

ORDINANCE 4088

TO AMEND THE HARTSVILLE CITY CODE CHAPTER 31 "ENVIRONMENT" ARTICLE I. "SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT", SECTION 31-2 "DEFINITIONS" "ENCLOSED AREA" AND "RESTAURANT", SECTION 31-6 "PROHIBITION OF SMOKING IN CERTAIN OUTDOOR AREAS" SUBSECTION (e), AND SECTION 31-7 "REASONABLE DISTANCE OF ENTRY AND OUTDOOR AREA".

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Sec. 31-1. - Findings and determinations.

The city council (the "council") of the city of Hartsville, South Carolina, hereby finds and determines:

(a) The city of Hartsville, South Carolina (the "city"), is an incorporated municipality located in Darlington 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 (2005 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—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.; Chrysohou, 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) Certain outdoor events and activities, such as parades, festivals, similar public gatherings, and playground recreation for children result in nonsmokers finding themselves in close proximity on a continuing basis to persons who are smoking, and not merely passing by them. Exposure to secondhand smoke during such outdoor events and activities can be reasonably seen to have the same effects of exposure as when nonsmokers are exposed to smoke in an enclosed space. Lighted cigarettes, cigars, pipes, and other smoking devices or paraphernalia of people standing or sitting in close proximity also have the potential of burning those with whom they inadvertently come into direct contact. The outdoor use of tobacco can also impose health threats when nonsmokers are required to inhale secondhand smoke while seated in stadium seating, while standing or walking in crowded outdoor event space on either public or private property, or while otherwise forced to sit, stand, or walk where there is a high concentration of smoke.

(f) The presence of secondhand smoke in enclosed spaces or in outside areas where there is a public gathering with people being in close proximity in places open to the public inevitably results in persons who do not smoke being forced to bear unwarranted health risks and sustaining 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 council 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 (the "article").

(h) The pervasive and continuing odor of stale tobacco smoke residue left behind by active tobacco smoke is evidence that smoke has infiltrated premises where the odor is identified.

Sec. 31-2. - 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 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.

"Cigar bar" shall mean an establishment that offers a meaningful selection of fine cigars and fine tobacco for pipes, including hookahs, for smoking on the premises as well as retail purposes and which is licensed for the on-premises sale of beer, wine, or alcoholic beverages, or some combination of those, as well as some food service. 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. No bar can be considered a cigar bar unless at least 30 percent of its gross revenue can be demonstrated to come from the sale of cigars, pipe tobacco, and related products,

"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 nonprofit 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; parking structures and other facilities having only partial exterior walls but otherwise enclosed by ceilings and floors shall also be included in this definition.

"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, 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.

"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 bona fide home office, studio, or workshop in a private residence is not a "place of employment" for purposes of this article unless it is used as a child care, 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 a public conveyance.

"Private club" means the location where a voluntary association of two or more people periodically or occasionally meets or gathers, usually for social, recreational, or business related purposes, but for any other purpose as well or for no purpose at all. The definition includes incorporated and unincorporated members' clubs composed of a board which manages members' dues and contributions. The definition also includes proprietary clubs, both incorporated and unincorporated, run for profit-making purposes. For purposes of this article, there is no necessity that the club be incorporated, or be selective in membership.

"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, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, private clubs, hair salons, massage therapy studios, retail service establishments, retail stores, shopping malls, theaters, waiting rooms, sports arena, stadiums and ball parks. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

"Restaurant" means an eating establishment, including, but not limited to, full service dining establishments, coffee shops, cafeterias, sandwich stands, soup and salad venues, ice cream parlors, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees while on premises of the establishment or for carry out, as well as kitchens and catering facilities in which food is prepared on the premises for delivery or 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.

"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.

"Sports activity venue" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, ball fields, tennis courts, bleachers at any location, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Sec. 31-3. - Application to city-owned facilities and vehicles.

All enclosed facilities, buildings, and vehicles owned, leased, or operated by the city shall be subject to the provisions of this article, without regard to location, time of day, or character of use.

Sec. 31-4. - 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 and cigar bars.
- (d) Bingo facilities.
- (e) Convention facilities, conference centers, and exhibition halls.
- (f) Educational facilities, both public and private.
- (g) Elevators.
- (h) Health care facilities.

- (i) Hotels and motels.
- (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, but excluding those which regularly and most commonly are situated in private homes in areas where such residential uses are lawfully permitted, such as book clubs, knitting clubs, and garden clubs, bridge, so long as they are in such residential locations.
- (n) Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots stations, and terminals.
- (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) Sports arenas.
- (v) 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. 31-5. - 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 persons who smoke. The foregoing exclusion for vehicles used in employment shall not apply to vehicles owned, operated, or managed by the city of Hartsville.

(b) This prohibition on smoking shall be communicated by employers, in writing, to all existing employees by the effective date of this article and to all prospective employees upon their application for employment.

