

ORDINANCE # 2008-06

AN ORDINANCE AMENDING CHAPTER 8 OF THE WALTERBORO CITY CODE OF 2002, AS AMENDED, TO ENACT A NEW CITY ORDINANCE REGULATING SMOKING IN PUBLIC PLACES TO PROTECT THE PUBLIC AGAINST THE HARMFUL EFFECTS OF SECONDARY SMOKE.

**WHEREAS**, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke is a cause of disease, including lung cancer, in nonsmokers; and

**WHEREAS**, there is no safe level of exposure to secondhand smoke; and

**WHEREAS**, limiting the exposure to second hand smoke will protect the health and welfare of the public at large and will improve the City of Walterboro's quality of life, which in turn contributes to the City's being a livable community and having success in economic development; and

**WHEREAS**, upon assessing current conditions and the most recent medical findings made by authoritative sources, Council has determined that the Clean Indoor Act does not sufficiently address the pressing public health issue and quality of life considerations arising from the harmful effects of secondary smoke, and action by City Council is necessary and proper;

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF WALTERBORO, SOUTH CAROLINA,**

The provisions presented herein shall be enacted as the new Article V, which shall be titled "Smoking in Public Places and Places of Employment," and contained in Chapter 8, "Health and Sanitation." The effective date shall be twelve noon August 1, 2008.

**ARTICLE V. SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT**

**8.501. FINDINGS AND DETERMINATIONS.**

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

(a) The City of Walterboro, South Carolina (the "City"), is an incorporated municipality located in Colleton 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.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, 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, such as parades, festivals, and other public gatherings, result in nonsmokers finding themselves in close proximity to persons who are smoking which can be reasonably seen to have the same effects of exposure as when nonsmokers are exposed to smoke in the same enclosed space. Lighted cigarettes, cigars, and pipes of people standing or sitting in close proximity have the potential of burning those with whom they inadvertently come into direct contact and making the air quality and peaceful enjoyment of outdoor events unreasonably restricted for nonsmokers.

(f) When there is a presence of secondhand 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 inevitably results in persons who do not smoke being 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.

(g) The city 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").

#### **8.502. 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 only 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.

"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 non-profit 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 (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, 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 private residence is not a "place of employment" for purposes of this article unless it is used as a childcare, 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 public conveyance.

"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, or for purposes of benefitting particular club members and their guests, 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 primarily for the pecuniary benefit of the owner, or chief operating officer, or other person having substantial control shall not be treated as private clubs 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, 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 childcare, 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. 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. 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.

**8.503. 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.

**8.504. 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.
- (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 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 when being used for a function to which the general public is 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, projections booths, back stage areas, and the stage, but excluding smoking on stage when it is an integral part of a theatrical performance.

**8.505. 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 person who smoke.

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

**8.506. 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, although the city manager has the discretion, but not the obligation, to establish designated smoking areas in or in proximity to the parade or event area.

(d) Dining areas in encroachment areas on public sidewalks, plazas, and parks and dining areas on decks, balconies, and patios of restaurants and bars.

(e) Zoos.

**8.507. 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, or other means. Smoking is also prohibited within ten feet of the boundary of the outdoor areas 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.

**8.508. WHERE SMOKING NOT REGULATED.**

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of sections 8.504, 8.505, and 8.506 of this article:

(a) Private residences, except when used as a licensed childcare, 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 not more than 20 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 article. The status of rooms as smoking or 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 article.

(d) Private and semiprivate 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 article.

(e) Private clubs that have no employees, except when being used for a function to which the general public is admitted.

(f) Outdoor areas of places of employment except those covered by the provisions of section 8.506 and section 8.507 of this article.

**8.509. 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 8.510(a) is posted.

**8.510. 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.

**8.511. 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.

**8.512. 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.

(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.

(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.

(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.

**8.513. 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.

**8.514. 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.

**8.515. GOVERNMENTAL AGENCY COOPERATION.**

The city shall annually 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.

**8.516. OTHER APPLICABLE LAWS.**

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

**8.517. 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 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.

**8.518. 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.

**8.519. 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.

**ADOPTED, THIS 27<sup>th</sup> DAY OF MAY, 008.**

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Charles H. Sweat, Jr.  
Mayor

ATTEST:

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Betty J. Hudson  
City Clerk

First Reading: May 13, 2008  
Public Hearing: May 13, 2008  
Public Hearing: May 27, 2008

Second Reading: May 27, 2008

APPROVED AS TO FORM:

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George W. Cone  
City Attorney