

ORDINANCE NO: \_\_\_\_\_

**AN ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES AND WORK PLACES.**

**BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF HAMPTON, SC:**

**SECTION 1: Findings and Determinations.**

The Town Council (the "Council") of the Town of Hampton, South Carolina, hereby finds and determines:

- (a) The Town of Hampton, South Carolina (the "Town"), is an incorporated municipality located in Hampton County, South Carolina, 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 (2005 Supp) relating to regulating streets, markets, and public health.
- (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. The National Cancer Institute has determined that secondhand smoke is responsible for the early deaths of up to 65,000 American annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.) The Surgeon General has declared that:
  - (1) Secondhand smoke causes disease and premature death in nonsmokers exposed to smoke;
  - (2) Children exposed to secondhand smoke have an increased risk of sudden death syndrome, acute respiratory infections, ear problems, and more severe asthma;
  - (3) Adults exposed to secondary smoke have a higher risk of coronary heart disease and lung cancer;
  - (4) There is no safe level of exposure to secondhand smoke; and
  - (5) Separating smoking and nonsmoking sections of indoor areas does not sufficiently remove the threats of secondhand smoke in enclosed areas.
- (c) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50 percent 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. (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., “Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes; the CARDIO2000 case-control study,” Tobacco Control 11(3): 220-225, September 2002.)

- (d) 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.
- (e) Certain outdoor events and activities, such as parades, festivals, similar public gatherings and playground recreation for children result in nonsmokers finding themselves in close proximity on a continuing basis to persons who are smoking, and not merely passing by them. Exposure to second hand smoke during such outdoor events and activities can be reasonably seen to have the same effects of exposure as when nonsmokers are exposed to smoke in an enclosed space. Lighted cigarettes, cigars, pipes and other smoking devices or paraphernalia of people standing or sitting in close proximity also have the potential of burning those with whom they inadvertently come into direct contact. The outdoor use of tobacco can also impose health threats when non-smokers are required to inhale secondhand smoke while seated in stadium seating, while standing or walking in crowded outdoor event space on either public or private property, or while otherwise forced to sit, stand, or walk where there is a high concentration of smoke.
- (f) The presence of secondhand smoke in enclosed spaces or in outside areas where there is a public gathering with people being in close proximity in places open to the public inevitably results in persons who do not smoke being forced to bear unwarranted health risks and sustaining inappropriate deprivation of peaceful enjoyment of the premises to which they have been invited or permitted to enter, even when steps have been taken to separate “smoking; and “nonsmoking” areas within the confined space.
- (g) The Council recognizes that smoke creates a danger to the health and safety of the public at large and that, in order to protect the health and welfare of the public, it is necessary to restrict smoking in the manner provided for in this article (the “article”).
- (h) The pervasive and continuing odor of stale tobacco smoke residue left behind by active tobacco smoke is evidence that smoke has infiltrated premises where the odor is identified.

**SECTION II: Definitions.**

Unless the context shall clearly indicate some other meaning, the terms defined in this section shall, for all purposes of this article and other documents herein referenced, have the meanings herein specified. Definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined.

“Bar” shall mean an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

“Business” shall mean a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit, or not-for-profit, including retail establishments where goods or services are offered for sale; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

“Employee” shall mean a person who is employed by an employer in consideration for direct or indirect monetary wages, commission, goods or services in kind or like compensation, and it shall also mean a person who volunteers his or her services for a non-profit entity.

“Employer” shall mean a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

“Enclosed area” means 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. The term also include any deck, patio, or porch or like improvement-whether with a ceiling or not and whether separated by rail, rope, planters or other temporary or permanent barriers- which may be contiguous to or in close proximity to a location otherwise qualifying as “enclosed area” when containing furnishings, fixtures, equipment, or signage for the sale, service, or consumption of food, beverages, consumer products, or personal services.

“Health care facility” means an office or institution providing care or treatment of persons having diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes (except as otherwise permitted herein), homes for the aging or chronically ill, laboratories, and office of surgeons, chiropractors,

physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

“Place of employment: means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A bona fide home office, studio or workshop in a private residence is not a “place of employment” for purposes of this article unless it is used as a childcare, adult day care, or health care facility. Nor is a private passenger motor vehicle a “place of employment” when used in the performance of employment responsibilities, provided it is not being used as a public conveyance.

