

ORDINANCE NO. 395

AN ORDINANCE TO AMEND CHAPTER 74 OF THE CITY OF HAMPTON CODE OF ORDINANCES ENTITLED "STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES"; TO AMEND ARTICLE III ENTITLED "SMOKING IN PUBLIC PLACES"; TO PROVIDE FOR AREAS WHERE PROHIBITED; TO PROVIDE FOR POSTING OF SIGNS; TO PROVIDE FOR ENFORCEMENT; TO PROVIDE FOR PENALTIES; TO ESTABLISH AN EFFECTIVE DATE; AND FOR OTHER PURPOSES:

WHEREAS, it is the desire of the Mayor and Council to adopt in all respects an Ordinance relating to the regulation of smoking in public places; and.

WHEREAS, adequate enforcement relating to smoking in public places requires that they be regulated, abated or prohibited; and

WHEREAS, the Mayor and Council do hereby find:

(1) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution.

(2) Breathing secondhand smoke is a cause of disease in healthy non-smokers, including heart disease, stroke, respiratory disease and lung cancer.

(3) Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function including asthmatics and those with obstructive disease.

(4) Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities and cancer.

WHEREAS, the Mayor and Council declare that the purpose of this Chapter is:

(1) To protect the public health, safety and welfare by prohibiting smoking in public places;

(2) To guarantee the right of non-smokers to breathe smoke-free air; and

(3) To recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

THE COUNCIL OF THE CITY OF HAMPTON HEREBY ORDAINS:

SECTION 1. Code Chapter Amended. Chapter 74, Article III of the Code of Ordinances of the City of Hampton, Georgia, is hereby amended by deleting Article III in its entirety and substituting in lieu thereof a new Article III entitled "Smoking in Public Places" and new sections thereunder which shall read as follows:

Section 74-41. Definitions.

Child-care facility: Structure wherein is provided care and supervision of children under age 18 away from their place of residence on a regular basis for compensation, including, but not limited to, any public, private or parochial: child-care home, child-care center, nursery school, early learning center, pre-kindergarten, private kindergarten, play school, or pre-school.

Dining area: Interior area containing a counter or tables upon which food is served.

Enclosed: All space between a floor and ceiling that is bordered on all sides by enclosures which prevent air flow to the exterior (exclusive of doorways), which extend from the floor to the ceiling, including without limitation lobbies and foyers. Opening of doors or windows shall not convert an "enclosed" space into an unenclosed or open space.

Health care facility: Any general or specialized hospital, institutional infirmary, public health center, or diagnostic and treatment center, as defined by O.C.G.A. § 31-7-1.

Intermediate care (nursing) home: Any long-term custodial care facility that provides for the welfare of the aged.

Personal care home: Residential facility having at least 25 beds and providing, for compensation, care and oversight of ambulatory persons who need a monitored environment but who do not have injuries or disabilities which require chronic or convalescent care, including medical, nursing or intermediate care. Personal care homes include facilities which monitor daily residents' functioning and location, have the capability for crisis intervention, and provide supervision in areas of nutrition, medication and provision of transient medical care. Such term does not include old age residences devoted to independent living units with kitchen facilities in which residents have the option of preparing and serving some or all of their own meals, or boarding facilities which do not provide personal care. Personal care homes shall also mean residential care facilities for the elderly.

Public place: Any enclosed area in which the public is permitted, including, but not limited to, restaurants, educational facilities, recreational facilities, health care facilities, child care facilities, personal care homes, intermediate care (nursing) homes, auditoriums, theaters, arenas, convention centers, meeting rooms, and convention halls. Enclosed porches, courtyards or decks with a contiguous connection to a public place shall be considered a public place. A private residence is not a public place unless it is used as a child-care facility, an intermediate care (nursing) home facility or a healthcare facility. Public place shall not include the non-enclosed areas of any public park owned or operated by the City of Hampton.

Restaurant: Eating and drinking establishment, including but not limited to, coffee shops, cafeterias, food courts within enclosed shopping malls, private clubs, sandwich stands, school cafeterias and kitchens and catering facilities in which food is prepared on the premises for serving elsewhere.

Retail tobacco store: A retail store utilized primarily for the sale of tobacco products and accessories.

