

ORDINANCE NO.: 2008-034

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 8, Environmental Health and Sanitation, Article IV, Pollution Control, Division 5, Regulations and Requirements Relating to Smoking of Tobacco Products, Sec. 8-216 Definitions, Sec. 8-218 Exceptions to delete (8) and Sec. 8-221, Jurisdiction, enforcement and penalties

WHEREAS, Ordinance No. 2006-081 was enacted on November 8, 2006 but not enforced pending a decision by the South Carolina Supreme Court on appeals involving similar ordinances enacted by other municipalities; and,

WHEREAS, the South Carolina Supreme Court issued an opinion finding that municipalities could lawfully enact such ordinances if the conduct sought to be regulated was not criminalized; and,

WHEREAS, Ordinance 2006-081 criminalizes the conduct sought to be regulated and amendment to Sec. 8-221 Jurisdiction, enforcement and penalties will be required to conform with the South Carolina Supreme Court opinion; NOW, THEREFORE,

BE IT ORDAINED by the Mayor and Council this 21st day of May, 2008, that the 1998 Code of Ordinances of The City of Columbia, South Carolina, Chapter 8, Environmental Health and Sanitation, Article IV, Pollution Control, Division 5, Regulations and Requirements Relating to Smoking of Tobacco Products, Sec. 8-216 Definitions, Sec. 8-218 Exceptions to delete (8) and Sec. 8-221, Jurisdiction, enforcement and penalties is are-amended to read as follows:

Sec. 8-216. 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:

Employee means any person who performs services for an employer in return for wages, profit or other valuable consideration, and a person who volunteers his or her services for a non-profit entity.

Employer means any person, partnership, association, corporation, trust, school, college, university or other educational institution, nonprofit entity or other organization, including any public or private employer, any manager, supervisor, and all other persons charged with control, supervision, and operation of any workplace, work space, or work spaces as defined herein, that employs one (1) or more persons.

Enclosed means a space bounded by walls (with or without windows), a ceiling or roof, and enclosed by doors, including but not limited to, offices, rooms, foyers, waiting areas and halls.

Medical facility means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological

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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 medical facilities.

Medical research facility means an enclosed indoor workplace where tobacco smoking is an integral part of a smoking cessation program approved by a university, college or hospital.

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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 at all times, 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 primary for the pecuniary benefit of the owner or chief operating officer shall not be treated as private clubs under this division. A private club is not a private club for the purposes of this division when being used for a function to which the general public is allowed to enter.

Retail tobacco store means any establishment which is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times.

Secondhand smoke is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as "side stream smoke") and smoke exhaled by the smoker. Exposure to secondhand smoke is also frequently referred to as "passive smoking," "secondhand smoking" or "involuntary smoking".

Smoking means the inhaling, exhaling, burning, lighting or carrying of a lighted cigarette, cigar, pipe, or similar device or any other lighted tobacco product.

Smoking materials includes cigars, cigarettes and all other manner of smoking devices intended to be used for the purpose of inhaling, burning, carrying or exhaling lighted tobacco products.

Workplace means any enclosed indoor area, structure, building or facility or any portion thereof at which one (1) or more employee(s) perform services for their employer, including but not limited to: retail food stores; retail stores; restaurants; bars; cabarets, cafes; public or private clubs; pool halls and bowling alleys.

Work space or work spaces means any enclosed area occupied by an employee during the course of his or her employment, including but not limited to: offices, customer service areas; common areas; hallways; waiting areas; restrooms; lounges and eating areas.

Sec. 8-218. Exceptions.

Notwithstanding the provisions of section 8-217 herein, smoking may be permitted in the following places or under the following circumstances:

- (1) Private residences;
- (2) Private clubs;
- (3) Hotel and motel 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 may be so designated. 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 division. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;
- (4) Retail tobacco stores as defined herein;
- (5) Religious ceremonies where smoking is part of the ritual;
- (6) Medical research facilities;
- (7) Smoking by performers during a theatrical event which requires smoking in the context of the performance;

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Sec. 8-221. Jurisdiction, enforcement and penalties.

- (a) An infraction of this division is hereby declared to be a public nuisance.
- (b) A manager, supervisor or any other person who owns, operates, or otherwise controls a workplace or work space and who fails to comply with the provisions of this division shall be guilty of an infraction.
- (c) A person smoking or possessing a lighted tobacco product in any workspace or workplace shall be guilty of an infraction.
- (d) Each infraction shall be punishable by a civil penalty of \$500.00. The city shall make written demand for payment of civil penalty for each infraction upon the infractor and shall set forth in detail the date, time, place and nature of the infraction. A copy of any written demand for payment of a civil penalty as provided for herein shall be sent to the Employer; the City business licensee, if any; and, the infractor by certified mail.

If payment is not received within fifteen (15) days after written demand for payment of the civil penalty is received by the infractor, the civil penalty shall increase by \$50.00 for each fifteen (15) day period during which the civil penalty remains unpaid after it becomes final up to a maximum of \$1,000.00.

The city may file a civil action in the circuit court in the county in which the infraction occurred to recover the civil penalty, including any increased amounts.

The city, in addition to or in lieu of assessing or collecting a civil penalty, may institute a civil action in the circuit court in the county in which the infraction occurred seeking (i) a mandatory injunction requiring compliance with this division, (ii) a declaration that the infraction is a public nuisance and an order requiring abatement of the public nuisance, or (iii) for any other remedy permitted by law.

If three or more infractions occur within a six (6) month period at a workspace or workplace subject to this division, such shall be deemed to be a nuisance related to the business.

(d) (i) An infractor may, within five (5) days after written demand for payment of the civil penalty is received by the infractor, file an administrative appeal with the city manager. The city manager or a designee shall, within thirty (30) days after receipt of the administrative appeal, conduct a hearing to determine if the infraction, as is alleged in the written demand, occurred. The rules of evidence shall not apply.

If there is any evidence that the infraction occurred, the city manager or a designee shall affirm the civil penalty.

If there is no evidence that the infraction occurred, the city manager or a designee shall rescind the civil penalty.

In no event shall the civil penalty be reduced or suspended.

(ii) The infractor or the city shall have ten (10) days after receipt of written notice of the city manager or a designee's decision to file an appeal in the circuit court in the county in which the infraction occurred. Failure to timely file an administrative appeal or appeal in circuit court shall be deemed a waiver of the right to appeal.

The filing of an administrative appeal or appeal in circuit court shall not act as a stay of the city's right to institute any civil action as described above.

(e) Each infraction and on each day which an infraction of this division occurs, shall be considered a separate and distinct infraction.

This ordinance shall be effective and enforcement of Ordinance 2006-81, as amended hereby, shall be as of **October 1, 2008**.

Requested by:

Mayor Coble


MAYOR

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Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 4/16/2008; 5/13/2008
Final Reading: 5/21/2008

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