“Private club” means the location where a voluntary association of two or more people periodically or occasionally meets or gather, usually for social, recreational, or business related purposes, but for any other purpose as well or for no purpose at all. The definition includes incorporated and unincorporated members’ clubs composed of a board which manages members’ dues and contributions. The definition also includes proprietary clubs, both incorporated and unincorporated, run for profit-making purposes. For purposes of this article, there is no necessity that the club be incorporated, or be selective in membership.

“Public Place” means an area to which the public is invited or to which the public is permitted to have access, including but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, private clubs, hair salons, massage therapy studios, retail service establishments, retail stores, shopping malls, theaters, waiting rooms, sports arena, stadiums and ball parks. A private residence is not a “public place” unless it is used as a childcare, adult day care, or health care facility.

“Restaurant” means an eating establishment, including but not limited to, full service dining establishments, coffee shops, cafeterias, sandwich stands, soup and salad venues, ice cream parlors, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees while on premises of the establishment or for carry out, as well as kitchens and catering facilities in which food is prepared on the premises for delivery or serving elsewhere. The term “restaurant” shall include a bar area within the restaurant and shall also include the area of any patio, porch, deck or other open air space attached to, adjacent to, or in

close proximity to the primary structure and on which food or beverages, together or separately, are served or allowed to be carried.

“Retail tobacco store; means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

“Service line” means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

“Shopping mall” means an enclosed public plaza, promenade, walkway, or hall area that serves to connect retail or professional establishments.

“Smoking” means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other lighted tobacco product in any manner or in any form.

“Sports activity venue” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, ball fields, tennis courts, bleachers at any location, 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.

**SECTION III: Application to Town-owned facilities and vehicles.**

All enclosed facilities, buildings, and vehicles owned, leased or operated by the Town shall be subject to the provisions of this ordinance, without regard to location, time of day, or character of use.

**SECTION IV: Prohibition of smoking in enclosed public places..**

Smoking shall be prohibited in all enclosed areas within public places within the Town, including but not limited to, the following places:

- (a) Galleries, libraries, and museums.
- (b) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels and motels.
- (c) Bars.
- (d) Bingo Facilities.
- (e) Convention facilities, conference centers, and exhibition halls.
- (f) Educational facilities, both public and private.
- (g) Elevators.
- (h) Health care facilities.
- (i) Hotel and motel lobbies.
- (j) Licensed childcare and adult day care facilities.

- (k) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (l) Polling places.
- (m) Private clubs, but excluding those which regularly and most commonly are situated in private homes in areas where such residential uses are lawfully permitted, such as book clubs, knitting clubs, and garden clubs, bridge, so long as they are in such residential locations.
- (n) Public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depot stations, and terminals.
- (o) Restaurants.
- (p) Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- (q) Retail stores.
- (r) Rooms, chambers, places of meeting or public assembly, including school buildings.
- (s) Service lines.
- (t) Shopping malls.
- (u) Sports arenas.
- (v) Theaters, performance halls, lecture halls, and similar facilities, inclusive of lobbies, audience seating areas, dressing rooms, projections booths, back stage areas, and the stage, but excluding smoking on stage when it is an integral part of a theatrical performance.

**SECTION V: Prohibition of smoking in places of employment.**

- (a) Smoking shall be prohibited in all enclosed areas within places of employment without exception, including but not limited to common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles used for the conveyance of the public, but not including vehicles used in performing employment responsibilities when the sole occupants and users are persons who smoke. The foregoing exclusion for vehicles used in employment shall not apply to vehicles owned, operated, or managed by the Town of Hampton.
- (b) This prohibition on smoking shall be communicated by employers to all existing

employees by the effective date of this article and to all prospective employees upon their application for employment.

