

AN ORDINANCE AMENDING CHAPTER 22 OF THE CITY CODE OF AIKEN, SOUTH CAROLINA TO ADD NEW ARTICLE IV, SECTION 22-64, *ET SEQ.*, REGARDING REGULATION OF SMOKING IN THE CITY LIMITS.

WHEREAS, the City of Aiken has established as a priority improving the quality of life in its boundaries, which is in the best interests of the general health, safety, and welfare of the city and its citizens; and

WHEREAS, numerous studies have concluded that second hand smoke is a health risk, a known carcinogen, an impairment to normal respiratory functions, and a fire hazard; and

WHEREAS, the City of Aiken will benefit from these findings as well as those findings contained in the attached Exhibit 'A' all of which point to the necessity of prohibiting smoking in indoor public spaces in the city limits; and

WHEREAS, the Council of the City of Aiken has concluded that adoption of the proposed new smoking regulations for Chapter 22, Article IV, Section 64 *et seq.*, of the City Code of Aiken, South Carolina set forth as Exhibit 'A' is essential to the general health, safety, and welfare of the City and is in the best interests of its citizens;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF AIKEN HEREBY ORDAINS THAT:

Section 1: New Chapter 22, Article IV, Sections 64, *et seq.*, Aiken City Code is hereby added as set forth on Exhibit 'A' attached and incorporated by reference.

Section 2: In all other respects, Chapter 22, Aiken City Code, shall remain in full force and effect. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent necessary to give the provisions of this Ordinance full force and effect.

Section 3: In the event any provision of this Ordinance, or any part thereof, or any application thereof to any person or circumstance, is for any reason held to be unconstitutional, or otherwise invalid or ineffective, by any court of competent jurisdiction on its face, or as applied, such holding shall not affect the validity or effectiveness or any of the remaining provisions of this Ordinance, or any part of it, or any application of it to any person or circumstance. It is hereby declared to be in the legislative intent of the City Council that this Ordinance would have been adopted had such unconstitutional, invalid, or ineffective provisions not been included here.

Section 6: This Ordinance shall be effective upon adoption by the Council of the City of Aiken.

ATTACHMENT 'A':
SMOKING REGULATIONS

ARTICLE IV

Sec. 22-64. Findings and determinations.

The Aiken City Council ("Council") hereby finds and determines:

- (a) The City of Aiken, South Carolina ("City"), is an incorporated municipality located in Aiken County, South Carolina, 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 § 5-7-30 (2007 Supp.) relating to regulating streets, markets, and public health.
- (b) 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. The National Cancer Institute has determined that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*, August 1999.). The Surgeon General has declared that:
 - 1) Secondhand smoke causes disease and premature death in nonsmokers exposed to smoke;
 - 2) Children exposed to secondhand smoke have an increased risk for sudden death syndrome, acute respiratory infections, ear problems, and more severe asthma;
 - 3) Adults exposed to secondary smoke have a higher risk of coronary heart disease and lung cancer;
 - 4) There is no safe level of exposure to secondhand smoke; and
 - 5) Separating smoking and nonsmoking sections of indoor areas does not sufficiently remove the threats of secondhand smoke in enclosed areas.
- (c) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25 to 50 percent 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. (Pitsavos, C.; Panagiotakos, D.B.; Chrysoshoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzias, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

- (d) 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. ("The high price of cigarette smoking, "*Business & Health* 15(8), Supplement A: 6-9, August 1997.)
- (e) 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.
- (f) 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 ("Article").

Sec. 22-65. Definitions.

Unless the context shall clearly indicate some other meaning, the terms defined in this section shall, for all purposes of this article and other documents herein referenced, have the meanings herein specified. Definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined.

"Bar" shall mean an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in 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.

"Business" shall mean a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are offered for sale; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

"Employee" shall mean a person who is employed by an employer in consideration for direct or indirect monetary wages, commission, goods or services in kind or like compensation, and it shall also mean a person who volunteers his or her services for a non-profit entity.

"Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or nonprofit entity that employs the services of one or more individual persons.

"Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by walls or windows (exclusive of doorways), which extend from the floor to the ceiling, including stationary structures and mobile public conveyances. It does not mean an area open at least fifty [50%] percent to the outdoors, and not including any roof or ceiling over it in this calculation.

"Health care facility" means an office or institution providing care or treatment of persons having 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 (except as otherwise permitted herein), homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

"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 second hand smoke.

"Place of employment" means an 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" for purposes of this article unless it is used as a childcare, adult day care, or health care facility. Nor is a private passenger motor vehicle a "place of employment" when used in the performance of employment responsibilities, provided it is not being used as public conveyance.

"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, or for purposes of benefiting particular club members and their guests, which is operated solely for a recreational, fraternal, 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, or other person having substantial control shall not be treated as private clubs under this article.

