

ORDINANCE 2016/39**AN ORDINANCE OF BEAUFORT COUNTY COUNCIL UPDATING THE BEAUFORT COUNTY SMOKING ORDINANCE**

WHEREAS, numerous medical and scientific studies show substantial levels of exposure to secondhand smoke among the United States population; and

WHEREAS, the U.S. Surgeon General has concluded that smoking and exposure to secondhand smoke is harmful to the smoker and to people around the smoker; and

WHEREAS, prohibiting smoking in and around the workplace, public buildings and publicly supported facilities increases public awareness of the adverse health effects of smoking, reduces the social acceptability of smoking, reduces harm caused by smoking to nonsmokers and to children and reduces costs to the community of addressing the medical conditions caused by smoking; and

WHEREAS, in 1982 Beaufort County codified its Code of Ordinance including Section 38-91 through Sec. 38-98; and

WHEREAS, in 2006 Beaufort County Council passed Ordinance 2006-28 adding Article V establishing the regulation and requirements relating to smoking tobacco products in the County of Beaufort and those additions were codified as Beaufort Code Section 38-101 through Sec. 38-112; and

WHEREAS, the South Carolina General Assembly passed the “Clean Indoor Air Act” in 1990 and codified as S.C. Code Secs. 44-95-10 through 44-95-60 which preempts some of the local ordinances; and

WHEREAS, Council recognizes that for a variety of reasons citizens are frequently required to come to government offices in order to conduct business as well as to enjoy cultural activities, athletic events and artistic endeavors; and

WHEREAS, Council has determined that it is in the best interest of the residents of Beaufort County to designate County owned and operated properties, including outdoor property adjacent to the same which is under the control of the County as smoke-free in order to protect the public health, safety and general welfare of its citizens, residents, employees and visitors who enter these properties.

NOW THEREFORE, BE IT HEREBY ORDAINED that, in order, to protect and promote the public health, safety and general welfare of Beaufort County residents, Beaufort County Code Article IV, Division I Sec 38-91 through 38-98 and Article IV, Division II Sec. 38-101 through 38-112 are hereby amended and replaced with the following:

DIVISION 1. – IN COUNTY OWNED FACILITIES

Sec. 38-91. - 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:

County owned and operated facilities means any building or facility, including outdoor property adjacent to and part of such a building or facility, which is used by any person(s), group of persons, agencies or organizations which are funded in whole by public funds from County Council or which is operated by or under the managerial control of the County.

Public meeting means any meeting open to the public under the South Carolina Freedom of Information Act.

Smoking means inhaling, exhaling, burning, lighting or carrying a lighted cigarette, e-cigarette, cigar, pipe, device or any other lighted inhalable product.

(Code 1982, § 8-57)

Cross reference— Definitions generally, § 1-2.

Sec. 38-92. - Prohibitions.

- (a) Smoking shall be prohibited in and on all county owned or operated facilities.
- (b) Smoking may be prohibited in private sector establishments at the option of owners/operators in unincorporated areas of the County; such establishments shall identify designated smoking areas as set forth in Section 38-94.

(Code 1982, § 8-58)

Sec. 38-93. - Posting of signs.

- (a) Signs with the words "No Smoking" in letters not less than four inches high and citing in smaller letters enabling Ordinance No. 92-24 shall be conspicuously posted in each room and publicly supported place as defined in Section 38-91. These signs shall be visible to any occupant of the restricted area. Public areas not posted shall be deemed to be nonsmoking areas unless specifically posted as smoking areas.
- (b) Posting of no smoking signs shall be the responsibility of the person directly in control of the affected facility.
- (c) Signs may be posted by any private citizen in his place of business. Standard signs may be obtained from the County purchasing agent. Inclusion under this article of a private-sector establishment is entirely voluntary. The proprietor, owner, or individual responsible for such establishment may disregard enforcement of this article if he so desires in his own place of business.

(Code 1982, § 8-59)

Sec. 38-94. - Designated smoking areas.

