

ADOPTED

OCT 11 2016

ORDINANCE NO. 116A-41

Board of Supervisors
James City County, VA

AN ORDINANCE TO AMEND AND REORDAIN JAMES CITY COUNTY CODE, CHAPTER 11, HEALTH AND SANITATION, REPEALING ARTICLE IV, SMOKING, BY DELETING SECTION 11-25, PURPOSE AND INTENT; SECTION 11-26, DEFINITIONS; SECTION 11-27, SMOKING PROHIBITED IN CERTAIN PUBLIC PLACES; SECTION 11-28, DESIGNATED SMOKING AREAS; SECTION 11-29, WHERE SMOKING IS NOT REGULATED; SECTION 11-30, POSTING OF SIGNS; SECTION 11-31, REGULATION OF SMOKING IN PRIVATE PLACES OF EMPLOYMENT; SECTION 11-32, VIOLATIONS AND PENALTIES, SECTION 11-33, ENFORCEMENT; SECTION 11-34, OTHER APPLICABLE LAWS AND POLICIES; AND SECTION 11-35, SEVERABILITY.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 11, Health and Sanitation, is hereby amended and reordained by repealing Article IV, Smoking, by deleting Section 11-25, Purpose and intent; Section 11-26, Definitions; Section 11-27, Smoking prohibited in certain public places; Section 11-28, Designated smoking areas; Section 11-29, Where smoking is not regulated; Section 11-30, Posting of signs; Section 11-31, Regulation of smoking in private places of employment; Section 11-32, Violations and penalties, Section 11-33, Enforcement; Section 11-34, Other applicable laws and policies; and Section 11-35, Severability and by reserving Article IV, Sections 11-25 through 11-35.

Chapter 11. Health and Sanitation
Article IV. *Smoking Reserved*

Sec. 11-25. Purpose and intent.

~~Based on a substantial body of scientific evidence and on the 1986 Report of the Surgeon General entitled, "The Health Consequences of Involuntary Smoking," James City County hereby acknowledges that passively inhaled tobacco smoke poses a potential health hazard. The purpose of this article is to protect the public health, safety and welfare by regulating the smoking of tobacco in designated public places and places of employment in a manner that recognizes the competing interests of smokers and nonsmokers, and the burdens imposed on persons in control of regulated places. The regulations contained herein are intended to be viewed as minimum standards and shall not be construed as limiting, in any manner, the authority of persons in control of public places or places of employment to implement more stringent standards applicable to the particular establishment or place of employment.~~

~~(Ord. No. 116A-19, 9-4-90)~~

Sec. 11-26. Definitions.

~~The following words and phrases shall, for purposes of this article, have the meanings respectively ascribed to them:~~

~~*Bar or lounge area.* Any establishment or portion thereof where one can consume alcoholic beverages and/or hor d'oeuvres, but excluding any such establishment having tables or seating facilities where, in consideration for payment, meals are served.~~

~~*Educational facility.* Any building used for instruction of enrolled students, including, but not limited to, any day care center, nursery school, public or private school, college, university, medical school, law school or vocational school.~~

~~*Health care facility.* Any office, institution, building or agency required to be licensed under Virginia law, including, but not limited to, hospitals, clinics, nursing homes, homes for the aging or chronically ill, supervised living facilities, or ambulatory medical and surgical centers.~~

~~*Person.* Any person, firm, partnership, association, corporation, company or organization of any kind.~~

~~*Private work place.* Any office or work area which is not open to the public in the normal course of business except by individual invitation.~~

~~*Proprietor.* The owner or lessee of the public place who ultimately controls the activities within the public place. The term "proprietor" includes corporations, associations, partnerships and individuals.~~

~~*Public conveyance or public vehicle.* Any air, land or water vehicle used for the mass transportation of persons in intrastate travel for compensation, including, but not limited to, any airplane, train, bus or boat that is not subject to federal smoking regulations.~~