Sec. 31-6. - Prohibition of smoking in certain outdoor areas.

Smoking shall also be prohibited in certain outdoor areas when the use involves a gathering of the public, regardless of the number actually assembled for the event, performance, or competition. This prohibition shall apply to:

- (a) Amphitheaters.
- (b) Ball parks and stadiums when in use for athletic competitions or public performances.
- (c) Parades and special events on public streets and city property.
- (d) Dining areas in encroachment areas on public sidewalks, plazas, and parks.
- (e) City owned parks, not including city owned parking lots.

Sec. 31-7. - Reasonable distance of entry and outdoor area.

Smoking is prohibited within a distance of ten feet from any entry into an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, the natural flow of outside air, or other means. Smoking is also prohibited within five feet of the boundary of the outdoor area where smoking is prohibited. Persons who have begun smoking prior to approaching the ten-foot distance may continue doing so, provided they

do not stop, stand, sit, or linger within the ten-foot distance.

Sec. 31-8. - Where smoking is not regulated.

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the prohibitions of sections 31-4, 31-5, and 31-6 of this article:

- (a) Private residences, except when used as a licensed childcare, adult day care, or health care facility.
- (b) Retail tobacco stores, provided that smoke from the establishment does not infiltrate into areas where smoking is prohibited under the provisions of this article. The pervasive and continuing presence of the odor of stale tobacco smoke in areas where smoking is prohibited shall be accepted as evidence that tobacco smoke infiltration has occurred. Retail tobacco store proprietors shall be responsible for achieving compliance by using whatever design, construction, or technological means actually preclude tobacco smoke infiltration into areas where smoking is prohibited. In areas outside the central business district, smoking on patios, decks, and porches attached to retail tobacco stores is permitted provided the smoke does not infiltrate into areas where it is otherwise prohibited. No business license or certificate of occupancy may be issued for a retail tobacco store without the applicant first providing a detailed plan for compliance with this provision. Nevertheless, the issuance of a certificate of occupancy or a business license to a retail tobacco store shall not be construed as the city's determination that the retail tobacco store is in compliance with the requirement of this provision.
- (c) Outdoor areas of places of employment except those covered by the provisions of section 31-6 and section 31-7 of this article.

Sec. 31-9. - 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 shall be prohibited in any place in which a sign conforming to the requirements of subsection 31-10(a) is posted by the lawful occupant of the premises.

Sec. 31-10. - 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. Signs having other wording may meet the requirement of this section provided they clearly put on notice a person of reasonable sensibilities that smoking is not permitted in the facility, establishment, vehicle, or other location.
- (b) Every public place and place of employment where smoking is prohibited by this article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (c) All ashtrays shall be removed from any area where smoking is prohibited by this article by the owner, operator, manager, or other person having control of the area.

Sec. 31-11. - No retaliation; no waiver 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 fails to enforce this article or otherwise allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 31-12. - 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 or authorized designee.
- (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. The police in the ordinary performance of their duties of law enforcement and maintenance of public safety are specifically empowered to make observations or inquiry about compliance

without having to wait for a complaint.

(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 and direct those persons to comply with this article.

(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. 31-13. - 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.

Sec. 31-14. - Public education.

The city shall 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. 31-15. - Governmental agency cooperation.

The city shall periodically make reasonable efforts to 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. 31-16. - Other applicable laws, rules, and regulations.

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or by rules or regulations established by the owner or occupant of the premises.

Sec. 31-17. - 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 or its odor in places where they work, stand, sit, walk, dine, drink, read, study, or engage in entertainment and recreation. All provisions shall be construed to achieve these purposes.

Sec. 31-18. - Severability.

If any provision, clause, sentence, or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Should all or most provisions of this article applicable to locations not covered by city ordinance provisions in effect on October 10, 2012, be held invalid by a court of competent jurisdiction, then the smoking in public places ordinance provisions in effect prior to the adoption of Ordinance 4083 shall be reenacted automatically without further action by council, and they shall remain in effect until new ordinance provisions are upheld by a court of final jurisdiction or until amended by council.

Sec. 31-19. - Effect of section headings.

The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this article.

State Law reference— Clean Indoor Air Act, S.C. Code 1976, § 44-95-10 et seq.

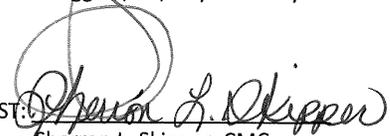
ORDAINED IN MEETING DULY ADVERTISED AND ASSEMBLED on the 10th day of July, 2012 and to become effective immediately upon final reading with compliance in ninety days.



Martin S. Driggers, Sr., City Attorney



Carl M. (Mel) Pennington, IV., Mayor

ATTEST: 
Sherron L. Skipper, CMC
City Clerk

First Reading: 08/14/2012
Public Hearing: 09/11/2012
Final Reading: 09/11/2012