

ORDINANCE 2006-9-7170

AN ORDINANCE RELATING TO THE PROTECTION OF THE PUBLIC HEALTH AND WELFARE BY PROHIBITING THE SMOKING OF TOBACCO PRODUCTS IN BUILDINGS OPEN TO THE PUBLIC

WHEREAS, the City Commission hereby declares it in the interest of public health and policy to adopt an ordinance prohibiting the smoking of tobacco products in public buildings.

WHEREAS, the City Commission hereby finds that:

- (a) Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution.
- (b) Reliable Scientific Studies, including studies by the Surgeon General of the United States and studies commissioned and assessed by the U.S. Environmental Protection Agency, have shown that breathing sidestream or secondhand smoke is a significant health hazard to nonsmokers.

NOW, THEREFORE, be it ordained by the City of Paducah as follows:

Section 1. A new section shall be created in Chapter 54, Article III of the Paducah Code of Ordinances which shall prohibit the use of tobacco products in buildings open to the public.

Section 2. Definitions.

A. For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (1) *Building* means any structure open to the public that is enclosed from the weather, whether or not windows or doors are actually left open. If a person owns, leases, or possesses only a portion of a building, the term building applies to the ownership, leasehold, or possessory interest as well.
- (2) *Common Area* means any area where individuals may congregate such as hallways, lobbies, restrooms, and elevators.
- (3) *Dwelling* means any place used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, a hotel or motel room or suite, or a hospital, hospice, or nursing home room.
- (4) *Enclosed area* means any place that
 - a) is closed overhead by a roof or other covering of any material, whether permanent or temporary; and

- b) has forty percent (40%) or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary.
- (5) *Employee* means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- (6) *Employer* means a person, business, partnership, association, unincorporated association, limited liability company, corporation, including a municipal corporation, trust, or non-profit entity, that employs the services of one or more individual persons.
- (7) *Person* shall include the owner, lessee, principal manager, or any individual or corporation, limited liability company, business, partnership, association, unincorporated association, municipal corporation, trust, or any non-profit entity having control of a building, as the term building is defined herein, or the agent or employee of any such owner, lessee, principal manager, individual or corporation.
- (8) *Private organization* means an establishment which maintains selective members, is operated by the membership, does not provide food, drink, entertainment, or lodging for pay to anyone who is not a member or accompanied by a member and is not profit oriented.
- (9) *Retail Tobacco Store* means a retail store devoted primarily to the sale of any tobacco product, including, but not limited to, cigarettes, cigars, pipe tobacco and chewing tobacco, and accessories in which the sale of other products is merely incidental. The sale of such other products shall be considered incidental if such sales generate less than one-third of the total annual gross sales.
- (10) *Smoke or Smoking* shall mean the act of possessing, carrying, burning, inhaling or exhaling the smoke of any lighted cigarette, cigar, or pipe, or other combustible tobacco product.
- (11) *Tobacco Warehouse* means any warehouse building offering tobacco for purchase at auction and meeting the definition established in KRS 248.010(4).

Section 3. Prohibition.

A. No person shall smoke within any building or enclosed area except in one of the following locations:

- (1) In any dwelling, unless the dwelling is also used as a childcare facility, adult day care center, or meets the definition of a common area as defined herein.

- (2) In a building, room, or hall being used by a person or group for a purely private social function that is not open to the public nor is admittance obtained by purchase of a ticket or the making of a donation; in any room used for psychological treatment of nicotine addiction by a licensed healthcare professional; or in a physically separate and independently ventilated room in a hospital, hospice facility, or nursing home open to all residents as a smoking room and for no other purpose.
- (3) In a retail tobacco store.
- (4) A performer as part of a theatrical production so long as adequate notice is provided to patrons before the performance.
- (5) Indoor smoking areas provided in state or federal governmental office buildings or workplaces pursuant to KRS 61.165.
- (6) Facilities not open to the public operated by private organizations.
- (7) In a tobacco warehouse.
- B. Nothing in this chapter shall prevent a person in control of any

place whatsoever from prohibiting smoking completely in such place, and no person shall fail to abide by such a private prohibition.

C. Nothing in this chapter shall authorize smoking in any place where it is otherwise prohibited by statute, ordinance, regulation, or by order of the Fire Marshall.

