

ORDINANCE NO.: 2008-088

Amending the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 8, Environmental Health and Sanitation, Article IV, Pollution Control, Division 5, Regulations and Requirements Relating to Smoking of Tobacco Products, Sec. 8-221, Jurisdiction, enforcement and penalties (d)

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BE IT ORDAINED by the Mayor and Council this 24th day of September, 2008, that the 1998 Code of Ordinances of The City of Columbia, South Carolina, Chapter 8, Environmental Health and Sanitation, Article IV, Pollution Control, Division 5, Regulations and Requirements Relating to Smoking of Tobacco Products, Sec. 8-221, Jurisdiction, enforcement and penalties (d), is amended to read as follows:

Sec. 8-221. Jurisdiction, enforcement and penalties.

- (a) An infraction of this division is hereby declared to be a public nuisance.
- (b) A manager, supervisor or any other person who owns, operates, or otherwise controls a workplace or work space and who fails to comply with the provisions of this division shall be guilty of an infraction.
- (c) A person smoking or possessing a lighted tobacco product in any workspace or workplace shall be guilty of an infraction.
- (d) Each infraction shall be punishable by a civil penalty of \$25.00. The city shall make written demand for payment of civil penalty for each infraction upon the infractor and shall set forth in detail the date, time, place and nature of the infraction. A copy of any written demand for payment of a civil penalty as provided for herein shall be sent to the employer; the city business licensee, if any; and, the infractor by certified mail.
 - (1) The city, in addition to or in lieu of assessing or collecting a civil penalty, may institute a civil action in the circuit court in the county in which the infraction occurred seeking (i) a mandatory injunction requiring compliance with this division, (ii) a declaration that the infraction is a public nuisance and an order requiring abatement of the public nuisance, or (iii) for any other remedy permitted by law.
 - (2) If three or more infractions occur within a six-month period at a workspace or workplace subject to this division, such shall be deemed to be a nuisance related to the business.
- (e) Appeals.
 - (1) Administrative appeal.
 - a. An infractor may, within five (5) days after written demand for payment of the civil penalty is received by the infractor, file an administrative appeal with the city manager. The city manager or a designee shall, within 30 days after receipt of the administrative appeal, conduct a hearing to determine if the infraction, as is alleged in the written demand, occurred. The rules of evidence shall not apply.
 - b. If there is any evidence that the infraction occurred, the city manager or a designee shall affirm the civil penalty.

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c. If there is no evidence that the infraction occurred, the city manager or a designee shall rescind the civil penalty.

d. In no event shall the civil penalty be reduced or suspended.

(2) Appeal of decision by city manager or designee. The infractor or the city shall have ten days after receipt of written notice of the city manager or a designee's decision to file an appeal in the circuit court in the county in which the infraction occurred. Failure to timely file an administrative appeal or appeal in circuit court shall be deemed a waiver of the right to appeal.

(3) The filing of an administrative appeal or appeal in circuit court shall not act as a stay of the city's right to institute any civil action as described above.

(f) Each infraction and on each day which an infraction of this division occurs, shall be considered a separate and distinct infraction.

Requested by:

MAYOR

Approved by:

City Manager

Approved as to form:

City Attorney

ATTEST:

City Clerk

Introduced: 9/17/2008
Final Reading: 9/24/2008