

ORDINANCE NO.: 11-11

**“Sandra’s Law”**

**“AN ORDINANCE TO ENACT A TOWN ORDINANCE REGULATING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT TO PROTECT THE PUBLIC AGAINST THE HARMFUL EFFECTS OF SECONDHAND SMOKE”**

WHEREAS, upon assessing current conditions and more recent medical findings made by authoritative sources, Council has determined that neither the state's Clean Indoor Air Act nor the Town’s existing ordinance sufficiently addresses the pressing public health issues and quality of life considerations arising from the harmful effects of secondhand smoke, and additional action by Town Council is necessary and proper;

NOW THEREFORE BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF PENDLETON, SOUTH CAROLINA

**SECTION 1. FINDINGS AND DETERMINATIONS**

The Town Council (the “Council”) of the Town of Pendleton, South Carolina, hereby finds and determines:

- (a) The Town of Pendleton, South Carolina, (the “Town”), is an incorporated municipality located in Anderson 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 Q 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 Americans 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:
  - (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 secondhand smoke have a higher risk of coronary heart disease and lung cancer; (iv) there is no safe level of exposure to secondhand smoke; and
  - (v) separating smoking and non-smoking 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% 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 CARD102000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

- (d) Certain outdoor events, such as parades, festivals, and other public gatherings, result in nonsmokers finding themselves in close proximity to persons who are smoking can reasonably be seen to have the same effects of exposure as when nonsmokers are exposed to smoke in enclosed space. Lighted cigarettes, cigars, and pipes of people standing or sitting in close proximity have the potential of burning those with whom they inadvertently come into direct contact and making the air quality and peaceful enjoyment of outdoor events unreasonably restricted for nonsmokers. When there is a presence of secondhand smoke in enclosed spaces or in outside areas where there is a public gathering resulting in people being in close proximity in places that are otherwise open to the public at large inevitably results in persons who do not smoke being forced to bear unwarranted health risks and 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.
- (e) The Town 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 ordinance (the "Ordinance").

## SECTION 2. DEFINITIONS

The following words, terms and phrases, when used in this Ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Attorney* means the Town Attorney for the Town of Pendleton, South Carolina or his/her designee.

*ACSO* means Anderson County Sheriff's Office representative or authorized designee.

*BONA FIDE* means made in good faith without fraud or deceit.

*Employee* means any person who performs services for an employer, with or without compensation.

*Employer* means any person, partnership, association, corporation, trust or other organized group of individuals or entity, whether public or private, which utilizes the services of one (1) or more employees.

*Enclosed Area* means a space in any structure or building that is bound on all sides by any combination of walls, half walls, windows, or doorways extending from floor to the ceiling, regardless of whether the windows or doors are open or closed.

*Place of Employment* means any Enclosed Area under the control of an Employer which Employees normally frequent during the course of employment, including, but not limited to, common work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways and stairways and other common areas of a building or structure.

*Private Club or Lodge* means a bona fide organization, whether incorporated or not, which is the occupant of a building or a portion of a building that has a different address, a separate entrance and

## Town of Pendleton, SC – Smoke Free Ordinance

not connected by common doors or passageways with any other business within the building and which is used solely and exclusively for social, benevolent, patriotic, recreational or fraternal purposes and not monetary gain or profit and no part of the net earnings of which insures to the direct benefit of any member or shareholder and if engaged in the sale of beer, wine, porter, ale or alcoholic beverages, such as incidental to its main purpose, and which maintains on the premises a complete membership list showing the date of application of the proposed member, the date of admission after election, the date initiation fees and dues are paid, the amount paid by each member and each member's correct mailing address. No organization shall qualify as a private club or lodge under this section if it admits members on demand by payment of a nominal fee.

*Private Office* means an independent work space or area with separate ventilation, that is separated from the remainder of a place of employment by walls and a door, from floor to ceiling and which is not immediately accessible to the general public or Employees not assigned to work therein and restricted to a single person. Cubicle work spaces do not constitute a private office.

*Public Place* means any enclosed area to which the public is invited or in which the public is permitted to convene, conduct business or recreate, including but not limited to, banks, educational facilities, health facilities, Laundromats, public transportation facilities, recreational facilities, restaurants, establishments engaged in the sale or distribution of beer, wine, ale, porter or alcoholic beverages for on-premise consumption, reception areas, production and marketing establishments, retail service establishments, retail stores, theaters, waiting rooms and Service Lines.

