

Ratification  
Number 2007-14

# AN ORDINANCE

TO AMEND THE CODE OF THE CITY OF CHARLESTON, SOUTH CAROLINA, CHAPTER 21, BY ADDING A NEW SECTION 132 THEREIN, ESTABLISHING REGULATIONS AND REQUIREMENTS RELATING TO SMOKING OF TOBACCO PRODUCTS IN THE CITY OF CHARLESTON AND TO FURTHER AMEND THE CODE OF THE CITY OF CHARLESTON, SOUTH CAROLINA, CHAPTER 21, SECTION 21-131(G) TO MODIFY THE PENALTY PROVISIONS FOR VIOLATIONS OF SAID SECTION. (AS AMENDED)

BE IT ORDAINED BY THE MAYOR AND COUNCIL MEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

**Section 1:** The Code of the City of Charleston is hereby amended by creating a new Section 21-132, which shall read as follows:

(A) **Findings.** As an incident to the adoption of this Ordinance, the City Council ("City Council") of the City of Charleston, South Carolina (the "City") makes the following findings:

- (1) The City 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 Section 5-7-30 relating to regulating streets, markets, and public health; and
- (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 second hand smoke is responsible for the early deaths of up to 65,000 Americans annually. 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 secondhand smoke (v) separating smoking and non smoking sections of indoor areas does not sufficiently remove the threats of secondhand smoke in enclosed areas; and
- (3) 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.

(4) 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.

(5) 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

(6) 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

(7) The South Carolina General Assembly at Section 44-95-10 et seq. (the "Clean Indoor Air Act of 1990") imposed certain limitations on smoking. 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. Consistent with the Clean Indoor Air Act of 1990, City Council previously adopted Section 21-131 of the City Code. In that Ordinance, City Council made the following finding:

The City of Charleston in furtherance of its duty to provide such regulations as may be necessary to protect the health of its citizens and minimize the incidents of disease of its population, and to provide a working environment for its employees and the general public which is reasonably free of hazards and distractions, such as environmental tobacco smoke, and in furtherance of the objectives of the Clean Indoor Act of 1990, deems it to be in the public interest to regulate smoking in city-owned or operated indoor facilities.

City Council has now determined that additional regulation of smoking in areas beyond those addressed in the Clean Indoor Air Act of 1990 and Section 21-131 is appropriate in furtherance of its duty to protect the health of its citizens and employees in the workplace and therefore enacts this ordinance.

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

**(C) Definitions.**

(1) "Business Agent" means an individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

(2) "Cigar Bar" means any establishment in existence as of the date of the adoption of this Ordinance which (a) serves alcohol for consumption by patrons on the premises; (b) either itself or in conjunction with an affiliated entity operating within the same premises derives 30% or more of its gross revenue from the sale of tobacco products or related paraphernalia; (c) shall permit the smoking of cigars and other tobacco products by patrons on the premises; and (d) prohibits the entry of persons under the age of twenty-one (21) at all times. For purposes of this section, affiliated entity shall be defined as a commercial entity with which the Cigar Bar has a

business relationship, including but not limited to a lease or sublease, contract, service agreement or sharing of expenses and/or profits.

(3) "Employee" means any person who performs services for an employer in return for wages, profit or other valuable consideration.

(4) "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 that employs 1 or more persons.

(5) "Enclosed" means 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.

(6) "Environmental tobacco smoke" (ETS) or "secondhand smoke" is the complex mixture formed from the escaping smoke of a burning tobacco product (termed as "sidestream smoke") and smoke exhaled by the smoker. Exposure to ETS is also frequently referred to as "passive smoking," "secondhand smoking" or "involuntary smoking".

(7) "Livability Court" means that certain division of the City of Charleston Municipal Court.

(8) "Police Department" means the City of Charleston Police Department.

(9) "Public building" means any building owned, operated or leased by the City, as defined in Section 21-131(3) of the City Code.

(10) "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 related paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of eighteen (18) is prohibited at all times.

(11) "Smoking" means the inhaling, exhaling, burning, lighting or carrying of a lighted cigarette, cigar, pipe, or similar device or any other lighted tobacco product.

(12) "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.

(13) "Workplace" means any enclosed indoor area, structure, building or facility or any portion thereof at which one (1) 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.

(14) "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.

**(D) Prohibition of Smoking in the Workplace.**

(1) 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.

(2) Smoking shall be prohibited in all work spaces 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.

(3) 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.

