

CITY OF DANVILLE
ORDINANCE NO. 1733

AN ORDINANCE RELATED TO THE PROTECTION OF PUBLIC HEALTH AND
WELFARE BY REGULATING SMOKING IN PUBLIC PLACES AND PLACES OF
EMPLOYMENT

Whereas, the Board of Commissioners of the City of Danville, pursuant to KRS 61.165, adopted Ordinance No #___1733___, regulating smoking in and on all properties owned or used by the City of Danville, but requiring the City to “provide accessible indoor smoking areas in buildings where smoking is otherwise restricted”; and

Whereas, KRS 61.165 has been amended and no longer requires that indoor smoking areas be provided in buildings where smoking is prohibited; and

Whereas, the Commission has received and considered the results of an Indoor Air Quality assessment of certain establishments and places of employment in Boyle County, facilitated by the Boyle County Health Department, which study establishes that employees who work in Boyle County venues where smoking is allowed are exposed to pollution levels two times the annual Environmental Protection Agency (EPA) exposure standards for fine particle air pollution, that levels of indoor air pollution in Boyle County are 6.5 times higher in restaurants with smoking compared to nonsmoking restaurants, and that the level of indoor air pollution in Boyle County is 8.1 times higher than that in smoke-free cities around the United States; and

Whereas, the Board of Commissioners 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 interest of the citizens of the City of Danville, Kentucky, to adopt this regulation of smoking in all public places and places of employment within the City of Danville;

Now, therefore, be it ordained by the Board of Commissioners of the City of Danville as follows:

SECTION 1. Findings and Intent: The Board of Commissioners of the City of Danville finds that:

- A. According to numerous studies, tobacco smoke is a major contributor to indoor air pollution. Breathing secondhand smoke is a cause of disease in healthy non-smokers. These diseases include heart disease, stroke, respiratory disease and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI).

- B. The Public's Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS).
- C. Secondhand smoke is particularly hazardous to the elderly, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airways disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, Sudden Infant Death Syndrome (SIDS), developmental abnormalities and cancer. (California Environmental Protection Agency (Cal EPA).
- D. The US Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services).

Accordingly, the Board of Commissioners of the City of Danville adopts the foregoing as justification for this Ordinance, the purpose of which is

- 1. To protect the public health and welfare by prohibiting smoking in public places and places of employment; and
- 2. To guarantee the right of nonsmokers to breathe smoke-free air; and
- 3. To recognize that the public's need to breathe smoke-free air shall have priority over the individual's desire to smoke.

SECTION 2. 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, or other professional services are delivered; and private clubs.
- B. "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 business.
- C. "Employer" means a person, business, association, municipal corporation, or trust, with one or more employees.
- D. "Enclosed Area" means all space between a floor and ceiling that is closed in on all sides by doors, walls, or windows, whether open or closed, the combination of which extend from the floor to the ceiling. A wall includes any physical barrier, whether temporary or permanent.
- 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 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 all waiting rooms, hallways, private rooms, semi-private rooms, and wards within health care facilities.

- F. “Place of Employment” means any area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, common work areas, auditoriums, private offices, elevators, medical facilities, stairs, employee lounges, restrooms, conference and meeting rooms, classrooms, cafeterias, hallways, and work vehicles. 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 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. 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. The organization has established by-laws and/or a constitution to govern its activities. 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, hotel and motel lobbies, laundromats, polling places, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters and facilities primarily used for exhibiting any motion picture, stage drama, lecture, musical recital, or similar performance, bingo halls, gaming facilities, waiting rooms and public transportation facilities . A public transportation facility would include depots, shelters, buses, and taxis. Also considered public places would be elevators, common areas of apartment buildings, condominiums, or other multi-unit residential facilities. A private club is a “public place” when being used 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. “Retail Tobacco Store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- K. “Service Line” means an indoor 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.
- L. “Shopping Mall” or “Flea Markets” means an enclosed public walkway or hall area that serves to connect retail, professional establishments, or booths.
- M. “Smoking” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other combustible tobacco product.
- N. “Sports Arena” means sports pavilions, stadiums, gyms, 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 3. Application of Ordinance to City-Owned or City-Operated Facilities:

Facilities, including all buildings and vehicles, owned or operated by the City, shall constitute “public places” as defined in Section 2, and shall be governed by this Ordinance. In addition to penalties established by this Ordinance, a violation of this policy by a city employee on or in City property will be cause for disciplinary measures against such employee by supervisory personnel under employee policies and procedures.