*Service Line* means any indoor or outdoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

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

### **Section 3. USE OF TOBACCO PRODUCT'S PROHIBITED IN ALL ENCLOSED TOWN-OWNED BUILDINGS**

It shall be unlawful for any person to use any tobacco product, including a lit cigarette, cigar, pipe or other lighted smoking material or equipment, chewing tobacco, "dip" or snuff, in any enclosed town-owned building. "No Smoking" signs shall be conspicuously displayed near all entrances to all enclosed town-owned or occupied buildings.

For purposes of this Section, "enclosed" means a structure or building that is bound on all sides by any combination of walls, half walls, windows or doorways which extend from floor to ceiling, regardless of whether the windows or doorways are open or closed.

### **SECTION 4. USE OF TOBACCO PRODUCT'S PROHIBITED IN TOWN-OWNED VEHICLES**

It shall be unlawful for any person to use any tobacco product, including a lit cigarette, cigar pipe or other lighted smoking material or equipment, chewing tobacco, "dip" or snuff, in a Town-owned or leased vehicle.

### **SECTION 5. SMOKING IN PUBLIC PLACES**

Harmful effects from exposure to exhaled smoke and smoke from the end of a burning cigarette, cigar or pipe, commonly referred to as secondhand smoke, being well documented, it is in the interest of the health, safety and welfare of the general public that exposure to secondhand smoke be

## Town of Pendleton, SC – Smoke Free Ordinance

minimized in indoor places where it is usual and customary for members of the general public to convene to work, conduct business or recreate. It is the purpose of this section to foster and promote public health by decreasing citizens' exposure to secondhand smoke by regulating smoking in enclosed places normally accessible to the public at large and in enclosed places normally accessible to and utilized by employees.

### **SECTION 6. 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) Amphitheatres.
- (b) Ball parks and stadiums when in use for athletic competitions or performances.
- (c) Parades and special events on public streets and Town property, although the Town has the discretion, but not the obligation, to establish designated smoking areas in or in proximity to the parade or event area.
- (d) Dining areas in encroachment areas on public sidewalks, plazas and parks and dining areas on decks, balconies and patios of restaurants and bars.

### **SECTION 7. REASONABLE DISTANCE OF ENTRY AND OUTDOOR AREA**

Smoking is prohibited within a distance of five (5) 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 or other means. Smoking is also prohibited within five (5) feet of the boundary of the outdoor areas where smoking is prohibited. Persons who have begun smoking prior to approaching the five (5) foot distance may continue doing so, provided they do not stop, stand, sit or linger within the five (5) foot distance.

### **SECTION 8. PROHIBITION OF SMOKING IN ENCLOSED PLACES**

- (a) Except within a Private Office, the possession of lighted smoking materials in any form, including but not limited to the possession of lighted cigarettes, cigars, pipes or other tobacco products, is prohibited in all enclosed areas of places of employment within the Town.
- (b) The possession of lighted smoking materials in any form, including but not limited to the possession of lighted cigarettes, cigars, pipes or other tobacco products, shall be prohibited in all public places within the Town.
- (c) No person shall possess lighted smoking materials in any form, including but not limited to lighted cigarettes, cigars, pipes or other tobacco products, at an entrance to or exit from a building where smoking is prohibited pursuant to this section.

### **SECTION 9. PROHIBITION OF SMOKING REGULATIONS IN PLACES OF EMPLOYMENT**

The prohibition on smoking as set forth in Section 8 (a) shall be communicated by Employers to all existing Employees by the effective date of this Ordinance and to all prospective Employees upon their application for employment.

### **SECTION 10. RESPONSIBILITIES OF PROPRIETORS, OWNERS AND MANAGERS**

- (a) A person having control of a place of employment or public place shall not knowingly permit, cause, suffer or allow any person to violate the provisions of Section 8; provided it shall be an affirmative defense to an alleged violation of this subsection that the person having control of the place of employment or public place has asked that the lighted cigarette, cigar, pipe or other tobacco product be extinguished and asked the person to leave the place of employment or public place if that person has failed or refused to extinguish the lighted cigarette, cigar, pipe or other tobacco products.
- (b) "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.
- (c) 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. A PDF copy of this sign is available for download and printing from the town's website at [www.townofpendleton.org](http://www.townofpendleton.org) the sign available online prints out to 8 ½" x 11" and meets the minimum requirements (minimum size for display is 5" x 5").
- (d) All ashtrays, for public use, shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.
- (e) It shall be the responsibility of Employers to provide a smoke-free workplace for all Employees in accordance with the provisions of this Ordinance.

