

ORDINANCE NO. 2013-08

AN ORDINANCE AMENDING CHAPTER 18 OFFENSES AND MISCELLANEOUS PROVISIONS, ARTICLE VII SMOKING PROHIBITION OF THE CODE OF ORDINANCES FOR THE TOWN OF BLUFFTON, SOUTH CAROLINA.

WHEREAS, The South Carolina General Assembly at Section 44-95-10 et seq. (the "Clean Indoor Air Act of 1990") imposed certain limitations on smoking; and

WHEREAS, on December 12, 2006 the Town of Bluffton Town Council adopted Ordinance 2006-20 ("Smoking Ordinance") providing for additional regulations of smoking in areas beyond those addressed in the Clean Indoor Air Act of 1990 was appropriate in furtherance of its duty to protect the health of its citizens and employees in the workplace; and

WHEREAS, on November 18, 2008 the Town Council adopted Ordinance 2008-21 amending the Jurisdiction, Enforcement and Penalties Section of the Smoking Ordinance; and

WHEREAS, Town Council wishes to further amend the Smoking Ordinance to define Cigar Bars and exempt such uses from prohibiting smoking within the workplace.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA:

SECTION 1. The Town of Bluffton hereby adopts an Ordinance amending Chapter 18 Offenses and Miscellaneous Provisions, Article VII Smoking Prohibition of the Code of Ordinances for the Town of Bluffton, South Carolina, which is attached and incorporated hereto as Exhibit A.

SECTION 2. Ordinance in Full Force and Effect. This Ordinance shall take full force and effect on July 17, 2013.

DONE, RATIFIED AND ENACTED this Sixteenth day of July, 2013.

First Reading was held on June 11, 2013.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

Attest:

Sandra Lunceford, Town Clerk
Town of Bluffton, South Carolina

Second and Final Reading was held on July 16, 2013.

Lisa Sulka, Mayor
Town of Bluffton, South Carolina

ATTEST:

Sandra Lunceford, Town Clerk
Town of Bluffton, South Carolina

CODE OF ORDINANCES
Chapter 18 - OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE VII. - SMOKING PROHIBITION

ARTICLE VII. - SMOKING PROHIBITION

Sec. 18-158. - Intent.
Sec. 18-159. - Definitions.
Sec. 18-160. - Prohibition of smoking in the workplace.
Sec. 18-161. - Smoking restricted by State law (S.C. Code 1976, § 44-95-10 et seq.).
Sec. 18-162. - Exceptions.
Sec. 18-163. - Posting of signs.
Sec. 18-164. - Reasonable distance.
Sec. 18-165. - Jurisdiction, enforcement and penalties.
Sec. 18-166. - Conflict with other laws, ordinances or regulations.
Sec. 18-167. - Waivers.
Secs. 18-168—18-187. - Reserved.

Sec. 18-158. - Intent.

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

(Ord. No. 2006-20, § 2, 12-12-2006; Ord. No. 2008-21, § 2, 11-18-2008)

Sec. 18-159. - 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:

Cigar means any product that contains nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains any roll of tobacco wrapped in tobacco leaves.

Cigar Bar means an establishment operated by a holder of an On Premise Beer and Wine Permit or other Alcohol Beverage Licensing Permit (issued by the State of South Carolina) that:

1. Does not sell food;
2. In addition to selling beer and wine, annually receives thirty percent (30%) or more of its gross revenue from the sale of cigars, pipes, pipe tobacco and other tobacco products and tobacco-related products, except from the sale of cigarettes. A cigar bar shall not discount alcohol if sold in combination with cigars or other tobacco products and tobacco-related products;
3. Has a walk-in humididor on the premises;
4. Only permits the smoking of cigars, hookah tobacco, and pipe tobacco and does not permit the smoking of cigarettes; and
5. 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 Ordinance.

Cigarette means any product that contains nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

1. Any roll of tobacco wrapped in paper or in any substance not containing tobacco;
2. Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

CODE OF ORDINANCES
Chapter 18 - OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE VII. - SMOKING PROHIBITION

3. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette. The term cigarette includes roll-your-own tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes).

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

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 workplace or work space, as defined herein, that employs one or more persons.

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.

Hookah tobacco means a specially made tobacco burned or heated under ordinary conditions of use in a device with one or more pipes (commonly known as a hookah, waterpipe, shisha or narghile) designed with a tube passing through an urn of water that cools the smoke as it is drawn through it.

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

Pipe tobacco means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be burned or heated under ordinary conditions of use in a pipe.

Police Department means the Bluffton Police Department.

Public building means any building owned, operated or leased by the Town.

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 into which the entry of persons under the age of 18 years is prohibited at all times.

Smoking means 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.