SECTION 4. Prohibition of Smoking in Enclosed Public Places:

Smoking is prohibited in all enclosed public places as defined in Section 2 above, within the City of Danville, Kentucky.

SECTION 5. Prohibition of Smoking in Places of Employment:

- A. Smoking is prohibited in all enclosed places of employment.
- 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 6. Prohibition of Smoking in Outdoor Arenas and Stadiums:

Smoking is prohibited in the seating areas of all outdoor arenas, stadiums and amphitheaters.

SECTION 7. Reasonable Distance:

Any designated outdoor smoking areas shall occur at a reasonable distance from any entrance, exit, window or ventilation units of any enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means. In no instance shall a designated outdoor smoking area be permitted within ten (10) feet from the entrance to any enclosed area. A greater distance may be imposed by the property owner.

SECTION 8. Where Smoking is Not Regulated:

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Section 4 and 5:

- A. Private residences, except when used as a licensed child care, adult day care or health care facility.
- B. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous. Smoke from the designated smoking rooms shall not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Retail tobacco stores, provided that smoke from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
- D. Private clubs and businesses that have no employees; provided that when such clubs or businesses are being used for functions to which the general public is invited, the prohibitions set out in Sections 4 and 5 shall apply, provided that smoke from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
- E. Outdoor areas of places of employment, except those covered by the provisions of Sections 6 and 7, provided that smoke from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.

SECTION 9. Declaration of Establishment as Non-Smoking:

Notwithstanding any other provision of this Ordinance, an owner, operator, manager or other authorized person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place regardless of its designation under this Ordinance. In such areas designated as non-smoking, signs must be posted according to the

specifications listed in Section 10 and smoking will not be allowed as if those areas were subject to the prohibitions of Sections 4 through 6 of this Ordinance.

SECTION 10. Posting of Signs:

- A. "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 area where smoking is prohibited by this Ordinance, by the owner, operator, manager or other person having control of such building or other area.
- B. Every area where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

SECTION 11. Ashtrays; Spent Smoking Materials:

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. Spent smoking materials shall be properly discarded and not littered on the grounds of any property, including the City sidewalks.

SECTION 12. Non-Retaliation and Non-Waiver of Rights:

- A. No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment afforded by 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 13. Enforcement:

- A. The City Fire Department, the Code Enforcement Officers, the City Police, and all other City officials or employees designated by the City Manager 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 Danville.
- 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 Fire Department, or other individuals listed above that are in an establishment performing otherwise legal inspections, shall inspect for compliance with this Ordinance.

- E. If an owner, manager, operator, or employee of an establishment subject to this Ordinance observes a person violating the Ordinance, he or she shall immediately direct the person in violation to stop smoking. If the person violating the Ordinance does not stop smoking, the owner, manager, operator, or employee shall ask the person to leave the premises. If the person in violation refuses to leave, the owner, manager, operator, or employee shall call the police.

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 follows these steps.

- F. Notwithstanding any other provision of this Ordinance, the City, 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, manager, operator, 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 14. 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) for the first offense and a fine not exceeding one hundred dollars (\$100.00) for the second offense..
- 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 within a one-year (1) period.
 - 2. A fine not exceeding two hundred dollars (\$200.00) for a second violation within one (1) year.
 - 3. A fine not exceeding two hundred and fifty dollars (\$250.00) for each additional violation within one (1) year.
- 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 result in 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 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.
- E. Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

SECTION 15. Public Education:

The City of Danville shall seek the assistance of the Boyle County Health Department to provide a continuing education program to explain and clarify the purposes and requirements of this regulation to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. Such programs may include publication of a brochure for affected businesses and individuals explaining the provisions of this Ordinance.

SECTION 16. Governmental Agency Cooperation:

The City requests the assistance of the agencies listed in Section 13 of this document in order to effectively implement this Ordinance.

SECTION 17. Other Applicable Laws:

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

SECTION 18. Construction:

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

SECTION 19. 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.

SECTION 20. Repealer

Ordinance 1683, which is found in Section 9-7 of the Danville Code of Ordinances, is repealed by this new Ordinance.

SECTION 21. Effective Date:

This Ordinance shall be effective no later than ninety (90) days from and after passage and publication.

HUGH COOMER, MAYOR

ATTEST:

DONNA PEEK, CITY CLERK

Given 1st Reading and Passed this _14th_ day of _____April_____, 2008.

Given 2nd Reading and Passed this _28th_ day of _____April_____. 2008.

