and Sanitation to Provide for the Establishment of a Smoke Free Environment Within Unincorporated Aiken County.)

WHEREAS:

1. 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; and
2. The Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen; and
3. Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease and children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities and cancer; and
4. The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability; and
5. The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and
6. The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and
7. A significant amount of secondhand smoke exposure occurs in the workplace and 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
8. Various economic analyses examining restaurant and hotel receipts and analyzing economic variables in areas where smoke free legislation has been implemented have shown in a number of instances either no difference or a positive economic impact following the implementation of laws requiring these areas to be smoke free; and
9. Smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses.

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NOW THEREFORE BE IT ENACTED BY THE AIKEN COUNTY COUNCIL THAT:

1. Chapter 11 "Health, Social Services and Sanitation" of the Aiken County Code of Ordinances is amended by adding Article V, "Regulation of Smoking," as follows:

ARTICLE V. REGULATION OF SMOKING.

Section 11-70. Definitions. The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

- (a) *Attached Bar* means a bar area of a restaurant.
- (b) *Bar* means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and which the serving of food is only incidental to the consumption of those beverages, including, but not limited to, taverns, nightclubs, cocktail lounges, and cabarets. Twenty percent (20%) or less of the revenue of the bar must come from the sale of food; if the percentage of revenue from food is greater than 20% then the business is classified as a restaurant.
- (c) *Business* means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, or as a nonprofit entity for the manufacture, distribution, sale, delivery or provision of any type of goods or services.
- (d) *Employee* means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- (e) *Employer* means a person, business, partnership, association, corporation, including a municipal corporation, trust or non-profit entity that employs the services of one or more individual persons.
- (f) *Enclosed Area* means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- (g) *Health Care Facility* means, an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. And including all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- (h) *Infiltrate* means to permeate an enclosed area by passing through its walls, ceilings, floors, windows, or ventilation systems to the extent that an individual can smell secondhand smoke.
- (i) *Place of Employment* means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- (j) *Public Place* means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, hotels and motels, laundromats, polling places, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, health care facility, barbershop, beauty shop, personal care home, or other health care facility.

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- (k) *Restaurant* means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include an Attached Bar within any restaurant.
- (l) Secondhand smoke means smoke emitted from lighted, smoldering, or burning tobacco when the person smoking is not inhaling, smoke emitted at the mouthpiece during puff drawing, and smoke exhaled by the person smoking.
- (m) *Retail Tobacco Store* means a retail store which derives not less than 85% of its gross revenues from the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- (n) *Service Line* means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- (o) *Shopping Mall* means an enclosed public walkway or hail area that serves to connect retail or professional establishments.
- (p) *Smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.
- (q) Smoking area means a separately designated enclosed room which need not be entered by an employee in order to conduct business that is designated as a smoking area and, when so designated as a smoking area, shall not be construed as to deprive employees of a nonsmoking lounge, waiting area, or break room.
- (r) *Sports Arena* means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other buildings, structures or places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Sec. 11-71. Public Areas Where Smoking is Prohibited

Smoking is prohibited in all Public Places and Sports Arenas within the unincorporated areas of Aiken County, including but not limited to, the following places:

- (a) Aquariums, galleries, libraries, and museums.
- (b) Areas available to and customarily used by the general public in the facilities of any business entity patronized by the public, including but not limited to reception areas, waiting rooms, rest rooms, hallways, lounges and display areas.
- (c) Attached Bars.
- (d) Banks.
- (e) Bingo facilities.
- (f) Buildings and vehicles owned, leased, or operated by Aiken County.
- (g) Educational facilities.
- (h) Convention facilities.
- (i) Elevators.
- (j) Facilities primarily used as theaters for exhibiting a motion picture, stage, drama, dance, lecture, musical recital, or other entertainment performances.
- (k) Health care facilities.
- (l) Hotels and motels except as otherwise provided in Section 11-74(b) of this Article.
- (m) Laundromats.
- (n) Licensed child care and adult day care facilities.

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- (o) Lobbies, hallways, clubhouses, recreation rooms, meeting rooms and other common areas in apartment buildings and complexes, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (p) Polling places.
- (q) Public transportation facilities, including busses and taxicabs, operating under the authority of Aiken County, and ticket, boarding and waiting areas of public transit depots.
- (r) Restaurants, including attached bars.
- (s) Retail stores, retail service establishments and retail food production and marketing establishments.
- (t) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of Aiken County or a political subdivision of the State of South Carolina when a public meeting is in progress, to the extent the place is subject to the jurisdiction of Aiken County.
- (u) Service lines.
- (v) Shopping malls.

Sec. 11-72. Prohibition of Smoking in Places of Employment

- (a) Smoking shall be prohibited in all enclosed facilities within places of employment without exception including common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles and all other enclosed facilities.
- (b) The prohibition on smoking shall be communicated to all present employees by the effective date of this Ordinance and to all subsequent employees upon their application for employment.

Sec. 11-73. Additional Areas Where Smoking is Prohibited

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. This ten (10) feet distance shall be measured from the center of the door in question. This distance requirement shall not apply to any door which has a properly operating vertical air curtain.

Sec. 11-74. Smoking Not Prohibited

Notwithstanding the provisions of Sections 11-71 through 11-73, smoking is not prohibited in the following areas:

- (a) Private residences, except when used as a licensed child care, adult day care, barbershop, beauty shop, personal care home or other health care facility.
- (b) Hotel and motel rooms rented to guests and designated as smoking rooms; provided, however, that not more than twenty (20%) percent of guest rooms in a hotel or motel may be so designated.
- (c) Retail tobacco stores provided that smoke from such stores does not infiltrate areas where smoking is prohibited under the provisions of this Ordinance.
- (d) Outdoor areas of places of employment except those covered by the provisions of Section 11-73.
- (e) Outdoor dining areas which may be covered by a roof but must be open on at least three (3) sides.
- (f) Bars and restaurants as follows:
 - 1. All bars and restaurants to which access is denied to any person under the age of 18 and that do not employ any individual under the age of 18; or

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2. Private rooms in restaurants and bars if such rooms are enclosed and have an air handling system independent from the main air handling system that serves all other areas of the building and all air within the private room is exhausted directly to the outside by an exhaust fan of sufficient size.

