

CHAPTER 138: SMOKING AND TOBACCO PRODUCTS

Section

- 138.01 Findings
- 138.02 Intent
- 138.03 Definitions
- 138.04 Prohibition of smoking in the workplace
- 138.05 Smoking restrictions inapplicable
- 138.06 Exceptions
- 138.07 Posting of signs
- 138.08 Jurisdiction, enforcement and penalties
- 138.09 Non-retaliation
- 138.10 Conflict with other laws, ordinances or regulations
- 138.11 Waivers

- 138.99 Penalty

§ 138.01 FINDINGS.

Town Council makes the following findings relative to the adoption of this chapter:

(A) The town is an incorporated municipality, 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 relating to regulating streets, markets, and public health; and

(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.

(1) The National Cancer Institute has determined that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually.

(2) The Surgeon General has declared that:

(a) Secondhand smoke causes disease and premature death in nonsmokers exposed to smoke;

(b) Children exposed to secondhand smoke have an increased risk for sudden death syndrome, acute respiratory infections, ear problems, and more severe asthma;

(c) Adults exposed to secondhand smoke have a higher risk of coronary heart disease and lung cancer;

(d) There is no safe level of exposure to secondhand smoke; and

(e) Separating smoking and nonsmoking sections of indoor areas does not sufficiently remove the threats of secondhand smoke in enclosed areas; and

(C) A significant amount of secondhand smoke exposure occurs in the workplace. Studies have shown that 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; and

(D) Studies have also shown that 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; and

(E) There are laws, ordinances and regulations in place that protect workers from other environmental hazards, including Class A carcinogens, asbestos, arsenic and benzene, but none which regulate exposure to environmental tobacco smoke; and

(F) Prohibiting smoking in the workplace increases public awareness of the negative health effects of smoking, reduces the social acceptability of smoking, and reduces harm to children and other nonsmokers; and

(G) The South Carolina General Assembly, in S.C. Code §§ 44-95-10 *et seq.* (the "Clean Indoor Air Act of 1990"), imposed certain limitations on smoking.

(1) For example, it limited smoking in government buildings (the definition of which includes city-owned buildings), except where the owner of such building shall designate smoking areas.

(2) Town Council has now determined that additional regulation of smoking in areas beyond those addressed in the Clean Indoor Air Act of 1990 is appropriate, in furtherance of its duty to protect the health of its citizens and employees in the workplace, and therefore enacts this chapter.

(Ord. 07007, passed 6-12-07)

§ 138.02 INTENT.

Town Council finds that it is in the best interest of the people of this town to protect nonsmokers from involuntary exposure to environmental tobacco smoke in the workplace. Therefore, Town Council declares that the purpose of this act is to preserve and improve the health, comfort and environment of the people of this town by limiting exposure to tobacco smoke in the workplace.

(Ord. 07007, passed 6-12-07)

§ 138.03 DEFINITIONS.

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

BUSINESS AGENT. An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of the establishment.

BUSINESS LICENSE OFFICIAL. The Town of Mount Pleasant Business License Official.

CODE ENFORCER. The designated Code Enforcer employee(s) of the Town of Mount Pleasant.

EMPLOYEE. Any person who performs services for an employer in return for wages, profit or other valuable consideration.

EMPLOYER. Any person, partnership, association, corporation, trust, school, college, university or other educational institution, nonprofit entity or other organization, including any public or private employer that employs one or more persons.

ENCLOSED. A space bounded by walls (with or without windows) continuous from floor to ceiling and enclosed by doors, including but not limited to, offices, rooms, foyers, waiting areas and halls.

ENVIRONMENTAL TOBACCO SMOKE (ETS) or SECONDHAND SMOKE. 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 **ETS** is also frequently referred to as "passive smoking," "secondhand smoking" or "involuntary smoking."

FIRE DEPARTMENT. The Town of Mount Pleasant Fire Department.

POLICE DEPARTMENT. The Town of Mount Pleasant Police Department.

PUBLIC BUILDING. Any building owned, operated or leased by the town.

RETAIL TOBACCO STORE. Any establishment that 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 alcohol constitutes no more than 10% of gross revenue, and to which the entry of persons under the age of 18 is prohibited at all times.

SMOKING. 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.

WORK SPACE or **WORK SPACES.** 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.

WORKPLACE. Any enclosed indoor area, structure, building, 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, cabarets, cafes, public or private clubs, pool halls and bowling alleys.

(Ord. 07007, passed 6-12-07; Am. Ord. 08071, passed 12-9-08; Am. Ord. 09035, passed 7-14-09; Am. Ord. 14090, passed 1-13-15)

§ 138.04 PROHIBITION OF SMOKING IN THE WORKPLACE.

(A) It shall be the responsibility of the employer to provide a smoke-free environment for all employees working in an enclosed workplace. Each employer shall adopt, distribute and implement a written policy prohibiting smoking in the workplace in accordance with this section.

(B) Smoking shall be prohibited in all work spaces in a workplace. This includes all common work areas, auditoriums, classrooms, conference and meeting room, private offices, hallways, medical facilities, cafeterias, employee lounges, staircases, restrooms and all other enclosed areas in the workplace.

(C) The written smoking policy shall be adopted and distributed to all employees within four weeks of the effective date of this section, or within four weeks of the commencement of business operations. A copy of the policy shall be conspicuously posted in all facilities or areas of the workplace.

(Ord. 07007, passed 6-12-07) Penalty, see § 138.99

§ 138.05 SMOKING RESTRICTIONS INAPPLICABLE.

