

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

ORDINANCE NO. 1167

AN ORDINANCE

TO AMEND CHAPTER 23 OF THE LANCASTER COUNTY CODE, RELATING TO OFFENSES AND MISCELLANEOUS PROVISIONS, SO AS TO ADD A NEW ARTICLE TO PROHIBIT SMOKING IN ENCLOSED PUBLIC PLACES AND ENCLOSED AREAS WITHIN PLACES OF EMPLOYMENT; AND TO PROVIDE FOR OTHER MATTERS RELATED THERETO.

Be it ordained by the Council of Lancaster County, South Carolina:

Section 1. Smoking Regulations.

Chapter 23 of the Lancaster County Code is amended by adding:

“ARTICLE IV
SMOKING REGULATIONS

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Sec. 23-51. Legislative Findings.

Incident to the adoption of this article, the Lancaster County Council finds that:

(1) Lancaster 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 Lancaster 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.

(2) 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.

(3) 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; Toutouzas, 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.)

(4) 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.

(5) 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 article.

Sec. 23-52. Definitions.

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

'Bar' means 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' means 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' means 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 non-profit 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, 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 article.

'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 includes all waiting rooms, hallways, private rooms, semi-private 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 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. 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' means

- (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 regulations and rules of the South Carolina 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 to the general public;
 - (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 and/or rental fees;

(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 § 23-51 (2) through (5);

(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 § 23-51 (2) through (5); and

(k) Which has satisfied, complied with and implemented the terms, conditions, requirements and limitations of the Lancaster County Code and applicable provisions of the Code of Laws of South Carolina 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 the Lancaster County Code shall not be treated as a private club 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, 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’ means 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. Restaurant includes 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.

‘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 arena' means 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 assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Sec. 23-53. Application to County-Owned Facilities and Vehicles.

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

B. All facilities and buildings owned, leased or operated by the county shall have conspicuously displayed upon the premises a sign reading 'Smoking Prohibited by Law.'

C. No person shall use chewing tobacco, snuff or similar-type tobacco products in any form in a facility, building or vehicle owned, leased or operated by the county. The prohibitions of this section do not apply to those facilities and buildings or portions of those facilities and buildings which are leased to other organizations or entities.

D. All facilities and buildings owned, leased or operated by the county shall have conspicuously displayed upon the premises a sign reading 'Use of Chewing Tobacco, Snuff and Similar Products Prohibited by Law.'

Sec. 23-54. 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:

- (1) Galleries, libraries and museums;
- (2) 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;
- (3) Bars;
- (4) Bingo facilities;
- (5) Convention facilities, conference centers and exhibition halls;
- (6) Educational facilities, both public and private;
- (7) Elevators;
- (8) Health care facilities;
- (9) Hotel and motel lobbies;
- (10) Licensed child care and adult day care facilities;

(11) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

(12) Polling places;

(13) Clubs, other than a private club as defined in this article; provided, however, that smoking shall be prohibited in a private club when the general public is admitted or invited, except as provided in § 23-56(3);

(14) Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots;

(15) Restaurants;

(16) Restrooms, lobbies, reception areas, hallways, and other common-use areas;

(17) Retail stores;

(18) Rooms, chambers, places of meeting or public assembly, including school buildings;

(19) Service lines;

(20) Shopping malls;

(21) Sports arenas; and

(22) 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.

Sec. 23-55. 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 in this article, 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, and vehicles used for the conveyance of the public.

B. The prohibition on smoking contained in subsection A. of this section shall be communicated by employers to all existing employees by March 1, 2013 and to all prospective employees upon their application for employment.

Sec. 23-56. Where Smoking Not Regulated.

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of Sec. 23-54 and Sec. 23-55 of this article:

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

(2) Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article;

(3) Private clubs, as defined in this article, except when being used for a function to which the general public is admitted. If the public is invited, paragraph (4) of this section shall control;

(4) Outdoor areas of places of employment, including decks, balconies, and patios of restaurants and bars, provided that any smoking area is a minimum of fifteen (15) feet from any building opening or air handler and smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this article. Where smoking is allowed outdoors, receptacles must be provided for the safe and proper disposal of cigarettes and related smoking material.

Sec. 23-57. 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 except a private club as defined in this article in which a sign conforming to the requirements of Sec. 23-58 is posted.

Sec. 23-58. 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 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. 23-59. 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. 23-60. Enforcement.

A. This article shall be enforced by the office of the Sheriff or an authorized designee.

B. Notice of the provisions of this article 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 article may initiate enforcement with the office of the Sheriff.

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 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.

Sec. 23-61. Public Education.

The Lancaster County Health and Wellness Commission 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. 23-62. 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 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. 23-63. Other Applicable Laws.

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

Sec. 23-64. 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.

Sec. 23-65. Penalty.

A. A person who smokes in an area where smoking is prohibited by the provisions of this article is guilty of an infraction, punishable by a fine of not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00).

B. A person, firm, corporation or agent 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 is guilty of an infraction, punishable by:

(1) A fine not exceeding \$50 for a first violation; and

(2) A fine not exceeding \$100 for any subsequent violation within one year.

C. No arrest warrant may be issued for a person who smokes in an area where smoking is prohibited by this article or for a person, firm, corporation or agent 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. In enforcing this article, law enforcement officers shall issue an ordinance summons as provided for in Section 2-1 of the Lancaster County Code and Section 56-7-80 of the Code of Laws of South Carolina 1976, as amended. The service of the ordinance summons will vest the magistrate's court with jurisdiction to hear and to dispose of the charge.

D. In addition to the fines established by this section, repeated violations of this article by a person, firm, corporation or agent 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.

E. Violation of this article 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.

F. Each day of a continuing violation of this article shall be considered a separate and distinct infraction.”

Section 2. Severability.

If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

Section 3. Conflicting Provisions.

To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 4. Effective Date.

Exept as otherwise provided, this ordinance takes effect upon its approval. The provisions of Sections 23-53, 23-54 and 23-55(A), as contained in Section 1 of this ordinance, take effect March 1, 2013, and apply to all causes of action arising on or after March 1, 2013.

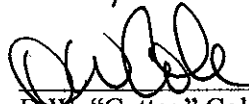
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AND IT IS SO ORDAINED, this 26th day of November, 2012.

LANCASTER COUNTY, SOUTH CAROLINA

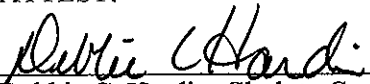


Kathy G. Sistare, Chair, County Council



D.W. "Cotton" Cole, Secretary, County Council

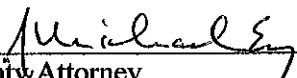
ATTEST:



Debbie C. Hardin, Clerk to Council

First Reading: August 27, 2012
Second Reading: September 10, 2012
Public Hearing: September 24, 2012
Third Reading: November 26 2012

Approved as to form:



County Attorney

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