Section 4. Posting Signs.

A. Not less than two (2) 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 building and enclosed area. The party responsible for the placement of the signage is the owner, employer, operator, lessee, manager, or other person in control of the building or enclosed area.

B. Nothing in this chapter shall authorize the removal of no-smoking signs required by other statute, regulation, or ordinance.

C. All ashtrays or ash containers shall be removed from buildings and enclosed areas, except for ashtrays for sale and not for use on the premises. Any permanent structure that previously functioned or was used as an ashtray shall be disabled or altered to prevent its use as an ashtray.

Section 5. Reasonable Distance.

A. Smoking is prohibited within a reasonable distance from the outside entrance to any building or enclosed area so as to ensure that tobacco smoke does not enter the building or enclosed area through entrances, windows, ventilation systems, or other means. Unless directed otherwise by the City Manager, the distance of fifteen (15) feet shall be deemed reasonable.

Section 6. Non-Retaliation and Non-Waiver 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 for employment or customer exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this ordinance.

Section 7. Enforcement.

- A. The City Manager's Office shall designate the City departments responsible for enforcing this Ordinance.
- B. Written notice of the provisions of this Ordinance shall be given to all applicants for a business license within the City of Paducah.
- C. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with a written complaint to the City Manager.
- D. The following departments, or their designees, shall, while performing otherwise legal inspections inspect for compliance with this Ordinance: Fire Department, Inspection Department, Public Works Department, and Finance Department.
- E. A person in control of a building or enclosed area shall inform persons violating this Ordinance of the applicable provisions thereof and report non-compliance to City Manager.
- F. No person having control of a building or enclosed area shall fail to:
- (1) Immediately ask smokers to refrain from smoking in any no smoking area;
 - (2) Use any other legal means which may be appropriate to further the intent of this chapter, including the action required by paragraph E., above.
- G. Notwithstanding any other provision of this Ordinance, the City, or any person aggrieved by a failure to comply with this Ordinance, whether by commission or omission, including violations on the part of a person in control of a building or enclosed area covered by this Ordinance may bring legal action to enforce this Ordinance, either by civil action seeking injunctive relief or by criminal complaint in a court of competent jurisdiction.

Section 8. 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 a violation of the same, which violation shall be punishable by a fine not exceeding fifty dollars (\$50.00).
- B. A person in control of a building or enclosed area who fails to comply with the provisions of this Ordinance shall be guilty of a violation punishable by:
- (1) A fine not exceeding fifty dollars (\$50.00) for a first violation within a twelve month period.
 - (2) A fine not exceeding one-hundred dollars (\$100.00) for a second violation within a twelve month period.
 - (3) A fine not exceeding two hundred fifty dollars (\$250.00) for each additional violation within a twelve month period.
- C. Persons who smoke in an area where smoking is prohibited by this

Ordinance and who refuse to extinguish their smoking material when asked, may be required to leave the premises, and shall be subject to prosecution for trespass if they do not leave when asked.

D. In addition to the fines established by this Section, violation of this Ordinance by a person who controls a building or enclosed area more than three (3) times in any twelve-month period may result in the suspension or revocation of any permit or business license issued by the City to the person for the premises on which the violation occurred.

E. Violation of this Ordinance is declared to be a public nuisance which may be abated by the City or its designated agents by restraining order, preliminary and permanent injunction or other means provided for by law. The City may recover the reasonable costs of any court enforcement action seeking abatement of this nuisance.

F. Each calendar day on which a violation of this Ordinance occurs shall be considered a separate and distinct offense.

Section 9. Severability.

If any section or portion of this ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, that section or portion shall be deemed severable and shall not affect the validity of the remaining sections of the ordinance.

Section 10. The provisions of this ordinance shall be effective April 1, 2007.

Section 11. This ordinance shall be read on two separate days and shall be published in accordance with KRS Chapter 424.



William F. Paxton, Mayor

ATTEST:


Tammara S. Brock, City Clerk

Introduced by the Board of Commissioners September 12, 2006
Adopted w/Amendments by the Board of Commissioners September 22, 2006
Recorded by Tammara S. Brock, City Clerk September 22, 2006
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