

ORDINANCE NO. 297.2016

KERSHAW COUNTY ORDINANCE TO PROHIBIT SMOKING AND THE USE OF OTHER TOBACCO PRODUCTS ON COUNTY PROPERTY

WHEREAS, as an incident to the enactment of this ordinance, Kershaw County Council, as the governing body of Kershaw County, has made the following legislative findings:

WHEREAS, Kershaw County is a body politic and political subdivision of the State of South Carolina and as such possesses all powers granted to counties by the Constitution and the laws of the State of South Carolina including the powers enumerated in S.C. Code §§ 4-9-10 et seq. The Kershaw County Council is authorized and empowered to enact regulations, resolutions and ordinances in relation to health and order in counties or respecting any subject as appears to them necessary or proper for the security, general welfare and convenience of counties or for preserving health, peace, order and good government in them as provided in S.C. Code §§ 4-9-10 et seq., as amended, including S.C. Code § 4-9-25 thereof and the general law; and

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, including limitations on smoking in government buildings (the definition of which includes county-owned buildings) except where the owner of such building shall designate smoking areas; and

WHEREAS, according to the Centers for Disease Control and Prevention (CDC), smoking is a public health hazard that is harmful to smokers and non-smokers and laws prohibiting smoking can reduce the risk for certain illnesses and diseases associated with secondhand smoke (Centers for Disease Control and Prevention, Secondhand Smoke (SHS) Facts, http://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.html (last visited August 15, 2016); and

WHEREAS, county buildings, enclosed areas, vehicles, mobile equipment, grounds, sports arenas, parking lots and campuses have been shown to be locations of significant exposure to secondhand tobacco smoke; and

WHEREAS, a simple separation of smokers and nonsmokers within the same airspace does not eliminate the exposure of secondhand smoke to nonsmokers;

WHEREAS, the only way to fully protect nonsmokers on county property is to eliminate smoking and the use of tobacco products on county property; and

WHEREAS, Kershaw County recognizes that, in order to protect the public health and welfare, it is in the best interests of the citizens of the County to adopt an ordinance prohibiting smoking and the use of tobacco products on County property.

NOW, THEREFORE, the Kershaw County Council hereby ordains the following:

Sec. 1. Definitions.

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KERSHAW COUNTY
CLERK OF COURSE
JULIE E. BOONAN

As used in this article, the following terms have the indicated meaning:

1. "Campus". – The buildings, enclosed areas and grounds associated with any property owned, leased, operated or occupied by Kershaw County.
2. "County building". – A building owned, leased as lessor, or the area leased as lessee and occupied by the County.
3. "County vehicle". – A passenger-carrying vehicle owned, leased, or otherwise controlled by the County and assigned permanently or temporarily to its employees, agencies, institutions, or facilities for official County business.
4. "Employee". – A person who is employed by Kershaw County, or who contracts with the County or a third person to perform services for the County, or who otherwise performs services for the County with or without compensation.
5. "Electronic vaping device". – means any electronic device composed of a mouthpiece, heating element, battery and electronic circuits that provides, or is manufactured or intended to provide, a vapor of liquid nicotine and/or other substances mixed with propylene glycol and/or other substances delivered or deliverable to the user that he/she can inhale in simulation of smoking. This term shall include every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes, electronic hookahs, e-hookahs or under any other product name or design.
6. "Enclosed Area". – 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.
7. "Grounds". – An unenclosed area owned, leased, or occupied by the County.
8. "Mobile Equipment". – Any county-owned land vehicle, including its attached machinery and equipment, not defined as a vehicle above that is operated in an enclosed cab or other control center by a county employee and is designed for use principally off public roads; i.e. backhoes, bulldozers, front-end loaders, etc.
9. "Parking Lot". – An area where cars or other vehicles may be left temporarily.
10. "Smoking". – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product and/or vaping or the use of any electronic vaping device.
11. "Sports Arena". – Sports pavilions, fields, 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.
12. "Tobacco product". – Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component part or accessory of a tobacco product, including but not limited to cigarettes; cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cutting and sweepings of tobacco; and other kinds and forms of tobacco. A tobacco product excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
13. "Universal 'No Smoking and Use of Tobacco Products Prohibited' Symbol" – Symbol consisting of a pictorial representation of a burning cigarette and a tobacco product enclosed in a red circle with a red bar across it.

14. “Vaping”. – Inhaling or exhaling vapors of electronic vaping liquid from an electronic vaping device.

Sec. 2. Enumeration of prohibited acts.

PROHIBITION OF SMOKING AND USE OF TOBACCO PRODUCTS ON COUNTY PROPERTY

Smoking and the use of tobacco products are prohibited:

- (A) In or on any building or enclosed area owned, leased, operated and/or occupied by the County.
- (B) In any vehicle or mobile equipment owned, leased, operated and/or controlled by the County.
- (C) On or in any grounds, campus, sports arena and/or parking lot that is owned, leased, operated or occupied by the County.

REASONABLE DISTANCE OF ENTRY AND OUTDOOR AREA.

Smoking is prohibited within a distance of ten feet from any entry into a building or 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 area 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.

WHERE SMOKING NOT REGULATED.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from this Ordinance.

- (A) Private vehicles

POSTING OF SIGNS.

- (A) The Universal “No Smoking and Use of Tobacco Products Prohibited” Symbol shall be clearly and conspicuously posted in all locations where smoking is prohibited by this chapter.
- (B) Every location where smoking is prohibited by this chapter 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 chapter.

NONRETALLATION: 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 chapter or reports or attempts to prosecute a violation of this chapter.

PENALTY.

(A) A person who smokes or uses tobacco products in an area where smoking and the use of tobacco products is prohibited by the provisions of this chapter shall be guilty of an infraction, punishable by a fine not exceeding \$50.

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

(C) Each continuing offense shall be considered a separate and distinct infraction.

Sec. 3. Separability.

The provisions of this ordinance are hereby declared to be separable and, if any section, phrase or provision shall for any reason be declared by a court of competent jurisdiction to be invalid or unenforceable, such declaration shall not affect the validity of the remainder of the sections, phrases, and provisions hereunder.

Sec. 4. Effective Date.

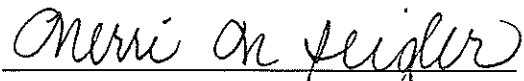
The effective date of this ordinance shall be sixty (60) days following the date it is adopted by the County Council. Upon the effective date, all prior ordinances, resolutions or policies that are inconsistent with or duplicative of this ordinance shall be rescinded.

ADOPTED by Kershaw County Council this 22nd day of November, 2016.

KERSHAW COUNTY COUNCIL

By: 

ATTEST:


Merri M. Seigler, Clerk to County Council

First Reading: October 11, 2016
Second Reading: October 25, 2016
Third Reading: November 22, 2016