- (a) (a) If smoking areas are designated, they shall be selected using existing physical barriers and ventilation systems to minimize the toxic effects of smoke in adjacent nonsmoking areas.
- (b) (b) Designated smoking areas, if any, shall not include the specific areas prohibited in Section 38-92.

Sec. 38-95. - Responsibility.

The County Administrator or his designated representative shall be responsible for informing each person directly in control of each publicly supported facility of this article.

(Code 1982, § 8-61)

Sec. 38-96. – Reserved.**Sec. 38-97. - Violation of signs.**

No person shall smoke in any properly posted place, nor shall any person remove any “No Smoking” sign erected by or under the authority of this article.

(Code 1982, § 8-63)

Sec. 38-98. - Penalties.

- (a) Any person who violates any section of this article may be cited and, if found guilty of an infraction, punished by a fine of not less than ten dollars (\$10.00) nor more than twenty – five dollars (\$25.00).
- (b) Any 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 ten (\$10.00) nor more than twenty – five dollars (\$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 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.

(Code 1982, § 8-64)

Secs. 38-99, 38-100. - Reserved.

DIVISION 2. - IN THE WORKPLACE

Sec. 38 -101. - Intent.

Council finds that it is in the best interest of the people of the County to protect nonsmokers from involuntary exposure to secondhand smoke in the workplace. Therefore, Council declares that the purpose of this article is to preserve, protect and improve the public health, comfort, safety and environment of the people of the County by limiting exposure to tobacco smoke in the workplace.

(Ord. No. 2006/28, § 2, 12-11-2006)

Sec. 38-102. - Definitions.

- (a) *Employee* means any person who performs services for an employer in return for wages, profit or other valuable consideration.
- (b) *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 work place, work space, or work spaces as defined herein, that employs one or more persons.
- (c) *Enclosed* means a space bounded by walls (with or without windows), and enclosed by doors, including but not limited to, offices, rooms, foyers, waiting areas and halls
- (d) *Secondhand smoke* is the complex mixture formed from the escaping smoke of a burning product (termed "sidestream smoke") and smoke exhaled by the smoker. Exposure to secondhand smoke is also frequently referred to as "passive smoking," "secondhand smoking" or "involuntary smoking".
- (e) *Sheriff's office* means the Beaufort County Sheriff's Office.
- (f) *Public building* means any enclosed area which is owned, operated or leased by the County as well as outdoor property adjacent to such buildings and facilities.
- (g) *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.
- (h) *Smoking* means the inhaling, exhaling, burning, lighting or carrying a lighted cigarette, e-cigarette, cigar, pipe, device or any other lighted inhalable product.
- (i) *Smoking materials* includes cigars, cigarettes, e-cigarettes and all other manner of devices intended to be used for the purpose of inhaling, burning, carrying or exhaling lighted products.
- (j) *Workplace* means any enclosed indoor area, structure, building or facility or any portion thereof at which one 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.

- (k) *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.
- (l) *Person(s)* means a customer or other visitor on the premises regulated herein.

(Ord. No. 2006/28, § 3, 12-11-2006; Ord. No. 2008/23, 6-23-2008)

Sec. 38-103. - Prohibition of smoking in the workplace.

- (a) The employer shall provide a smoke free environment for all employees working in all work space, work spaces and work places as those terms are defined herein. Further, the employer and all employees shall prohibit any persons present in said work space, work spaces and work places from smoking tobacco products therein.
- (b) Smoking shall be prohibited in all work space, work spaces and work places in a workplace. This includes all common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms and all other enclosed areas in the workplace.

(Ord. No. 2006/28, § 4, 12-11-2006)

Sec. 38 -104. - Smoking restricted by state law: S.C. Code § 44-95-10 et seq.