Smoking: Inhaling, exhaling or carrying any lighted cigar, cigarette, pipe, weed, plant or other combustible substance in any manner or in any form including electronic cigarettes or e-cigs.

Section 74-42. Prohibited smoking.

Unless otherwise provided, smoking is prohibited in all public places in the City.

Section 74-43. Reasonable distance.

Smoking may occur outdoors, but not less than five feet from any entrance to any place where smoking is prohibited.

Section 74-44. Smoking prohibited in local government buildings

Smoking shall be prohibited in all enclosed facilities of, including buildings owned, leased, or operated by, the State of Georgia, its agencies and authorities, and any political subdivision of the state, municipal corporation, the City of Hampton, or local board or authority created by general, local, or special Act of the General Assembly or by ordinance or resolution of the governing body of a county or municipal corporation individually or jointly with other political subdivisions or municipalities of the state.

Section 74-45. Smoking prohibited in enclosed public places

Except as otherwise specifically authorized in O.C.G.A. § 31-12A-6, smoking shall be prohibited in all enclosed public places in the City of Hampton.

Section 74-46. Exemptions

(a) Notwithstanding any other provisions herein to the contrary, those areas identified in O.C.G.A. § 31-12A-6 shall be exempt from the provisions of this chapter.

(b) In order to qualify for exempt status under subsection (a) of this Code section, any area described in subsection (a) of this Code section, except for areas

described in O.C.G.A. § 31-12A-6(a)(1), shall post conspicuously at every entrance a sign indicating that smoking is permitted.

(c) Notwithstanding any other provision hereof, any person who controls any establishment described in this chapter may declare that the entire establishment is a non-smoking establishment.

Section 74-47. Responsibility of owners of public places.

(a) It is the responsibility of owners of public places to provide a smoke-free environment in public places.

(b) Each owner of a public place is encouraged to implement and make known a written smoking policy that incorporates the smoking prohibitions of this chapter.

(c) An owner, manager, operator and/or employee of an establishment regulated by this chapter shall inform persons violating this chapter of the smoking prohibitions and ask the person to stop smoking or leave

Section 74-48. Posting of signs and notification.

"No smoking" signs or the international "no smoking" symbol (consisting of a pictorial representations of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every building where smoking is prohibited.

Section 74-49. Enforcement.

(a) Health department officials or any police officer may issue a citation for any violation.

(b) Any citizen who desires to register a complaint under this chapter may do so with the health department or the police department.

(c) Any owner, operator, manager or employee of any establishment regulated by this chapter shall inform violators of the smoking prohibition and request compliance. If the violator refuses to either leave or to stop smoking and the police are not called, the person smoking, and the operator or manager shall be charged with violating this chapter. The operator and manager shall be relieved of liability if they call law enforcement and report the violation.

Section 74-50. Non-retaliation.

No person shall retaliate against any person because they exercise any right to a smoke-free environment.

Section 74-51. Violations and penalties.

Any person who violates any provision of this Chapter shall be subject to the following penalties:

- (1) A fine not exceeding \$50.00 for a first violation;
- (2) A fine not exceeding \$75.00 for a second violation within one year; and
- (3) A fine not exceeding \$100.00 for each additional violation within one year.

Section 74-52. Other applicable laws and disclaimer.

This chapter shall not be construed to permit smoking where it is otherwise restricted by other applicable laws. By regulating smoking, the city is assuming an undertaking only to promote the general health and welfare of its citizens. By this enactment, neither the city, its officers nor its employees are liable to any person who claims any breach of this chapter caused injury.

SECTION 2. This Ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

SECTION 3.

(A) It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are and were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

(B) It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

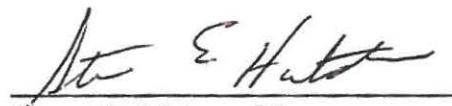
(C) In the event that any phrase, clause, sentence, paragraph or section of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Ordinance and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION 4. Repeal of Conflicting Provisions. Except as otherwise provided herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 5. Effective Date. This ordinance shall become effective ten (10) days after its adoption by the Mayor and City Council of the City of Hampton.

SO ORDAINED this 28 day of October, 2014.

CITY OF HAMPTON, GEORGIA


Steve Hutchison, Mayor

Attest:



Kim Drinkall, City Clerk

(Seal)

FIRST READING: 10-14-14

SECOND READING
ADOPTION: 10-28-14