(g) Smoking areas designated by an employer which shall meet the following requirements:

1. The smoking area shall be located in a nonwork area where no employee, as part of his or her work responsibilities, shall be required to enter, except such work responsibilities shall not include custodial or maintenance work carried out in the smoking area when it is unoccupied;
2. Air handling systems from the smoking area shall be independent from the main air handling system that serves all other areas of the building and all air within the smoking area shall be exhausted directly to the outside by an exhaust fan of sufficient size and capacity for the smoking area and no air from the smoking area shall be recirculated through or infiltrate other parts of the building; and
3. The smoking area shall be for the use of employees only.

Sec. 11-75. Establishment of Additional Restricted Areas

Notwithstanding any other provision in this Ordinance, 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 Section 11-76 is posted.

Sec. 11-76. Posting of Signs

- (a) "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) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Article, by the owner, operator, manager, or other person in control of that place.
- (b) Every public place and place of employment where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (c) All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Ordinance by owner, operator, manger or other person having control of the area.
- (d) All businesses and facilities open to the general public which allow smoking within the facility (as allowed by this ordinance) are required to post signs which say: "Warning. This business allows smoking and may have hazardous smoke. Enter at your own risk." The signs shall be on a red background.

The county will pay for the production of the signs, but the business must obtain the signs from the county and post one at each entrance and exit location in a conspicuous location.

Sec. 11-77. Nursing Homes, Long-term Care Facilities and Assisted Living Facilities

Nursing homes, long term care facilities and assisted living facilities shall each adopt smoke free policies and enforce them subject to any restrictions or limitations thereon contained in the rules and regulations promulgated by South Carolina Department of Health and Environmental Control where applicable.

Sec. 11-78. 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 Ordinance or reports or attempts to prosecute a violation of this Ordinance.

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Sec. 11-79. Exemptions:

- (a) Any nonprofit organization under the laws of the state of its organization which meets the criteria set forth in either (1) or (2) below, may apply to County Council for an exemption from this Article:
 - (1) A private club which:
 - (i) has at least 75 regular dues-paying members who pay dues of at least \$50 per year; and
 - (ii) the membership in the club is limited in number and by specified membership criteria;
 - (iii) is not open to the general public, but only to its members and their guests; and
 - (iv) substantially all of its activities are for the pleasure or recreation or other non-profitable purposes of its members and it does not receive more than 35% of its gross revenues from sources outside of its membership; and
 - (v) no part of its net earnings inures to the benefit of any for profit private entity or individual.
 - (2) A post or organization of past or present members of the Armed Forces of the United States;
 - (i) at least 75% of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members are spouses, widows or widowers of past or present members of the Armed Forces of the United States; and
 - (ii) no part of the net earnings of which inures to the benefit of any for profit private entity or individual.
- (b) Any organization seeking to avail itself of this exemption shall make exception for this exemption to County Council on such forms and following such procedures as may be provided for by County Council. County Council shall then make a determination as to whether the applicant meets the criteria for this exemption and on the basis of such determination grant or deny the exemption to the applicant. Any exemption granted by County Council may be revoked by County Council at any time that it determines that the requirements for the exemption are no longer being met.
- (c) Any exemption granted to an entity shall not apply during any time that the facilities operated by the entity are open to the public or are used by a non-member for meetings, gatherings, social events and the like. In such circumstances, the provisions of this Article must be complied with.

Sec. 11-80. Enforcement

- (a) This Ordinance shall be enforced by any law enforcement officer or Code Enforcement Officer of Aiken County or an authorized designee.
- (b) Notice of the provisions of this Ordinance shall be given to each person or entity registering a business in unincorporated Aiken County.
- (c) Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with any sheriff's deputy, fire marshal, code enforcement officer, building inspector or building official of Aiken County.
- (d) The Health Department, Fire Marshal or other designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.
- (e) An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions hereof.
- (f) In addition to the remedies provided by the provisions of this Section, Aiken County may apply for injunctive relief to enforce the provisions of this Ordinance in any court of competent jurisdiction.

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Sec. 11-81. Violations and Penalties

- (a) Any person who violates any provision of this Ordinance, shall, upon conviction, be subject to the penalties as set forth in Section 1-8 of this Code.
- (b) In addition to the penalties established by this Section, a violation of this Ordinance by a person who owns, manages, operators or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

Sec. 11-83. Government Agency Cooperation

The Aiken County Health Department shall annually request other governmental and educational agencies having facilities within Aiken County to establish local operating procedures in cooperation and compliance with this Ordinance.”

- 2. The municipalities in Aiken County are requested to consider adoption of similar “No Smoking” ordinances.
- 3. All provisions in other County Ordinances in conflict with this Ordinance are hereby repealed.
- 4. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application and to this end, the provisions of this Ordinance are severable.

This Ordinance shall become effective on June 1, 2007.

Adopted at the regular meeting of Aiken County Council on February 20, 2007.

ATTEST:

SIGNED:

Tamara Sullivan, Council Clerk

Ronnie Young, Chairman

IMPACT STATEMENT:

COUNCIL VOTE: Majority
OPPOSED: Rawls, Barton, Bunker & Young