~~*Public place.* Any enclosed, indoor area used by the general public, including, but not limited to any building owned or leased by the commonwealth or any agency thereof or any county, city or town, public conveyance or public vehicle, restaurant, educational facility, hospital, nursing home, other health care facility, library, retail store of 15,000 square feet or more, auditorium, arena, theater, museum, concert hall, or other area used for a performance or an exhibit of the arts or sciences, or any meeting room.~~

~~*Restaurant.* Any building, structure or area where food is available for eating on the premises, in consideration for payment, having seating for 50 or more patrons, excluding any seats in a bar or lounge area or seats in any separate room of a restaurant which is used exclusively for private functions.~~

~~*Smoke or smoking.* The carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment, or the lighting, inhaling or exhaling of a pipe, cigar or cigarette of any kind.~~

~~*Theater.* Any indoor facility or auditorium open to the public, which is primarily used or designed for the purpose of exhibiting any motion picture, stage production, musical recital, dance, lecture or other similar performance.~~

(Ord. No. 116A-19, 9-4-90)

Sec. 11-27. Smoking prohibited in certain public places.

(a) It shall be unlawful for any person to smoke in any of the following public places:

- (1) ~~Elevators, regardless of capacity;~~
- (2) ~~Indoor service lines and cashier areas;~~
- (3) ~~Common areas in educational facilities, including, but not limited to, classrooms, hallways, libraries, auditoriums, public meeting rooms and other facilities;~~
- (4) ~~Hospital emergency rooms;~~
- (5) ~~Local or district health departments;~~
- (6) ~~Designated no smoking areas in any buildings owned or leased by the commonwealth or any agency thereof, the county, the school board or the James City Service Authority;~~

- ~~(7) Polling rooms; and~~
- ~~(8) School buses and other public conveyances or public vehicles.~~

~~(b) The proprietor or manager shall designate reasonable no smoking areas, considering nature of the use and size of the building, in the following places:~~

- ~~(1) Retail and service establishment of 15,000 square feet or more serving the general public, including, but not limited to, department stores, grocery stores, drug stores, clothing stores and shoe stores;~~
- ~~(2) Rooms in which a public meeting or hearing is being held;~~
- ~~(3) Places of entertainment and cultural facilities, including, but not limited to, theaters, concert halls, gymnasiums, auditoriums, other enclosed arenas, art galleries, libraries and museums;~~
- ~~(4) Indoor facilities used for recreational purposes;~~
- ~~(5) Other public places; and~~
- ~~(6) Any restaurant as defined in this article.~~

~~(Ord. No. 116A 19, 9 4 90)~~

~~Sec. 11-28. Designated smoking areas.~~

~~The proprietor or person who manages or otherwise controls any building, structure, space, place or area governed by this article in which smoking is not otherwise prohibited may designate rooms or areas in which smoking is permitted as follows:~~

- ~~(1) Designated smoking areas shall not encompass so much of the building, structure, space, place or area open to the public that reasonable no smoking areas, considering the nature of the use and size of the building, are not provided;~~
- ~~(2) Designated smoking areas shall be separated to the extent reasonably practical from those rooms or areas entered by the public in the normal use of the particular business or institution; and~~
- ~~(3) In designated smoking areas, ventilation systems and existing physical barriers shall be used when reasonably practical to minimize the permeation of smoke into no smoking areas. However, this article shall not be construed as requiring physical modifications or alterations to any structure.~~

~~(Ord. No. 116A 19, 9 4 90)~~

~~Sec. 11-29. Where smoking is not regulated.~~

~~This article is not intended to regulate smoking in the following places or under the following conditions:~~

- ~~(1) Bars and lounge areas;~~
- ~~(2) Retail tobacco stores;~~
- ~~(3) Restaurants, conference or meeting rooms, and public or private assembly rooms while these places are being used exclusively for private functions;~~
- ~~(4) Office or work areas which are not entered by the public in the normal course of business or use of the premises;~~

- (5) ~~Areas of enclosed shopping centers or malls that are external to the retail stores and are used by customers as a route of travel from one store to another, and that consist primarily of walkways and seating accommodations; and~~
- (6) ~~Lobby areas of hotels, motels and other establishments open to the public for overnight accommodation.~~

(Ord. No. 116A-19, 9-4-90)

Sec. 11-30. Posting of signs.

