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York County Code of Ordinances

CHAPTER 94: SMOKING REGULATIONS

Section

- 94.01 Legislative findings
- 94.02 Definitions
- 94.03 Application to county-owned facilities and vehicles
- 94.04 Prohibition of smoking in enclosed public places
- 94.05 Prohibition of smoking in places of employment
- 94.06 Where smoking is not regulated
- 94.07 Declaration of establishment as nonsmoking
- 94.08 Posting of signs
- 94.09 Nonretaliation; nonwaiver of rights
- 94.10 Enforcement
- 94.11 Public education
- 94.12 Governmental agency cooperation
- 94.13 Other applicable laws
- 94.14 Interpretation for intent
- 94.99 Penalty

§ 94.01 LEGISLATIVE FINDINGS.

Incident to the adoption of this chapter, the York County Council, as the governing body of York County, South Carolina, makes the following findings:

(A) York County is a body politic and political subdivision of the State of South Carolina and as such possesses all powers granted to counties by the Constitution and the laws of the State of South Carolina including the powers enumerated in S.C. Code §§ 4-9-10 *et seq.* The York County Council is authorized and empowered to enact regulations, resolutions and ordinances in relation to health and order in counties or respecting any subject as appears to them necessary or proper for the security, general welfare and convenience of counties or for preserving health, peace, order and good government in them as provided in

S.C. Code §§ 4-9-10 *et seq.*, as amended, including S.C. Code § 4-9-25 thereof and the general law.

(B) 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 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 (i) secondhand smoke causes disease and premature death in nonsmokers exposed to smoke; (ii) children exposed to secondhand smoke have an increased risk for sudden death syndrome, acute respiratory infections, ear problems, and more severe asthma; (iii) adults exposed to secondary smoke have a higher risk of coronary heart disease and lung cancer, (iv) there is no safe level of exposure to second hand smoke, and (v) separating smoking and non smoking sections of indoor areas does not sufficiently remove the threats of secondhand smoke in enclosed areas.

(C) A significant amount of second hand smoke exposure occurs in the workplace. 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. (Pitsavos, C; Panagiotakos, D.B.; Chrysohoon, C; Skoumas, J.; Tzioumis, K.; Stefanadis, C; Toutouzias, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARIO2000 case-control study, "Tobacco Control" 11(33): 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) When there is a presence of second hand smoke in enclosed spaces or in outside areas where there is a public gathering resulting in people being in close proximity in places that are otherwise open to the public at large persons who do not smoke are 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 county 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 chapter (the "Ordinance").

(Ord. 909, passed 2-2-09)

§ 94.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BAR. 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. 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. 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. 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.

ENCLOSED AREA. 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, or walls substantially enclosing the area or walls four feet or more in height including stationary structures and mobile public conveyances. Enclosure of an outdoor area attached to a building or structure through the use of any sort of canopy, tent or other structure which consists of coverings on all sides shall cause such an area to be deemed an enclosed area for purposes of this chapter.

HEALTH CARE FACILITY. 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, semi-private rooms, and wards within health care facilities.

PLACE OF EMPLOYMENT. 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 chapter unless it is used as a child care, adult day care, or health care facility. A private passenger motor vehicle is not a **PLACE OF EMPLOYMENT** when used in the performance of employment responsibilities, provided it is not being used as a public conveyance.

PRIVATE CLUB.

(1) A bona fide non-profit organization, association or non-profit corporation organized and existing under the laws of the state, and operated solely and exclusively for social, benevolent, patriotic, recreational or fraternal purposes, but not for pecuniary gain or profit, no part of the net earnings of which inures to the direct benefit of any member or shareholder;

(a) Which is licensed to sell liquor by the drink for consumption on the premises as a private club under applicable rules of the Department of Revenue;

(b) Which has a retail sales tax license in the same name;

(c) Which is not open to the general public;

(d) Which is not engaged in the preparation and service of meals;

(e) Which has a definite, fixed method of electing persons on an individual basis to membership in the organization, such method being described in the club's bylaws and which must bear some reasonable

relation to the object and purpose of the organization;

(f) Which is comprised of members 21 years of age or older who shall be elected or excluded by the Board of Directors by way of ballot;

(g) Which is maintained by its bona fide members through the payment of monthly, quarterly or annual fees or dues;

(h) Whose affairs and management shall be conducted by a Board of Directors, executive committee or similar governing body chosen by the members at a regular meeting held no less frequently than annually;

(i) Whose members have been given notice of the dangers of tobacco smoke and second-hand smoke exposure in the particulars recited in § 94.01(B) through (E);

(j) Which has no employees under the age of 21 years nor employees who have not been given a notice of the dangers of tobacco smoke and second-hand smoke substantially similar to the dangers recited in § 94.01(B) through (E); and

(k) Which has satisfied, complied with and implemented the terms, conditions, requirements and limitations of this code and applicable provisions of the South Carolina Code of Laws, 1976, as amended, and regulations relating to the sale and consumption of alcoholic liquors by the drink by a bona fide non-profit private club.

(2) Any organization, establishment, club or entity, including bars, restaurants, entertainment venues or other entities which are not owned, leased, occupied or operated in compliance with the requirements of this code shall not be treated as a private club under this chapter.

PUBLIC PLACE. 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 and 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, waiting rooms, sports arena, stadiums and ball parks. 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 child care, adult day care or health care facility.

RESTAURANT. An 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. 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 for purposes of this chapter.

SERVICE LINE. 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. An enclosed public plaza, promenade, walkway, or hall area that serves to connect

retail or professional establishments.

