

CITY OF MIDWAY ORDINANCE NO.2014-006

A ORDINANCE RELATING TO THE PROTECTION OF THE PUBLIC HEALTH AND WELFARE BY REGULATING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

WHEREAS numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease and lung cancer; and

WHEREAS, the U.S. Surgeon General has issued a comprehensive scientific report which concludes that there is no risk-free level of exposure to secondhand smoke. (Department of Health and Human Services. New Surgeon General’s Report Focuses on the Effects of Secondhand Smoke. Public Health Service, Centers for Disease Control, 2006.); and

WHEREAS, the smoking of tobacco is a form of air pollution, a danger to health and a material public nuisance; and

WHEREAS, the Midway City Council has made findings establishing that the smoking of tobacco products produces a form of air pollution, a danger to health and a material public nuisance; and after significant study and debate of the issues deems it to be in the best interests of the citizens of Midway, Kentucky, to adopt an ordinance pertaining to smoking in public places and places of employment.

NOW THEREFORE, be it ordained by the Midway City Council:

Section 1. Definitions: The following words and phrases, whenever used in this Ordinance, shall be construed as defined in this Section:

- (A) “Business” means a 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.
- (B) “Employee” means a person who works in consideration for direct or indirect monetary wages or profit, or who volunteers his or her services for an entity.
- (C) “Employer means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons. A private club which employs exclusively from within or operated solely by member volunteers is not an employer.

- (D) "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
- (E) "Health Care 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, Optometrists, Podiatrists, Veterinarians, County Health Departments 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, but is not limited to, all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- (F) "Place of Employment" means an area under the control of a public or private employer that employees normally frequent or may need to access during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, or health care facility.
- (G) "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; and, 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; and, the organization has established bylaws and/or a constitution to govern its activities, and the organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- (H) "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to, banks, bars, educational facilities, health care facilities, hotels and motels, laundromats, polling places, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments and retail stores. "Public place" also means shopping malls, sports arenas, theaters, waiting rooms, parks and playgrounds, but shall not include unenclosed adjacent parking lots and access ways that are a reasonable distance from areas where smoking is prohibited, as defined within Section 6. A private club is a "public place" when being used on any occasion or for a function to which the general public is invited. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.

- (I) "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 serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- (J) "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.
- (K) "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- (L) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product or any other lighted substance intended for smoking, whether otherwise legally possessed or consumed in any manner or in any form.
- (M) "Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Section 2. Application of Ordinance to City-owned Facilities:

All facilities, including buildings and vehicles, that are owned, leased or otherwise operated by the City of Midway, shall be subject to the provisions of this ordinance.

Section 3. Prohibition of Smoking in Public Places:

Smoking is prohibited in all public places as defined in Section 1(H), above, and attendant service lines, within Midway, Kentucky.

Section 4. Prohibition of Smoking in Places of Employment:

- (A) Smoking is prohibited in all enclosed places of employment. This prohibition includes, but is not limited to common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, maintenance areas, attics, crawl spaces, health care facilities, cafeterias, employee lounges, stairs, restrooms, and service lines within Midway, Kentucky.
- (B) This prohibition on smoking shall be communicated to all existing employees by the effective date of this ordinance and to all prospective employees upon their application for employment.

Section 5. Prohibition of Smoking in Outdoor Arenas and Stadiums:

Smoking is prohibited in all service lines and in the seating areas of all outdoor arenas, stadiums and amphitheatres within Midway, Kentucky.

Section 6. Reasonable Distance:

Smoking is prohibited within a reasonable distance of not less than three (3) feet, from any outside entrance to or open windows of any area in which smoking is prohibited by this ordinance and from the air intake of a ventilation system serving an enclosed area where smoking is prohibited, in order to insure tobacco smoke does not enter that enclosed area through entrances, windows, ventilation systems or other means.

Section 7. Where Smoking Not Regulated:

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 3 and 4:

- (A) Private residences, except when used as a licensed childcare, adult day care or health care facility.
- (B) Private clubs that employ from within or whose only employees are member volunteers; provided that when such clubs are being used for functions or on occasions to which the general public is invited, the prohibitions set out in Sections 3 and 4 shall apply.
- (C) Outdoor areas of places of employment, except those covered by the provisions of Sections 4 and 5.

Section 8. Declaration of Establishment as Nonsmoking:

Nothing in this ordinance may be construed as preventing an owner, operator, manager or other authorized person in control of any establishment, facility or outdoor area from declaring the entire campus or property associated with that establishment, facility or outdoor area smoke free. Enforcement of any such restrictions exceeding the scope of this ordinance would be the responsibility of the authorized person in control of the affected establishment, facility or outdoor area.

Section 9. No Smoking receptacles:

All ashtrays shall be removed from any area within which this Ordinance or the owner, operator, manager, or other person having control of the area prohibits smoking, except for ashtrays displayed for sale and not for use on the premises.

Section 10. 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, or customer exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance.

