

# TOWN COUNCIL



## STAFF REPORT Department of Growth Management

<b>MEETING DATE:</b>	October 13, 2015
<b>PROJECT:</b>	An Ordinance Amending Chapter 18 Offenses and Miscellaneous Provisions, Article VII Smoking Prohibition of the Town Code to Prohibit Smoking in Public Parks – First Reading
<b>PROJECT MANAGER:</b>	Shawn Leininger, AICP, Director of Growth Management

**REQUEST:** Town Council approval of First Reading of an Ordinance amending Chapter 18 Offenses and Miscellaneous Provisions, Article VII Smoking Prohibition of the Town Code (“Smoking Ordinance”) to prohibit smoking in public parks.

**BACKGROUND:** On September 8, 2015, Town Council directed Town Staff to prepare an amendment to the Smoking Ordinance that would prohibit smoking around playgrounds in public parks.

Currently the Town Smoking Ordinance only prohibits smoking in the workplace, with certain exceptions provided for private residences, religious ceremonies, retail tobacco shops, cigar bars, portions of hotels and motels, and workplaces with totally separate smoking only facilities, HVAC systems, entrances, exits and restrooms. South Carolina State Law further restricts smoking in public schools, preschools, indoor facilities where children’s services are provided, healthcare facilities, government buildings, elevators, public transportation vehicles, arenas, auditoriums of public theaters, and performing arts centers.

In the Beaufort County region, only Beaufort County has prohibited smoking within its parks through the establishment of park rules stating that “No Alcohol, Drugs, or Tobacco Products” are permitted within parks. With regard to County owned or maintained parks in the Town of Bluffton, signs denoting these park rules have been posted at Buckwalter Regional Park, M.C. Riley Sports Complex, and Oscar J. Frazier Park.

**INTRODUCTION:** The proposed amendment adds public playground area to Section 18-160 as a prohibited location for smoking. Additionally, a definition of a public playground area was added to Section 18-159 to state:

*"Public playground area* means an area located within any Town owned or maintained park used for outdoor play, recreation or fitness, especially by children and containing equipment such as but not limited to swings and slides. The public playground area shall extend 25 feet measured away from the nearest point of any fence, edging, change in surface material, or other delineation containing, protecting, or otherwise defining the public playground area. In the absence of a fence, edging, change in surface material, or other

delineation, a distance of 50 feet measured away from the nearest edge of equipment shall define the public playground area.”

**ANALYSIS:** The proposed amendment provides for the prohibition of smoking in public playground areas. Approval of this ordinance at Second and Final Reading would subject the playground located at DuBois Park to these requirements. The following parks are owned or maintained by Beaufort County and would be subject to their ban of tobacco products:

1. Buckwalter Regional Park;
2. M.C. Riley Sports Complex; and,
3. Oscar J. Frazier Park.

Although the County also owns Oyster Factory Park and the Calhoun Street Dock, the recently approved Memorandums of Agreement state that as the operator of those facilities Town rules shall apply. As these facilities do not currently have playground areas, this proposed Ordinance would not apply.

**NEXT STEPS:** Approval of First Reading will result in this Ordinance being placed on the November 10, 2015, Town Council Agenda for Final Reading and a public hearing.

Town Code Amendment Procedure	Step Completed
Step 1. Town Council Directive to Amend Ordinance (September 8, 2015)	✓
Step 2. Town Council 1 <sup>st</sup> Reading (October 13, 2015)	
Step 3. Town Council Public Hearing, 2 <sup>nd</sup> and Final Reading (November 10, 2015)	

**ATTACHMENTS:**

1. Ordinance
  - a. Exhibit A. Amendment to Chapter 18 Offenses and Miscellaneous Provisions, Article VII Smoking Prohibition of the Town Code

**ORDINANCE NO.: 2015-**

**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**, on July 16, 2013 the Town Council adopted Ordinance 2013-08 to define Cigar Bars and exempt such uses from prohibiting smoking within the workplace.; and

**WHEREAS**, Town Council wishes to further amend the Smoking Ordinance to prohibit smoking in public playground areas.

**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 \_\_\_\_\_

DONE, RATIFIED AND ENACTED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

First Reading was held on October 13, 2015.

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Lisa Sulka, Mayor

Attest:

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Sandra Lunceford, Town Clerk

Second and Final Reading was held on \_\_\_\_\_, 2015.

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Lisa Sulka, Mayor

Attest:

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Sandra Lunceford, Town Clerk

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**ARTICLE VII. - SMOKING PROHIBITION**

Sec. 18-158. - Intent.

Sec. 18-159. - Definitions.

Sec. 18-160. - Prohibition of smoking in the workplace [and public playground areas](#).

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 humidior 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.

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*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
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.

*Public playground area* means an area located within any Town owned or maintained park used for outdoor play, recreation or fitness, especially by children and containing

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equipment such as but not limited to swings and slides. The public playground area shall extend 25 feet measured away from the nearest point of any fence, edging, change in surface material, or other delineation containing, protecting, or otherwise defining the public playground area. In the absence of a fence, edging, change in surface material, or other delineation, a distance of 50 feet measured away from the nearest edge of equipment shall define the public playground area.

*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 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 and public playground areas.**

(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.

(c) It is unlawful for a person to smoke or possess lighted smoking material in any form in all public playground areas.

(Ord. No. 2006-20, § 4, 12-12-2006; Ord. No. 2008-21, § 4, 11-18-2008)

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**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; and
  - (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)

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**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
  - (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)

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**Secs. 18-168—18-187. - Reserved.**