SMOKING. Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

SPORTS ARENA. Sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assembly to engage in physical exercise, participate in athletic competition, or witness sports or other events.

(Ord. 909, passed 2-2-09; Am. Ord. 2810, passed 10-4-10)

§ 94.03 APPLICATION TO COUNTY-OWNED FACILITIES AND VEHICLES.

All enclosed facilities, buildings, and vehicles owned, leased or operated by the county shall be subject to the provisions of this chapter.

(Ord. 909, passed 2-2-09)

§ 94.04 PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES.

Smoking shall be prohibited in all enclosed public places within the county, 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 non-profit entities patronized by the public, including, but not limited to, professional offices, banks, laundromats, hotels, and motels.
- (C) 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) Hotel and motel lobbies.
- (J) Licensed child care 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) Clubs, other than a private club as defined in this chapter; provided, however, that smoking shall be

prohibited in a private club when the general public is admitted or 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) Sports arenas.

(V) Theaters, performance halls, lecture halls, and similar facilities, inclusive of lobbies, audience seating areas, dressing rooms, projection booths, back stage areas, and the stage, but excluding smoking on stage when it is an integral part of a theatrical performance.

(Ord. 909, passed 2-2-09; Am. Ord. 2810, passed 10-4-10) Penalty, see § 94.99

§ 94.05 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.

(A) Smoking shall be prohibited in all enclosed areas within places of employment, except a private club as defined herein, without exception, including, but not limited to, work areas, auditoriums, classrooms, conferences 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 performing employment responsibilities where the sole occupants and users are persons who smoke.

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

(Ord. 909, passed 2-2-09; Am. Ord. 2810, passed 10-4-10) Penalty, see § 94.99

§ 94.06 WHERE SMOKING NOT REGULATED.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of §§ 94.04 and 94.05 of this chapter.

(A) Private residences, except when used as a licensed child care, adult day care, or health care facility.

(B) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that no more than 20% 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 chapter. The status of rooms as smoking and 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 chapter.

(D) Private and semi-private 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 chapter.

(E) Private clubs, as defined in this chapter, except when being used for a function to which the general public is admitted.

(F) Outdoor areas of places of employment.

(Ord. 909, passed 2-2-09; Am. Ord. 2810, passed 10-4-10)

§ 94.07 DECLARATION OF ESTABLISHMENT AS NONSMOKING.

Notwithstanding any other provision of this chapter, 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 except a private club as defined in this chapter in which a sign conforming to the requirements of § 94.08 is posted.

(Ord. 909, passed 2-2-09; Am. Ord. 2810, passed 10-4-10)

§ 94.08 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 chapter by the owner, operator, manager or other person in control of that place. Any private club as defined in this chapter which qualifies under exemption of a private club shall prominently display signage both outside and inside every entrance and at conspicuous places in the private club prominently notifying members and employees of the dangers of tobacco smoke and second-hand smoke including the dangers of disease and premature death, coronary heart disease, lung cancer, stroke, acute respiratory disease and decrease in lung function.

(B) Every public place and place of employment where smoking is prohibited by this chapter 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 chapter by the owner, operator, manager, or other person having control of the area.

(Ord. 909, passed 2-2-09; Am. Ord. 2810, passed 10-4-10)

§ 94.09 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 chapter or reports or attempts to prosecute a violation of this chapter.

(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.

(Ord. 909, passed 2-2-09) Penalty, see § 94.99

§ 94.10 ENFORCEMENT.

(A) This chapter shall be enforced by the office of the County Manager or an authorized designee.

(B) Notice of the provisions of this chapter shall be given to all applicants for a building permit; certificate of occupancy; or building, zoning, fire or other permit or license required in the county.

(C) Any citizen who desires to register a complaint under this chapter may initiate enforcement with the office of the County Manager.

(D) The Building Codes Division, County Fire Marshal Fire Department, or their designee shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this chapter.

(E) An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the appropriate provisions thereof.

(F) Notwithstanding any other provision of this chapter, an employee or member of the public may bring legal action against a person, business, or organization in violation of this chapter to enforce this chapter.

(G) In addition to the remedies provided by the provisions of this section, the county 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 chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

(Ord. 909, passed 2-2-09)

§ 94.11 PUBLIC EDUCATION.

The county shall engage in a continuing program to explain and clarify the purposes and requirements of this chapter 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 chapter.

(Ord. 909, passed 2-2-09)

§ 94.12 GOVERNMENTAL AGENCY COOPERATION.

The county shall annually request other governmental and educational agencies having facilities within the unincorporated area of the county to establish local operating procedures in cooperation and compliance with this chapter. 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.

(Ord. 909, passed 2-2-09)

§ 94.13 OTHER APPLICABLE LAWS.

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

(Ord. 909, passed 2-2-09)

§ 94.14 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 second hand smoke 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.

(Ord. 909, passed 2-2-09)

§ 94.99 PENALTY.

(A) A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be guilty of an infraction, punishable by a fine not exceeding \$50.

(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 chapter shall be guilty of an infraction, punishable by:

- (1) A fine not exceeding \$100 for a first violation.
- (2) A fine not exceeding \$200 for any subsequent violation within one year.

(C) In addition to the fines established by this section, repeated violations of this chapter 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 other permit or license issued to the person for the premises on which the violation occurred.

(D) Violation of this chapter is hereby declared to be a public nuisance, which may be abated by the county by restraining order, preliminary and permanent injunction or other means provided for by law, and the county may take action to recover the costs of the nuisance abatement.

(E) Each day of a continuing violation of this chapter shall be considered a separate and distinct offense.

(Ord. 909, passed 2-2-09)

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