It is unlawful for a person to smoke or possess lighted smoking material in any form in the following public indoor areas:

- (a) Public schools and preschools where routine or regular kindergarten, elementary, or secondary educational classes are held including libraries;
- (b) All other indoor facilities providing children's services to the extent that smoking is prohibited in the facility by federal law and all other child day care facilities, as defined in Section 20-7-2700, which are licensed pursuant to S.C. Code, § 20-7-13(11);
- (c) Health care facilities as defined in S. C. Code § 44-7-130;
- (d) Government buildings as defined in S. C. Code § 44-95-20(4), except to the extent regulation by the County is authorized therein;
- (e) Elevators;
- (f) Public transportation vehicles, except for taxicabs;
- (g) Arenas and auditoriums of public theaters or public performing art centers.

Sec. 38-105. - Exceptions.

Notwithstanding the provisions of Section 38-103 herein, smoking may be permitted in the following places and/or circumstances:

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

- (b) Hotel, motel, inn, bed and breakfast and lodging home rooms that are rented to guests, designated as "smoking rooms" (rooms) provided that the total percentage of such rooms does not exceed 25 percent in such establishment. A room so designated shall have signs posted indicating that smoking is allowed therein;
- (c) Retail tobacco stores as defined herein;
- (d) Religious ceremonies where smoking is part of the ritual.

(Ord. No. 2006/28, § 6, 12-11-2006)

Sec. 38-106. - Posting of signs.

The owner, manager or person in control of an establishment or area in which smoking is prohibited pursuant to this section shall post a conspicuous sign at the main entrance to the establishment or area. The sign shall contain the words "No Smoking" and the universal symbol for no smoking.

(Ord. No. 2006/28, § 7, 12-11-2006)

Sec. 38-107. - Reasonable distance.

Smoking is prohibited within a reasonable distance of 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

(Ord. No. 2006/28, § 8, 12-11-2006)

Sec.38-108. - Enforcement and penalties.

- (a) A person who violates any section of this article may be cited and, if found guilty of an infraction, punished by a fine of not less than ten dollars (\$10.00) nor more than twenty – five dollars (\$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 ten (\$10.00) nor more than twenty – five dollars (\$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. (Ord. No. 2006/28, § 9, 12-11-2006; Ord. No. 2008/23, 6-23-2008)

Sec. 38-109. - Severability.

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

(Ord. No. 2006/28, § 10, 12-11-2006)

Sec. 38-110. - Nonretaliation.

No person or employer shall discharge, refuse to hire, refuse to serve or in any manner retaliate or take any adverse personnel action against any employee, applicant, customer or person because such employee, applicant, customer or person takes any action in furtherance of the enforcement of this section or exercises any right conferred by this section.

(Ord. No. 2006/28, § 11, 12-11-2006)

Sec. 38-111. - Conflict with other laws, ordinances or regulations.

Nothing in this section shall be deemed to amend or repeal any applicable fire, health or other law, ordinance or regulation so as to permit smoking in areas where it is prohibited by such applicable fire, health or other law, ordinance or regulation.

(Ord. No. 2006/28, § 12, 12-11-2006)

Secs. 38-113- 38-150. - Reserved.

DONE this 14th day of November, 2016.

COUNTY COUNCIL OF BEAUFORT COUNTY

By: _____
D. Paul Sommerville, Chairman

APPROVED AS TO FORM:

Thomas J. Keaveny, II, County Attorney

ATTEST:

Ashley M. Bennett, Clerk to Council

First Reading: October 10, 2016
Second Reading: October 24, 2016
Public Hearing: November 14, 2016
Third and Final Reading: November 14, 2016

Chronology

- Third and final reading occurred November 14, 2016 / Vote 9:2
- Public hearing occurred November 14, 2016
- Second reading approval occurred October 24, 2016 / Vote 10:1
- First reading approval occurred October 12, 2016 / Vote 8:0
- Community Services Committee discussion and recommendation to approve ordinance on first reading occurred September 26, 2016 / Vote 5:0
- Community Services Committee discussion occurred August 22, 2016
- Community Services Committee discussion occurred June 27, 2016
- Community Services Committee discussion occurred March 28, 2016