- (B) An employee who continues to work in a setting where an employer allows smoking in violation of this Ordinance does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Section 11. Enforcement:

- (A) Enforcement of this Ordinance shall be the responsibility any and all sworn law enforcement officers who may be assigned to work within the City of Midway, if so directed by their superiors. Enforcement shall be primarily done on a complaint basis but can be done at any time witnessed by an enforcement official.
- (B) Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Midway by the appropriate clerk.
- (C) Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with any of the authorized persons listed above.
- (D) The Woodford County Health Department, while in an establishment performing otherwise legal inspections, shall have the right to inspect for compliance with this Ordinance.
- (E) Owners, managers, operators or employees of establishments regulated by this Ordinance shall inform persons seen violating this Ordinance of the requirements of this Ordinance. In the event an owner, manager, operator or employee of an establishment regulated by this Ordinance observes a person or persons violating this Ordinance, he or she shall immediately direct the person or persons in violation to extinguish the item being smoked.
 - (1) In the event the person (or persons) violating this Ordinance complies with this directive; no violation shall exist for the owner, manager, operator or employee witnessing the violation. In the event an owner, manager, operator or employee of an establishment regulated by this Ordinance observes a person or persons violating this Ordinance and fails to immediately direct the person (or persons) in violation to extinguish the item being smoked, the owner, manager, operator or employee failing to take appropriate steps required by this Ordinance shall be in violation of this Ordinance.
 - (2) In the event the person (or persons) violating this Ordinance fails or refuses to comply with this directive, the owner, manager, operator or employee directing the person (or persons) violating this Ordinance shall take immediate and reasonable steps to obtain the removal of the person (or persons) from the premises.

As an example of the reasonableness required, if there is a person violating the Ordinance who the owner, manager, operator or employee of an establishment regulated by this Ordinance is required to remove from the premises, but the person is intoxicated or otherwise reasonably believed to be unable to safely drive or conduct himself or herself if required to leave those premises, then in this event the owner, manager, operator or employee may reasonably determine to allow the person violating this Ordinance to remain on the premises until appropriate arrangements may be made for the person's removal. In the event the person (or persons) violating this Ordinance is timely removed from the premises; no violation shall exist for any owner, manager, operator or employee related to the establishment in which these events occurred. In no event is an owner or agent of the premises to forcibly remove the person violating the Ordinance. Compliance is achieved under this subsection if the owner or agent of the premises orders the person violating the Ordinance to leave its premises and promptly notifies law enforcement authority if the person refuses.

- (3) In the event the person (or persons) violating this Ordinance fails or refuses to comply with this directive and the owner, manager, operator or employee who observed the violation or if a different person who directed the person (or persons) in violation to leave the premises, fails to take immediate and reasonable steps to obtain the removal of the person (or persons) from the premises, the owner, manager, operator or employee failing to take appropriate steps required by this Ordinance shall be in violation of this Ordinance.
- (4) In all events, the establishment in which a violation occurs shall be in violation of this Ordinance for each violation that occurs on its premises and in connection with which the owner, manager, operator or employee fail to take appropriate steps required by this Ordinance.
- (5) An employee who observes a person (or persons) violating this Ordinance may immediately notify his or her owner, manager or supervisor of the violation in satisfaction of the employee's responsibility under this Ordinance. The failure of the employee's owner, manager or supervisor to take appropriate steps required by this Ordinance in response to the employee's notice shall not constitute a violation on the part of the employee.
- (6) In the event all duties required under this Section are satisfied yet the person violating this Ordinance persists in his or her violation and/or refuses to vacate the premises on which the violation occurred, the owner, manager, supervisor and/or employee shall immediately contact one or more of the agencies or departments authorized above to enforce this Ordinance informing the agency or department of the circumstances of the violation.

- (7) The mere presence of a person smoking within premises of an establishment governed by this Ordinance does not constitute a violation on the part of the establishment. The establishment and its agents shall only be charged for a violation of this Ordinance if the responsible agent(s) of the establishment fail to timely satisfy each responsibility prescribed for them in this Section.
- (F) Notwithstanding any other provision of this Ordinance, an employee, or any person aggrieved by a failure to comply with this Ordinance, whether by commission or omission, including violations on the part of an owner, operator, manager, employee or other person(s) in control of a public place or a place of employment 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 12. 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, punishable by a fine not exceeding fifty dollars (\$50.00).
- (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 a violation, punishable by:
- (1) A fine not exceeding one hundred dollars (\$100.00) for a first violation.
 - (2) A fine not exceeding two hundred and fifty dollars (\$250.00) for a second violation within one (1) year from a previous offense date.
 - (3) A fine not exceeding five hundred dollars (\$500.00) for the third and each additional violation within one (1) year from a previous offense date.
- (C) In addition to the fines established by this Section, violations of this Ordinance by a person who owns, manages, operates, or otherwise controls a public place or place of employment may serve as reasonable cause for the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- (D) Violation of this Ordinance is declared to be a public nuisance, which may be abated by the City of Midway or its designated agents by restraining order, preliminary and permanent injunction, or other means provided for by law. The City of Midway may recover the reasonable costs of any court enforcement action seeking abatement of this nuisance.
- (E) Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation. Multiple violations witnessed in a single observance shall also be considered separate and distinct violations.

Section 13. Other Applicable Laws:

This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 14. Construction:

This Ordinance shall be construed so as to further its stated purposes.

Section 15. Severability:

If any provision, clause, sentence, or paragraph of this Ordinance or its application to any person or factual context shall be held invalid, that invalidity shall not affect the remaining provisions of this Ordinance, which may be given effect independent of the provision or application declared invalid.

Introduced and given first reading at a meeting of the Midway City Council, Midway, Kentucky held on the 4th day of August 2014, and fully adopted after the second reading at a meeting of the said City Council held on the 18th day of August 2014.

MIDWAY CITY COUNCIL

BY: Tom Bozarth
Tom Bozarth, Mayor

ATTEST:

Phyllis Hudson
Phyllis Hudson, City Clerk