#### **SECTION 11. WHERE SMOKING IS NOT REGULATED**

Notwithstanding any other provision of this ordinance to the contrary, the following shall not be subject to the smoking restrictions of this ordinance:

- (1) Private residences: (any location that has a business license shall not be considered a private residence for purposes of the smoking regulation and shall be subject to the prohibition in all areas where business is being conducted)
- (2) Hotel and motel rooms and Bed and Breakfast rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel or bed and breakfast may be so designated. All smoking rooms on the same floor must be contiguous and smoke from those rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of smoking rooms may not be changed, except to add additional nonsmoking rooms.
- (3) Establishments where more than fifty (50) percent of the revenue, volume of trade or business activity is derived from the blending of tobaccos, or sale of tobaccos, pipes, cigars or smoker's sundries, provided that smoking areas in these establishments are enclosed and smoke does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
- (4) Religious ceremonies where smoking is part of a ritual.
- (5) Private Club or Lodge operating within a building or portion of a building owned or leased by the club.
- (6) Any location where smoking is regulated under S.C. Code § 44-95-10, et seq (1976), as amended, the Clean Indoor Air Act, to include:
  - a. Public schools and preschools where routine or regular kindergarten, elementary or secondary educational classes are held, including libraries, but excluding private offices

and teacher lounges which are not adjacent of classrooms or libraries, unless smoking is prohibited in private offices or teacher lounges by directive of the local school board or a smoke-free campus mandated by a district board of trustees;

- b. 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, § 20-7-2700, which are licensed pursuant to Sub-article 11, Article 13, Chapter 7 of Title 20 of the Code of Laws of South Carolina (1976), as amended.
- c. Health care facilities as defined in S.C. Code § 44-7-130 (1976), as amended, but excluding designated smoking areas in employee break areas, unless the governing body of the facility has determined to maintain a smoke free environment.
- d. Government buildings, as defined in S.C. Code § 44-95-20 (4), except health care facilities as provided for in subpart (c ) hereof, and except for buildings owned or occupied by the Town of Pendleton
- e. Elevators;
- f. Public transportation vehicles that are not owned or operated by the Town of Pendleton, excluding taxicabs;
- g. Arenas and auditoriums of public theaters or public performing art centers, excluding areas that may be designated for smoking in foyers, lobbies or other common areas and excluding smoking as part of a legitimate theatrical performance.

**SECTION 12. NONRETALIATION; 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 Ordinance or reports or attempts to prosecute a violation of this Ordinance.
- (b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

**SECTION 13. ENFORCEMENT**

- (a) This Ordinance shall be enforced by the Anderson County Sheriff’s Office or an authorized designee.
- (b) Notice of the provisions of this Ordinance shall be given to all business license applicants in the Town.
- (c) The Building Codes Officer, Fire Marshall, or their designees shall, while an establishment is undergoing otherwise mandated or voluntary inspections, inspect for compliance with this Ordinance.
- (d) The owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.
- (e) Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Mayor’s office.

**SECTION 14. PENALTY FOR VIOLATION OF THIS ORDINANCE**

- (1) First offense: \$75
- (2) Second offense: \$150
- (3) Third offense: up to \$500

Violators of this Ordinance include:

- (a) Any person who smokes in an area where smoking is prohibited by the provisions of the Ordinance.
- (b) A person who owns, manages, operates, or otherwise controls a Public Place or Place of Employment who fails to adhere to the provisions of this Ordinance.
- (c) In addition to the fines established by this section, four (4) or more 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 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/violation.

**SECTION 15. OTHER APPLICABLE LAWS**

This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**SECTION 16. 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 choice of others to be free from the hazards and inconvenience of secondhand smoke in places where they work, stand, sit, dine, drink, read, study or engage in entertainment and recreation in enclosed public places or places of employment. All provisions of this Ordinance shall be construed to achieve these purposes.

**SECTION 17. SEVERABILITY**

If any provision, clause, sentence or paragraph of this Ordinance or the application thereof to any person or circumstance 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 18. 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.

Town of Pendleton, SC – Smoke Free Ordinance

SECTION 19. EFFECTIVE DATE

This Ordinance shall be effective on Feb. 1, 2012.

MAYOR: 

COUNCIL:

WARD 1: \_\_\_\_\_

WARD 2: Andrew Gault

WARD 3: MS [Signature]

WARD 4: \_\_\_\_\_

ATTEST: Omber Barnes  
Municipal Clerk