In providing for the inapplicability of this chapter to the following divisions (A) through (G), it is specifically recognized that such locations are addressed in the Clean Indoor Air Act, enacted by the General Assembly of South Carolina and codified in S.C. Code §§ 44-95-10 *et seq.* Therefore, this chapter shall not apply to:

(A) Public schools and preschools, including libraries, where routine or regular kindergarten, elementary, or secondary educational classes are held;

(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 S.C. Code § 20-7-2700, which are listed pursuant to Sub-article 11, Article 13, Chapter 7, of Title 20 of the South Carolina Code;

(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 town is authorized therein;

(E) Elevators;

(F) Public transportation vehicles, except for taxicabs;

(G) Arenas and auditoriums of public theaters or public performing art centers.

(Ord. 07007, passed 6-12-07)

§ 138.06 EXCEPTIONS.

Notwithstanding the provisions of § 138.04 herein, smoking may be permitted in the following places and/or circumstances:

(A) Private residences;

(B) Hotel, motel, inn, bed and breakfast and lodging home rooms that are rented to guests, designated as "smoking room" ("rooms"); provided that the total percentage of such rooms does not exceed 25% in such establishment. A room so designated shall have signs posted indicating that smoking is allowed therein;

(C) Performers upon a stage, provided that the smoking is part of the theatrical production being performed;

(D) Religious ceremonies where smoking is part of the ritual;

(E) Medical research facilities; and

(F) Retail tobacco stores.

(Ord. 07007, passed 6-12-07; Am. Ord. 09035, passed 7-14-09)

§ 138.07 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. 07007, passed 6-12-07) Penalty, see § 138.99

§ 138.08 JURISDICTION, ENFORCEMENT AND PENALTIES.

(A) *Jurisdiction.* The Business License Official shall collect the penalties due hereunder for any infraction(s) of the provisions of this chapter.

(B) *Enforcement.* The Police Department, Fire Department and Code Enforcer of the town shall have the power to enforce the provisions of this chapter by using an infraction notice.

(C) *Penalties for infractions.*

(1) A person, employee or employer 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 of \$25.

(2) A person, employee or employer who owns, manages, operates, or otherwise controls a workplace or work space, and who fails to comply with the provisions of this chapter, shall be guilty of an infraction, punishable by a fine of \$25.

(3) In addition to the fines established hereunder, repeated violations of this chapter by a person, employee or employer who owns, manages, operates, or otherwise controls a workplace or work space, or the failure of a person, employee or employer who owns, manages, operates, or otherwise controls a workplace or work space to timely pay the penalty for an infraction, may result in the suspension or revocation of any occupancy permit or business license issued to the person, employee or employer for the premises on which the infraction occurred.

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

(5) A separate offense shall be deemed committed on each day that an infraction occurs or continues.

(6) In addition to or lieu of assessing a civil penalty, the Town may institute an action in the Court of Common Pleas for Charleston County for an injunction to require compliance with this chapter or pursue any other remedy, as may be permitted by law.

(D) Any person, employee or employer cited for an infraction of this chapter may, within five days of the date of the infraction notice, file an administrative appeal with the Town Administrator, or his or her designee.

(1) Within 30 days of receiving an appeal, the Town Administrator, or his or her designee, shall conduct a hearing to determine if an infraction occurred. The rules of evidence shall not apply.

(2) Any person, employee or employer aggrieved by a determination of the Town Administrator, or his or her designee, may, within 30 days of receipt of the decision, appeal to the Circuit Court for Charleston County.

(3) Failure to timely file an administrative appeal or appeal to the circuit court shall be deemed a waiver of the right to appeal.

(4) The filing of an administrative appeal or an appeal to the circuit court shall not act as a stay of the town's rights to institute civil proceedings to compel compliance with this chapter, or to institute proceedings to suspend or revoke a certificate of occupancy or business license.

(E) A business license shall not be renewed if there are delinquent penalties owed by an employer pursuant to this chapter.

(Ord. 07007, passed 6-12-07; Am. Ord. 08071, passed 12-9-08)

§ 138.09 NON-RETALIATION.

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 chapter, or exercises any right conferred by this chapter.

(Ord. 07007, passed 6-12-07) Penalty, see § 138.99

§ 138.10 CONFLICT WITH OTHER LAWS, ORDINANCES OR REGULATIONS.

Nothing in this chapter 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. 07007, passed 6-12-07)

§ 138.11 WAIVERS.

(A) Any employer, owner, manager or other person having control of a workplace subject to this chapter may apply to the Town Administrator, or his or her designee, for a waiver of any provision of this regulation, for a period not to exceed 90 days.

(B) All waivers shall be submitted to the Town Administrator, or his or her designee, on an application form provided by such Administrator.

(C) The decision to grant such a waiver shall be at the sole discretion of the Town Administrator, or his or her designee, based upon his or her determination that the following have been demonstrated: reasonable efforts have been made to comply with this regulation, and additional time will likely bring about compliance.

(D) No employer, owner, manager or other person having control of a workplace shall be granted more than one waiver.

(Ord. 07007, passed 6-12-07; Am. Ord. 07073, passed 11-13-07)

§ 138.99 PENALTY.

(A) Any person who violates any provision of this chapter shall be subject to a maximum fine of not more than \$100, plus all other state assessments, court charges and fees.

(B) A separate offense shall be deemed committed on each day that a violation occurs or continues.