**SECTION VI: Prohibition of smoking in certain outdoor areas.**

Smoking shall also be prohibited in certain outdoor areas when the use involves a gathering of the public, regardless of the number actually assembled for the event, performance, or competition. This prohibition shall apply to:

- (a) Amphitheaters.
- (b) Ball parks and stadiums when in use for athletic competitions or public performances.
- (c) Parades and special events on public streets and city property.
- (d) Dining areas in encroachment areas on public sidewalks, plazas, and parks.
- (e) Decks, balconies, and patios of restaurants and bars – when in used for entertainment or when in use for the consumption of food or beverages or both.
- (f) Zoos.

**SECTION VII: Reasonable distance of entry and outdoor area.**

Smoking is prohibited within a distance of ten feet from any entry into an enclosed area where smoking is prohibited, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, the natural flow of outside air, or other means. Smoking is also prohibited within ten feet of the boundary of the outdoor areas 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.

**SECTION VIII: Where smoking is not regulated.**

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the prohibitions of sections IV, V and VI of this ordinance:

- (a) Private residences, except when used as a licensed childcare, adult day care, or health care facility.
- (b) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20 percent of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited

under the provisions of this article. The status of rooms as smoking or non-smoking may not be changed, except to add additional non-smoking rooms.

- (c) Retail tobacco stores, provided that smoke from the establishments does not infiltrate into areas where smoking is prohibited under the provisions of this ordinance. The pervasive and continuing presence of the odor of stale tobacco smoke in areas where smoking is prohibited shall be accepted as evidence that tobacco smoke infiltration has occurred. Retail tobacco store proprietors shall be responsible for achieving compliance by using whatever design, construction or technological means actually preclude tobacco smoke infiltration into areas where smoking is prohibited. In areas outside the Central Business District, smoking on patios, decks, and porches attached to retail tobacco stores is permitted provided the smoke does not infiltrate into areas where it is otherwise prohibited. No business license or certificate of occupancy may be issued for a retail tobacco store without the applicant first providing a detailed plan for compliance with this provision. Nevertheless, the issuance of a certificate of occupancy or a business license to a retail tobacco store shall not be construed as the Town's determination that the retail tobacco store is in compliance with the requirement of this provision.
- (d) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this ordinance.
- (e) Outdoor areas of places of employment except those covered by the provisions of sections VI and VII of this ordinance.

**SECTION IX: Declaration of establishment as non-smoking.**

Notwithstanding any other provision of this ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a non-smoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of section X(a) is posted by the lawful occupant of the premises.

**SECTION X: Posting of sign.**

- (a) “No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this ordinance, by the owner, operator, manager, or other person in control of that place. Signs having other wording may meet the requirement of this section provided they clearly put on notice a person of reasonable sensibilities that smoking is not permitted in the facility, establishment, vehicle, or other location.
- (b) Every public place and place of employment where smoking is prohibited by this ordinance 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 ordinance by the owner, operator, manager or other person having control over the area.

**SECTION XI: No retaliation; no waiver 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 for employment, or customer exercises any rights afforded by this ordinance or reports or attempts to prosecute a violation of this ordinance.
- (b) An employee who works in a setting where an employer fails to enforce this ordinance or otherwise allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

**SECTION XII: Enforcement.**

- (a) This ordinance shall be enforced by the office of the Town manager or an authorized designee.
- (b) Notice of the provisions of this ordinance shall be given to all applicants for a business license in the Town.
- (c) Any citizen who desires to register a complaint under this article may initiate enforcement with the office of the Town manager.

- (d) The building codes division, fire department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this ordinance. The Police in the ordinary performance of their duties of law enforcement and maintenance of public safety are specifically empowered to make observations or inquiry about compliance without having to wait for a complaint.
- (e) An owner, manager, operator, or employee of an establishment regulated by this ordinance shall inform persons violating this ordinance of the appropriate provisions thereof and direct those persons to comply with this ordinance.
- (f) Notwithstanding any other provision of this ordinance, an employee or member of the public may bring legal action against a person, business, or organization in violation of this ordinance to enforce this ordinance.
- (g) In addition to the remedies provided by the provisions of this section, the city or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

**SECTION XIII: Violations and penalties.**

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this ordinance shall be guilty of an infraction, punishable by a fine of not less than \$10.00 nor more than \$25.00.
- (b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this ordinance shall be guilty of an infraction, punishable by a fine of not less than \$10.00 nor more than \$25.00.
- (c) In addition to the fines established by this section, repeated violations of this ordinance by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any occupancy permit or business license issued to the person for the premises on which the violation occurred.
- (d) Violation of this ordinance is hereby declared to be a public nuisance, which may be abated by the Town by 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.