- (a) ~~Any person who owns, manages or otherwise controls any building or area in which smoking is regulated by this article shall post signs conspicuous to public view stating "Smoking Permitted" or "No Smoking" (or a sign displaying the international "No Smoking" symbol, consisting of a pictorial representative of a burning cigarette enclosed in a red circle with a red bar across it). Restaurants subject to the provisions of this article shall post signs conspicuous to public view at or near each public entrance stating "No Smoking" or "No Smoking Section Available." Print on such signs shall be at least one inch in height and the international symbol, if used, shall have a circle of at least four inches in diameter.~~
- (b) ~~"No Smoking" signs may, but are not required to, contain language that smoking is prohibited by ordinance and that violation of the no smoking prohibition is a violation punishable by a fine of \$25.00.~~

(Ord. No. 116A-19, 9-4-90; Ord. No. 116A-24, 2-1-93)

Sec. 11-31. Regulation of smoking in private places of employment.

- (a) ~~Any employer who owns or operates a business in the county may regulate smoking in the work place, provided:~~
 - (1) ~~Such regulation does not violate the provisions of any written agreement between employer and employees; and~~
 - (2) ~~A total ban on smoking shall not be enforced by the employer unless a majority of the affected employees vote to approve the ban or such ban is prior condition of employment in an employment contract.~~
- (b) ~~This article shall not affect no smoking policies established by employers prior to the effective date of this article.~~

(Ord. No. 116A-19, 9-4-90)

Sec. 11-32. Violations and penalties.

- (a) ~~It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the prohibitions or restrictions of this article to fail to comply with its provisions. Any person who violates the provisions of this article shall be subject to a civil penalty of \$25.00.~~

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~~(b) It shall be unlawful for any person to smoke in any area prohibited or restricted by the provisions of this article. Any person who continues to smoke in a no smoking area after being asked to refrain from smoking shall be subject to a civil penalty of \$25.00.~~

~~(Ord. No. 116A-19, 9-4-90)~~

Sec. 11-33. Enforcement.

- ~~(a) Any citizen who desires to register a complaint under this article may contact the police department or office of building safety and permits who may initiate civil enforcement.~~
- ~~(b) The director of building safety and permits or duly authorized designee shall perform an evaluation for compliance with all requirements of this article while an establishment is undergoing otherwise mandated inspections. The director of building safety and permits or duly authorized designee may issue a civil summons for any violation under section 11-32(a).~~
- ~~(c) The police department may issue a civil summons for any violation under section 11-32(b).~~

~~(Ord. No. 116A-19, 9-4-90; Ord. No. 116A-24, 2-1-93; Ord. No. 116A-39, 7-26-11)~~

Sec. 11-34. Other applicable laws and policies.

~~This article shall not be interpreted or construed to permit smoking where it is otherwise prohibited or restricted by other applicable statutes and ordinances, or the policies of individual establishments.~~

~~(Ord. No. 116A-19, 9-4-90)~~

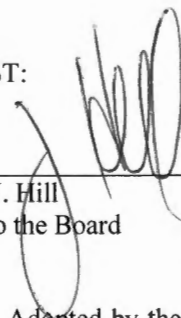
Sec. 11-35. Severability.

~~If any part, section, subsection, sentence, clause or phrase of this article is for any reason declared to be unconstitutional or invalid, such judicial decision shall not affect the validity of the remaining portions of this article.~~

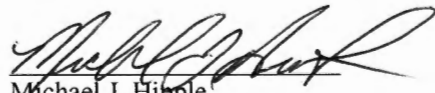
~~(Ord. No. 116A-19, 9-4-90)~~

Secs. 11-362~~3~~ - 11-40. Reserved.

ATTEST:



Bryan J. Hill
Clerk to the Board


Michael J. Hipple
Chairman, Board of Supervisors

	VOTES		
	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
MCGLENNON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
LARSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ONIZUK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SADLER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HIPPLE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Adopted by the Board of Supervisors of James City County, Virginia, this 11th day of October, 2016.

Smoking-ord