

ORDINANCE 2017-01
AN ORDINANCE REGULATING SMOKING IN ENCLOSED PUBLIC PLACES

Be It Ordained By the City of Clarkson, Kentucky As Follows:

FINDINGS OF FACT:

1. AFTER DUE RESEARCH AND EVALUATION, THE CITY COMMISSION OF THE CITY OF CLARKSON, KENTUCKY MAKES THE FOLLOWING FINDINGS:

A. Secondhand smoke, also known as environmental tobacco smoke, is a mixture of the smoke given off by the burning of tobacco and the smoke exhaled from the lungs of smokers. It is involuntarily inhaled by nonsmokers, lingers in the air hours after smoking materials have been extinguished and can cause and/or exacerbate a wide range of adverse health effects, including cancer, respiratory infections and asthma. (California Environmental Protection Agency, Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant, Executive Summary, June 2005). The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (Health Effects of Exposure to Environmental Tobacco Smoke: the Report of the California Environmental Agency, Smoking and Tobacco Control Monograph 10, Bethesda, Maryland, National Institutes of Health, National Cancer Institute, August 1002).

B. Secondhand smoke has been classified by the EPA as a known cause of cancer in humans.

C. Secondhand smoke exposure causes disease and premature death in children and adults who do not smoke. Secondhand smoke contains hundreds of chemicals known to be toxic or carcinogenic, including formaldehyde, benzene, vinyl chloride, arsenic, ammonia and hydrogen cyanide.

D. Secondhand smoke causes approximately 3,400 lung cancer deaths and 46,000 heart disease deaths in adult nonsmokers in the United States each year.

E. Nonsmokers exposed to secondhand smoke at work are at increased risk for adverse health effects. Levels of environmental tobacco smoke in restaurants and bars were found to be 2 to 5 times higher than in residences with nonsmokers and 2 to 6 times higher than in office work places.

F. The workplace is a major source of secondhand smoke exposure for adults. Since 1999, 70% of the U.S. workforce worked under a smoke-free policy. Blue collar and service employees are less likely than white collar indoor workers to be covered by smoke-free policies.

G. Electronic smoking devices including E-Cigarettes emit vapors which contain substances known to cause human illnesses and disabilities.

H. It is the prerogative of Kentucky municipalities to enact ordinances in order to promote the public welfare and that the following prohibitions and regulations are adopted for that purpose.

2. DEFINITIONS:

A. **ENCLOSED AREA** means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows and/or doors which extend from the floor to the ceiling and into which space the public is usually permitted.

B. **PUBLIC PLACE** means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

C. **PRIVATE CLUB** means an organization, whether incorporated or not, which the owner, lessee or occupant of a building or portion thereof uses for club purposes including recreational, fraternal, social, patriotic, political, benevolent or religious purposes, but not for net pecuniary gain and which may sell alcoholic beverages incidental to its operation. Provided, however, that private clubs are not exempt from the smoking prohibition set forth in this ordinance to the extent that persons under the age of 18 are permitted to be present.

D. **ELECTRONIC SMOKING DEVICE** means any product containing or delivering nicotine or any other non-medical substance intended for human consumption that can be used from the product. The term includes such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or description.

E. **SMOKING** means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other lighted or heated tobacco or plant product, intended for inhalation, including hookahs and marijuana in any manner or form, whether or not legally possessed, as well as the use of E-Cigarettes. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or in the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this ordinance.

F. **DWELLING/ PRIVATE RESIDENCE** means any place used primarily for sleeping overnight and conducting normal activities of daily living.

3. **PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES.** Except as otherwise hereinafter provided, smoking is prohibited in all Enclosed Public Places within the City of Clarkson, KY. Also prohibited is smoking within fifteen 15 feet from the outside entrance to or open windows of any enclosed public place in which smoking is herein prohibited.

4. **NOTICE TO PATRONS.** "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 posted in every enclosed Public Place in which smoking is prohibited by this ordinance. A sign reciting "Smoking Prohibited by Clarkson City Commission" constitutes a sufficient no smoking warning.

5. **WHERE SMOKING IS NOT REGULATED.** Notwithstanding any other provisions of this

Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 3 and 4 of this ordinance, to wit:

A. Private Residences/Dwellings except when used for childcare, adult day care, or health care purposes.

B. Hotel and motel rooms that are rented to guests and are designated as smoking rooms. Provided, however, all smoking rooms must be contiguous and sufficiently isolated from the rest of the facility so that smoke shall not infiltrate into areas where smoking is prohibited under the terms of this ordinance.

C. Private Clubs as hereinbefore defined as well as Penal Institutions in which Federal prisoners are incarcerated.

D. Nursing homes and long term care facilities to the extent that isolated areas are provided by the operators of the facility for residents to smoke and which isolated areas are so ventilated that smoke does not infiltrate into areas where smoking is not prohibited under the terms of this ordinance.

6. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

A. An owner, operator, manager or other authorized person in control of an establishment, facility or outdoor area may declare the outdoor areas under his or her control as a nonsmoking area regardless of whether this ordinance prohibits smoking in the said area.

B. An owner, operator, manager or other authorized person in control of an establishment or facility in which smoking is not prohibited under the terms of this ordinance may prohibit smoking in said establishment or facility. Smoking in such prohibited areas shall subject the violator to the same penalties set forth hereafter in Section 7 hereof.

7. ENFORCEMENT AND PENALTIES.

A. The City, County or State police shall enforce this ordinance.

B. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Clarkson, KY.

C. Any citizen who desires to register a complaint that the terms of the Ordinance has been or is being violated may initiate enforcement with any of the organizations listed in Section A immediately above.

D. (1) A person who smokes in an area where smoking is prohibited shall be guilty of a Violation, punishable by a fine not exceeding fifty dollars (\$50.00) plus court costs.

(2) A person who owns, manages, operates or otherwise controls a facility in which smoking is prohibited by this Ordinance and who willingly fails to prohibit smoking shall be guilty of a Violation punishable by:

(i) A fine not exceeding one hundred dollars (\$100.00) plus court costs for a first violation;

- (ii) A fine not exceeding two hundred dollars (\$200.00) plus court costs for a second violation within one year of the first violation date;
- (iii) A fine not exceeding two hundred fifty dollars (\$250.00) plus court costs for each additional violation within one year of the second violation.

8. SEVERABILITY.

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

9. EFFECTIVE DATE.

This Ordinance shall become effective following its passage by the Clarkson City Commission and its publication according to Kentucky Revised Statutes.

FIRST READING ON FEBRUARY 13, 2017.

PASSED AND ADOPTED AFTER SECOND READING ON MAY 1, 2017.



BONNIE HENDERSON, MAYOR

ATTEST:



CITY CLERK