- (e) Each occurrence of a continuing violation of this ordinance shall be considered a separate and distinct offense.

**SECTION XIV: Public education.**

The Town shall engage in a continuing program to explain and clarify the purposes and requirements of this ordinance to citizens affected by it, and to guide owners/operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

**SECTION XV: Governmental agency cooperation.**

The Town shall periodically make reasonable efforts to request other governmental and educational agencies having facilities within the Town to establish local operating procedures in cooperation and compliance with this ordinance. This includes urging all federal, state, county, city, and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

**SECTION XVI: Other applicable laws, rules and regulations.**

This article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or by rules or regulations established by the owner or occupant of the premises.

**SECTION XVII: Interpretation for intent.**

It is the intent of Council to prohibit smoking whenever the private choice of smoking intrudes or has the capacity to intrude upon the right of persons concerned about protecting their own rights to be free from hazards and inconvenience of secondhand smoke or its odor in places where they work, stand, sit, walk, dine, drink, read, study, or engage in entertainment and recreation. All provisions shall be construed to achieve these purposes.

**SECTION XVIII: Severability.**

If any provision, clause, sentence, or paragraph of this ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions

of this 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.

**SECTION XIX: *Effect of section headings.***

The headings or titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation, or effect of this ordinance.

**SECTION XX:**

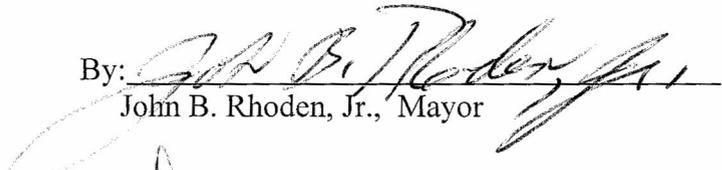
All Ordinances or parts of Ordinances in conflict herewith, to the extent of such inconsistency, are hereby appealed.

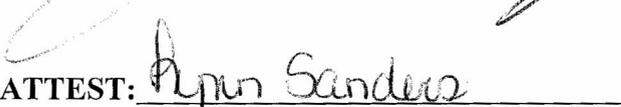
**SECTION XXI:**

This Ordinance shall take effect on January 1, 2012.

**AND IT IS SO ORDAINED this 18<sup>th</sup> day of October, 2011.**

**TOWN OF HAMPTON**

By:   
John B. Rhoden, Jr., Mayor

ATTEST:   
Lynn Sanders, Town Clerk

**FIRST READING: October 4, 2011**

**Public Hearing: October 4, 2011**

**Public Hearing: October 18, 2011**

**SECOND READING: October 18, 2011**



# Town of Hampton

608 FIRST STREET, WEST  
HAMPTON, SOUTH CAROLINA 29924-3504

## COUNCIL

CHARLES M. BOYLES, JR.  
JAMES W. HAGOOD  
TRAVIS L. MIXSON  
ANNA SUE RIVERS

JOHN B. RHODEN, JR., MAYOR  
TELEPHONE: (803) 943-2951  
FAX.: (803) 943-2182  
EMAIL: [townofhampton@embarqmail.com](mailto:townofhampton@embarqmail.com)

## **Amendment to Ordinance Prohibiting Smoking in Public Places and Work Places**

### **PRIVATE CLUB**

Private Club means the location where a voluntary association of two or more people periodically or occasionally meets or gathers, usually for social, recreational, or business related purposes, but for any other purpose as well or for no purpose at all. The definition includes incorporated and unincorporated members' clubs composed of a board which manages member's dues and contributions. The definition also includes proprietary clubs, both incorporated and unincorporated, run for profit-making purposes. For purposes of this article, there is no necessity that the club be incorporated, or be selective in membership.