Publication Dates: __May 8, 2008_____ and _____

ORDINANCE NO. 1837

AN ORDINANCE AMENDING THE EXISTING ORDINANCE PERTAINING TO SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT SO AS TO ADD DEFINITIONS OF ALTERNATIVE NICOTINE PRODUCT, TOBACCO PRODUCT AND VAPOR PRODUCT AND CLARIFY THEIR TREATMENT IN SAID ORDINANCE

WHEREAS, the Kentucky General Assembly passed Senate Bill 109 on March 31, 2014, defining “alternative nicotine product”, “tobacco product” and “vapor product”, in an effort to ban the sale of e-cigarettes to minors based on health concerns regarding same, by a vote of 93-7 in the House and 35-1 in the Senate; and

WHEREAS, the Governor signed said bill into law on April 10, 2014, citing the negative impact of said products; and

WHEREAS, the United States Food and Drug Administration has proposed rules to regulate alternative nicotine products and vapor products including electronic cigarettes, cigars, pipe tobacco, nicotine gels, water pipe tobacco and hookahs to require health warning labels; and

WHEREAS, the Board of Commissioners deems it necessary and appropriate to amend its existing ordinance pertaining to smoking in public places and places of employment to include the new statutory definitions of “alternative nicotine product”, “tobacco product” and “vapor product” so as to clarify what actions are not permitted in public places and places of employment;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF DANVILLE, KENTUCKY, as follows:

SECTION ONE:

Section 9.7(b) of the City of Danville Code of Ordinances is hereby amended to read as follows:

Definitions. The following words and phrases, whenever used in this section, shall be construed as defined in this section.

(1) *Alternative nicotine product* means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means.

(+2) *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, or other professional services are delivered; and private clubs.

(23) *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 business.

(34) *Employer* means a person, business, association, municipal corporation, or trust, with (1) or more employees.

(-4-5) *Enclosed area* means all space between a floor and ceiling that is closed in on all sides by doors, walls, or windows, whether open or closed, the combination of which extend from the floor to the ceiling. A wall includes any physical barrier, whether temporary or permanent.

(56) *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 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 specialist within these professions. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms, and wards within health care facilities.

(67) *Place of employment* means any area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, common work areas, auditoriums, private offices, elevators, medical facilities, stairs,

employee lounges, restrooms, conference and meeting rooms, classrooms, cafeterias, hallways, and work vehicles. A private residence is not a *place of employment* unless it is used as a childcare, adult day care or health care facility.

(78) *Private club* means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof 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. 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. The organization has established by-laws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C 501.

(89) *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, hotel and motel lobbies, laundromats, polling places, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters and facilities primarily used for exhibiting any motion picture, stage drama, lecture, musical recital, or similar performance, bingo halls, gaming facilities, waiting rooms and public transportation facilities. A public transportation facility would include depots, shelters, buses, and taxis. Also considered public places would be elevators, common areas of apartment buildings, condominiums, or other multi-unit residential facilities. A private club is a *public place* when being used 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.

(910) *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.

(1011) *Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products, alternative nicotine products, vapor products and accessories and in which the sale of other products is merely incidental.

(1112) *Service line* means an indoor 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.

(13) *Shopping mall or flea markets* means an enclosed public walkway or hall area that serves to connect retail, professional establishments, or booths.

(14) *Smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or any other combustible tobacco product or vapor product.

(15) *Sports arena* means sports pavilions, stadiums, gyms, 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.

(16) *Tobacco product* means any cigarette, cigar, snuff, smokeless tobacco product, smoking tobacco, chewing tobacco, and any kind or form of tobacco prepared in a manner suitable for chewing or smoking, or both, or any kind or form of tobacco that is suitable to be placed in a person's mouth.

(17) *Vapor product* means any noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size and including the component parts and accessories thereto, that can be used to deliver vaporized nicotine or other substances to users inhaling from the device.

Vapor product includes but is not limited to any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and every variation thereof, regardless of whether marketed as such, and any vapor cartridge or other container of a liquid solution or other material that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar product or device.

SECTION TWO: This ordinance is effective upon its publication.

SECTION THREE: If any section, subsection, paragraph, sentence, clause, phrase, or portion of this Ordinance is declared illegal or unconstitutional or otherwise invalid, such declaration shall not affect the remaining portions hereof.

GIVEN FIRST READING AND PASSED 5/12/14

GIVEN SECOND READING AND PASSED 5/27/14

PUBLISHED IN THE *ADVOCATE-MESSENGER* 6/2/14

APPROVED:


BERNIE HUNSTAD, MAYOR

ATTEST:


DONNA PEEK, CITY CLERK

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