

Final - Adopted February 6, 2012

AN ORDINANCE

AN ORDINANCE OF THE CITY OF NORTH MYRTLE BEACH TO REGULATE SMOKING IN PUBLIC PLACES, PLACES OF EMPLOYMENT AND CERTAIN OUTSIDE FACILITIES

Article VI. –Smoking in Public Places

Sec. 12-80. Findings and intent.

Findings. (a) It has been shown that the smoke produced by the smoking of cigarettes, cigars and pipes is hazardous and detrimental to the health, welfare and comfort of smokers and nonsmokers; and

The surgeon general has reported that smoking is a significant cause of cancer, heart disease and lung disorders in smokers and passive smokers (those inhaling the smoke of others); and

The City of North Myrtle Beach in furtherance of its duty to provide such regulations as may be necessary to protect the health of its citizens and minimize the incidents of disease of its population, deems it to be in the public interest to regulate smoking in the workplace and certain public places.

(b) *Intent.* City council finds that it is in the best interest of the people of this city to protect nonsmokers from involuntary exposure to secondhand smoke in the workplace. Therefore, city council declares that the purpose of this act is to preserve and improve the health, comfort and environment of this city by limiting exposure to secondhand smoke in the workplace.

Sec. 12-81. 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:

Bar means 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 means 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 sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

Employee means any person who performs services for an employer in return for wages, profit or other valuable consideration, and a person who volunteers his or her services for a non-profit entity.

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, work space, or work spaces as defined herein, that employs one (1) or more persons.

Enclosed Area means all space between a floor and a ceiling that is enclosed on all sides by walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

Medical facility means an office or institution providing care or treatment of 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, homes for the aging or chronically ill, laboratories, and offices 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 medical facilities.

Place of Employment means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, enclosed hallways, enclosed construction sites, and temporary offices. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.

Public Place means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, Laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.

Playground means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on North Myrtle Beach grounds.

Private club means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The

organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501. Establishments which are in fact operating as bars, restaurants or entertainment venues primary for the pecuniary benefit of the owner or chief operating officer shall not be treated as private clubs under this division. A private club is not a private club for the purposes of this division when being used for a function to which the general public is allowed to enter.

Restaurant means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for servicing elsewhere. The term "restaurant" shall include a bar area within the restaurant.

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. The term specifically includes cigar bars, which are establishments licensed for the on-premises sale of beer, wine and alcoholic beverages as well as some food service, but the term does not include any establishment which is primarily a bar or restaurant and which undertakes to make retail offerings of tobacco as a means of circumventing the purpose of this article.

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

Service Line means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

Shopping Mall means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

Smoking means the inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, in any manner or in any form.

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.

Sports Arena means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

Sec. 12-82. Prohibition of Smoking in Enclosed Public Places, City-Owned Facilities and Places of Employment and certain outside facilities

(A) All enclosed areas, including buildings owned, leased, or operated by the City of North Myrtle Beach shall be subject to the provisions of this Article.

(B) Smoking shall be prohibited in all enclosed public places within the city of North Myrtle Beach, including but not limited to, the following places:

- (1) Aquariums, galleries, libraries, and museums.
- (2) Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- (3) Bars.
- (4) Bingo facilities.
- (5) Child care and adult day care facilities.
- (6) Convention facilities.
- (7) Educational facilities, both public and private.
- (8) Elevators.
- (9) Gaming facilities.
- (10) Health care facilities.
- (11) Hotels and motels.
- (12) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (13) Polling places.
- (14) Public transportation vehicles, including buses and taxicabs, under the authority of the City of North Myrtle Beach, and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- (15) Restaurants.
- (16) Restrooms, lobbies, reception areas, hallways, and other common-use areas.

(17) Retail stores.

(18) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of North Myrtle Beach or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of North Myrtle Beach. Exceptions: campground spaces, lodgings, or sleeping accommodations furnished by any hotel, inn, tourist court, tourist camp, motel, campground, condominium complex, structures owned or rented as time shares, or residence.

(19) Service lines.

(20) Shopping malls.

(21). Sports arenas, including enclosed places in outdoor arenas.

(22). Ball parks, athletic fields and other sporting/athletic venues when in use for athletic competitions or public performances, public parks, amphitheaters; except in designated smoking areas

(23) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

(D) Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, enclosed hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

(E) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 12-83. Exceptions.

Notwithstanding the provisions of section 12-82 herein, smoking may be permitted in the following places or under the following circumstances:

(1) Private residences, unless used as a childcare, adult day care, or health care facility;

(2) Retail tobacco stores as defined herein;

(3) Religious ceremonies where smoking is part of the ritual;

(4) campground spaces, lodgings, or sleeping accommodations furnished by any hotel, inn, tourist court, tourist camp, motel, campground, condominium complex, structures owned or rented as time shares, or residence.

(5) Designated smoking areas for public parks, ball parks, athletic fields or other sporting/athletic venues when in use for athletic competitions or public performances, amphitheatres.

Sec. 12-84. Distance from Entry

When smoking outdoors, smoking shall be conducted at such a distance from any door, window or ventilation system of any structure to prevent smoke from entering the structure in the event any door, window or ventilation system of the structure is placed in operation while smoking is occurring.

Sec. 12-85. Jurisdiction, enforcement violations and penalties.

Sec. 12-85.1. Jurisdiction and enforcement.

- A. This Ordinance shall be enforced by the City 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 City of North Myrtle Beach.
- C. An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall direct a person who is smoking in violation of this Ordinance to extinguish the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises.

Sec. 12-85.2 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 one hundred dollars (\$100).
- 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:
 - (1) A fine not exceeding one hundred dollars (\$100) for a first violation.
 - (2) A fine not exceeding two hundred dollars (\$200) for a second violation.
 - (3) A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. In addition to the fines established by this Section, violation 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 permit or license issued to the person for the premises on which the violation occurred.
- D. Each violation of this Ordinance shall be considered a separate and distinct violation.

Sec. 12-86. Posting of Signs and Removal of Ashtrays

The owner, operator, manager, or other person in control of a public place or place of employment where smoking is prohibited by this Ordinance shall:

- A. Clearly and conspicuously post “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*) in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited.
- C. Remove all ashtrays from any area where smoking is prohibited by this Ordinance, except for ashtrays displayed for sale and not for use on the premises.

Sec. 12-88. Severability; conflicts with other regulations

- (a) *Severability*. If any provision, clause, sentence or paragraph of this division or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this division which can be given effect without the invalid provision or application, and to this end the provisions of this division are declared to be severable.
- (b) *Conflict with other laws, ordinances or regulations*. Nothing in this section 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.

Sec. 12-89. Liberal Construction

- (A) This Article shall be liberally constructed so as to further its purposes.

Sec. 12-90. Effective Date

- (A) This Article shall be effective thirty (30) days from and after the date of its adoption.