Workplace means any enclosed indoor area, structure, building or facility or any portion thereof at which one or more employees perform services for their employer, including but not limited to: retail food

CODE OF ORDINANCES
Chapter 18 - OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE VII. - SMOKING PROHIBITION

stores; retail stores; restaurants; bars; cabarets; cafes; public or private clubs; and pool halls and bowling alleys.

Work space or work spaces means any enclosed area occupied by an employee during the course of his employment, including but not limited to offices, customer service areas, common areas, hallways, waiting areas, restrooms, lounges, and eating areas.

(Ord. No. 2006-20, § 3, 12-12-2006; Ord. No. 2008-21, § 3, 11-18-2008)

Sec. 18-160. - Prohibition of smoking in the workplace.

- (a) The employer shall provide a smoke-free environment for all employees working in all work spaces and workplaces 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) It is unlawful for a person to smoke or possess lighted smoking material in any form in all work spaces and workplaces 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. 2006-20, § 4, 12-12-2006; Ord. No. 2008-21, § 4, 11-18-2008)

Sec. 18-161. - Smoking restricted by State law (S.C. Code 1976, § 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:

- (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 S.C. Code 1976, § 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 S.C. Code 1976, § 44-7-130;
- (4) Government buildings as defined in S.C. Code 1976, § 44-95-20(4), except to the extent regulation by the Town is authorized therein;
- (5) Elevators;
- (6) Public transportation vehicles;
- (7) Arenas and auditoriums of public theaters or public performing art centers.

(Ord. No. 2006-20, § 5, 12-12-2006; Ord. No. 2008-21, § 5, 11-18-2008)

Sec. 18-162. - Exceptions.

Notwithstanding the provisions of section 18-160, smoking may be permitted in the following places and/or circumstances:

- (1) Private residences, except when used as a licensed child care, adult day care or healthcare facility;
- (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 percent in such establishment. A room so designated shall have signs posted indicating that smoking is allowed therein;
- (3) Retail tobacco stores as defined herein;
- (4) Cigar Bars as defined herein; (5) Religious ceremonies where smoking is part of the ritual.

CODE OF ORDINANCES
Chapter 18 - OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE VII. - SMOKING PROHIBITION

- (6) Workplaces with totally separate smoking only facilities, HVAC systems, entrances, exits and restrooms.

(Ord. No. 2006-20, § 6, 12-12-2006; Ord. No. 2008-21, § 6, 11-18-2008)

Sec. 18-163. - Posting of signs.

The owner, manager or person in control of an establishment or area in which smoking is prohibited pursuant to this article 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. 2006-20, § 7, 12-12-2006; Ord. No. 2008-21, § 7, 11-18-2008)

Sec. 18-164. - Reasonable distance.

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

(Ord. No. 2006-20, § 8, 12-12-2006; Ord. No. 2008-21, § 8, 11-18-2008)

Sec. 18-165. - Jurisdiction, enforcement and penalties.

- (a) The Town Magistrate Court shall have jurisdiction over prosecuting violations of the provisions of this article.
- (b) The Bluffton Police Department shall enforce the provisions of this article. In addition, designated code enforcement employees of the County shall have the power to enforce the provisions of this article.
- (c) Any person who violates any provision of this article shall be subject to a civil fine not to exceed \$100.00.
- (d) Each citation shall constitute a separate violation.

(Ord. No. 2006-20, § 9, 12-12-2006; Ord. No. 2008-21, § 9, 11-18-2008)

Sec. 18-166. - Conflict with other laws, ordinances or regulations.

Nothing in this article 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. 2006-20, § 11, 12-12-2006; Ord. No. 2008-21, § 11, 11-18-2008)

Sec. 18-167. - Waivers.

- (a) Any employer, owner, manager or other person having control of a workplace subject to this article may apply to the Town Manager or his 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 Manager or his designee on an application form provided by the Town along with a \$100.00 nonrefundable filing fee payable to the Town Of Bluffton.
- (c) The decision to grant such a waiver shall be in the sole discretion of the Manager or his designee, based upon his determination that such waiver is in the public interest. In so determining, the manager or his designee may take into account, but is not limited to the following:
 - (1) The efforts that the employer, owner, manager or other person having control of a workplace has made toward compliance with this article;
 - (2) Whether or not the workplace will be in compliance with all terms of this article within 90 days; and

CODE OF ORDINANCES
Chapter 18 - OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE VII. - SMOKING PROHIBITION

- (3) Whether or not the granting of the waiver will result in an appreciable danger to the health of the public.
- (d) No employer, owner, manager or other person having control of a workplace shall be granted more than one waiver.
(Ord. No. 2006-20, § 12, 12-12-2006; Ord. No. 2008-21, § 12, 11-18-2008)

Secs. 18-168—18-187. - Reserved.