**(E) Smoking Restrictions Inapplicable.** In providing for the inapplicability of this section to the following subsections (1) through (7), 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 South Carolina Code section 44-95-10, et. seq. Therefore, this section shall not apply to:

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

(2) 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 Subarticle 11, Article 13, Chapter 7, of Title 20 of the South Carolina Code;

(3) Health care facilities as defined in South Carolina Code Section 44-7-130;

(4) Government buildings as defined in South Carolina Code Section 44-95-20(4), except to the extent regulation by the City is authorized therein;

(5) Elevators;

(6) Public transportation vehicles, except for taxicabs;

(7) Arenas and auditoriums of public theaters or public performing art centers;

**(F) Exceptions.** Notwithstanding the provisions of Section D herein, smoking may be permitted in the following places and/or circumstances:

(1) Private residences;

- (2) 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% in such establishment. A Room so designated shall have signs posted indicating that smoking is allowed therein;
- (3) Retail tobacco stores;
- (4) Cigar Bars, provided that the Cigar Bar has not expanded its size or changed its location from its size or location after the date of the adoption of this Ordinance, and it or its affiliated entity operating within the same premises continues to derive 30% or more of its gross revenue from the sale of tobacco products or related paraphernalia;
- (5) Performers upon a stage, provided that the smoking is part of the theatrical production being performed;
- (6) Religious ceremonies where smoking is part of the ritual; and
- (7) Medical research facilities.

(G) **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.

(H) **Reasonable Distance.** Smoking outside a Workplace, Work Space or Work Spaces and any other indoor area where smoking is prohibited, shall be permitted provided that tobacco smoke does not enter the Workplace, Work Space or Work Spaces through entrances, windows, ventilation systems or other means.

(I) **Jurisdiction, Enforcement and Penalties.**

(1) The Livability Court shall have jurisdiction over prosecuting violations of the provisions of this section.

(2) The Police Department shall enforce the provisions of this section. In addition, designated code enforcement employees of the City shall have the power to enforce the provisions of this section.

(3) The Police Department shall seek to obtain voluntary compliance with this section by means of publicity and education programs, and the issuance of warnings, where appropriate.

(4) Any person who violates any provision of this section shall be subject to the penalties set forth in Section 1-16 of the Code of the City of Charleston.

(J) **Severability.** If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstances shall be help 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 Ordinance are declared to be severable.

(K) **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 section or exercises any right conferred by this section.

(L) **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.

(M) **Waivers.**

(1) Any employer, owner, manager or other person having control of a workplace subject to this section may apply to the City of Charleston's Director of the Department of Budget, Finance and Revenue Collection or his designee for a waiver of any provision of this regulation for a period not to exceed ninety (90) days.

(2) All waivers shall be submitted to City of Charleston's Director of the Department of Budget, Finance and Revenue Collection or his designee, on an application form provided by such Director along with a \$100 non-refundable filing fee.

(3) The decision to grant such a waiver shall be in the sole discretion of City of Charleston's Director of the Department of Budget, Finance and Revenue Collection or his designee, based upon his determination that such waiver is in the public interest. In do determining, the City of Charleston's Director of the Department of Budget, Finance and Revenue Collection or his designee may take into account, but is not limited to the following:

- (a) The efforts that the employer, owner, manager or other person having control of a workplace has made toward compliance with this section;
- (b) Whether or not the workplace will be in compliance with all terms of this section within ninety (90) days; and
- (c) Whether or not the granting of the waiver will result in an appreciable danger to the health of the public.

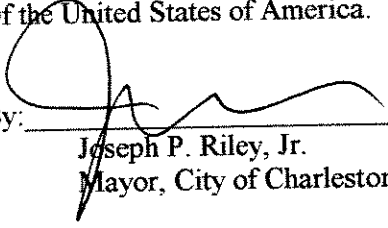
(4) No employer, owner, manager or other person having control of a workplace shall be granted more than one (1) waiver.

**Section 2:** The Code of the City of Charleston is hereby amended by deleting Section 21-131(g) in its entirety and substituting in its place and stead the following:

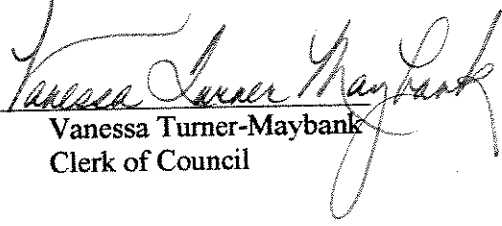
"Section 21-131(g): *Penalty.* Any person who violates any provision of this section shall be subject to the penalties set forth in Section 1-16 of the Code of the City of Charleston."

**Section 3.** This Ordinance shall become effective within six months of its ratification.

Ratified in City Council this  
*23<sup>rd</sup>* day of *January* in the  
Year of Our Lord, 2007, and in  
The 231<sup>st</sup> Year of the Independence  
Of the United States of America.

By:   
Joseph P. Riley, Jr.  
Mayor, City of Charleston

**ATTEST:**

By:   
Vanessa Turner-Maybank  
Clerk of Council