"Public place" means an area to which the public is invited or to which the public is permitted to have access, including but not limited to, the indoor areas of banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, theaters, or waiting rooms. A private club is a "public place" when being used for a function to which the general public is allowed entry. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.

"Restaurant" means the indoor areas of a eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, ice cream parlors, 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 a bar area within the restaurant.

"Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental. The term specifically includes cigar bars, which are establishments licensed for the on-premises sale of beer, wine, and alcoholic beverages as well as some food service, but the term does not include any establishment which is primarily a bar or restaurant and which undertakes to make retail offerings of tobacco products as a means of circumventing the purposes of this article.

"Second hand 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.

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

"Shopping mall" means an enclosed public plaza, promenade, walkway, or hall area that serves to connect retail or professional establishments.

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

Sec. 22-66. Application to city-owned facilities.

All enclosed facilities or buildings owned, leased, or operated by the city shall be subject to the provisions of this article.

Sec. 22-67. Prohibition of smoking in enclosed public places.

Smoking shall be prohibited in all enclosed public places within the city, including but not limited to, the following places:

- (a) Galleries, libraries, and museums.
- (b) Areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
- (c) Bars.
- (d) Bingo facilities.
- (e) Conference centers and exhibition halls.

- (f) Educational facilities, both public and private.
- (g) Elevators.
- (h) Health care facilities.
- (i) Hotel and motel lobbies.
- (j) Licensed childcare and adult day care facilities.
- (k) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (l) Polling places.
- (m) Private clubs when being used for a function to which the general public is invited.
- (n) Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots.
- (o) Restaurants.
- (p) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (q) Retail stores.
- (r) Rooms, chambers, places of meeting or public assembly, including school buildings.
- (s) Service lines.
- (t) Shopping malls.
- (u) Theaters, performance halls, lecture halls, and similar facilities, inclusive of lobbies, audience seating areas, dressing rooms, projections booths, back stage areas, and the stage, but excluding smoking on stage when it is an integral part of a theatrical performance.

Sec. 22-68. Prohibition of smoking in places of employment.

- (a) Smoking shall be prohibited in all enclosed areas within places of employment without exception, including but not limited to common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles used for the conveyance of the public, but not including vehicles used in performing employment responsibilities when the sole occupants and users are person who smoke.

- (b) This prohibition on smoking 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.

Sec. 22-69. Where smoking not regulated.

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of sections 22-67 and 22-68 of this article:

- (a) Private residences, except when used as a licensed childcare, adult day care, or health care facility.
- (b) Hotel and motel rooms that are rented to guests and are designated as smoking rooms. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- (c) Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.
- (d) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article.
- (e) Private clubs that have no employees, except when being used for a function to which the general public is admitted.

Sec. 22-70. Declaration of establishment as nonsmoking.

Notwithstanding any other provision of this article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking also shall be prohibited in any place in which a No Smoking sign is posted.

Sec. 22-71. Nonretaliation; nonwaiver of rights.

- (a) 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.
- (b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 22-72. Enforcement.

- (a) This article shall be enforced by the office of the city manager or an authorized designee.
- (b) Notice of the provisions of this article shall be given to all applicants for a business license in the city.
- (c) Any citizen who desires to register a complaint under this article may initiate enforcement with the office of the city manager.
- (d) The building codes division, fire department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this article.
- (e) An owner, manager, operator, or employee of an establishment regulated by this article shall inform persons violating this article of the appropriate provisions thereof.
- (f) Notwithstanding any other provision of this article, an employee or member of the public may bring legal action against a person, business, or organization in violation of this article to enforce this article.
- (g) In addition to the remedies provided by the provisions of this section, the city or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 22-73. Violations and penalties.

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this article shall be guilty of an infraction, punishable by a fine of not less than \$10.00 nor more than \$25.00.
- (b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this article shall be guilty of an infraction, punishable by a fine of not less than \$10.00 nor more than \$25.00.
- (c) 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 public place or place of employment 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.
- (d) 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.

- (e) Each day of a continuing violation of this article shall be considered a separate and distinct offense.
- (f) No ordinance summons nor any enforcement action shall be taken under this ordinance prior to January 14, 2009.

Sec. 22-74. Public education.

The city will engage in a continuing program to explain and clarify the purposes and requirements of this article to citizens affected by it, and to guide owners/operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this article.

Sec. 22-75. Governmental agency cooperation.

The city shall annually request other governmental and educational agencies having facilities within the city to establish local operating procedures in cooperation and compliance with this article. This includes urging all federal, state, county, city, and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 22-76. Other applicable laws.

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

Sec. 22-77. 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 right of persons concerned about protecting their own rights to be free from the hazards and inconvenience of secondhand smoke in indoor places where they work, stand, sit, walk, dine, drink, read, study, or engage in entertainment. All provisions shall be construed to achieve these purposes.