

ORDINANCE 24-2019

AN ORDINANCE AMENDING SECTION 94.06 OF THE HOPKINSVILLE CODE OF ORDINANCES PERTAINING TO REGULATING SMOKING IN ENCLOSED PUBLIC PLACES AND WORK PLACES

WHEREAS, Hopkinsville City Council, by Ordinance 08-2012, enacted certain regulations pertaining to smoking in enclosed public places and work places, and established civil fines and enforcement procedures for violations thereof; and

WHEREAS, Hopkinsville City Council, at the October 17, 2019 Committee of the Whole meeting voted to amend said ordinance in order to include prohibitions against electronic smoking devices; and

WHEREAS, Hopkinsville City Council also wishes to expand the scope of said ordinance to include public transit shelters.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Hopkinsville, Kentucky as follows:

SECTION ONE

That Section 94.06(B) and (C) of the Hopkinsville Code of Ordinances is amended to read as follows:

B. DEFINITIONS. As used in this section, the following terms and their derivatives shall have the following meanings unless the context indicates or requires a different meaning:

“Age-restricted venue”. A legal establishment that affirmatively restricts access to its buildings or facilities at all times to persons who are 21 years of age or older by requiring each person who attempts to gain entry to such buildings or facilities to submit for inspection an acceptable form of identification for the express purpose of determining if the person is 21 years of age or older.

“Building”. Any structure enclosed from the weather, whether or not windows or doors are open. If a person leases or possesses only a portion of a building, the term “building” applies to the leasehold or possessory interest as well.

“Dwelling”. 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, but not a hotel, motel, hospital, hospice or nursing home lobby, common elevator, common hallway or other common area.

“Electronic Smoking Device”. Any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner or in any form for the purpose of inhaling vapor or aerosol from the product. The term includes any 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 descriptor. “Electronic smoking device” also includes any fitment, add-on, auxiliary or attachment type device that is designed to be utilized in conjunction with or during the usage of an electronic smoking device.

“Enclosed Area”. An area that is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has forty percent (40%) or more of its perimeter closed in by wall or other coverings of any material, whether permanent or temporary.

“Establishment”. Any business or other entity operating or otherwise located in a building or portion thereof, and open to the public, including but not limited to manufacturing facilities, industrial plants, banks, laundromats, retail stores, professional offices, restaurants, bars, gaming facilities, child day care facilities and adult day care facilities.

“Open to the public”. Buildings, portions thereof, or establishments therein, are “open to the public” when their physical nature, function, custom, usage or notice would cause a reasonable person to believe no invitation or permission to enter is required.

“Private Organization”. An organization which is the owner, lessee, or occupant of a building, that is not open to the public. The building will be used exclusively for the organization’s or a member’s purposes at all times. The organization must maintain selective members, and be operated by the membership. The organization neither provides food, drink, nor lodging for pay to anyone who is not a member or a member’s guest, nor permits others to provide food, drink, or lodging for pay to anyone who is not a member or a member’s guest. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. § 501. A private organization is an “establishment” only when being used for a function to which the general public is invited.

“Retail Tobacco Store”. Any place used primarily for the sale of tobacco products, including but not limited to cigarettes, pipe tobacco, chewing tobacco and accessories, and 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.

“Smoke or Smoking”. Inhaling, exhaling, burning, possessing, or carrying any lighted cigar, cigarette, pipe, or other combustible tobacco product. Smoking also includes the use of an electronic smoking device or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in the chapter.

“Tobacco Warehouse”. Any warehouse building offering tobacco for purchase at auction and the definition established in KRS 248.010(4).

“Transit Shelter”. A shelter constructed and/or maintained by the City of Hopkinsville or utilized as a bus stop for Hopkinsville Transit public transportation, on land either owned by the City of Hopkinsville, or situated on property of another pursuant to an easement.

“Work Place”. Any building or portion thereof in which an establishment is located, including, but not limited to work areas, private offices, lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias, and hallways.

C. PUBLIC PROHIBITIONS AND EXCEPTIONS.

1. No person shall smoke within any building or enclosed area that is open to the public or any work place.

2. No person shall smoke within any public transportation vehicle, including buses, vans or taxicabs, or any city owned and/or insured vehicle.

3. No person shall smoke within any public transit shelter, or within close proximity of any transit shelter so as to ensure that smoke does not enter the transit shelter.

4[3]. The prohibition does not apply to the following locations provided smoke does not infiltrate into areas where smoking is prohibited under this section:

a. Any dwelling, unless the dwelling is also used as a childcare facility, adult day care center or health care facility. This exception does not extend to the lobby, common restrooms, common hallway, common elevator, or any other common area of a building or enclosed area containing attached dwelling units or hotel or motel rooms. If a hospital, hospice, or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with another person without that person's consent;

b. Any room used for psychological treatment of nicotine addiction by a licensed health care professional, or in a physically separate and independently ventilated room in a hospital, hospice facility or licensed long term care facility open to all residents as a smoking room and for no other purpose;

c. A retail tobacco store;

d. Indoor smoking areas provided in county, state or federal governmental office buildings or work places;

e. Buildings and facilities operated by private organizations, except when open to the public;

f. Tobacco warehouses;

g. A rental room or hall being used by a person or group for a 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;

h. A performer as part of a theatrical production so long as adequate notice is provided to patrons before the performance.

i. Age-restricted venues.

5[4]. Nothing in this section shall prevent an owner, operator, manager or other person having control of an establishment, including, without limitation, any motor vehicle, outdoor area, or dwelling, from prohibiting smoking completely in such place, and no person shall fail to abide by such a private prohibition.

6[5]. Nothing in this section shall authorize smoking in any place where it is otherwise prohibited by statute, ordinance, regulation or order of the Fire Marshal.

SECTION TWO

If any section, subsection, sentence, clause, or phrase of this ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remaining portions of this ordinance.

SECTION THREE

Any and all existing ordinances inconsistent with this ordinance are hereby repealed.

SECTION FOUR

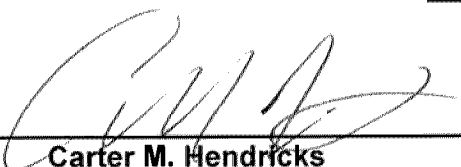
This ordinance shall take effect after its passage and publication according to law.


ORDINANCE 24-2019

REGULATING SMOKING IN ENCLOSED PUBLIC PLACES AND WORK PLACES

PUBLICLY READ AND PASSED FIRST TIME: November 5, 2019

PUBLICLY READ AND PASSED SECOND TIME: November 19, 2019

APPROVED: 
Carter M. Hendricks
Mayor

ATTEST: 
Christine M. Fletcher, MMC
City Clerk

Ordinance 24-2019
was published in the Kentucky New Era
on: 11.27.19
As Certified By K. Freeman