

COMMONWEALTH OF KENTUCKY
CITY OF LAGRANGE
ORDINANCE 11-2018

AN ORDINANCE RELATING TO THE PROHIBITION OF SMOKING IN
CITY OF LAGRANGE

WHEREAS, City of LaGrange has the authority to the provisions of KRS Chapters 67, 100 and other applicable law to enact ordinances; and

WHEREAS, City of LaGrange first obligation is to protect the lives of all people in the City of LaGrange; and

WHEREAS, the purpose of enacting a Smoking Ordinance is to protect the public health and welfare by prohibiting smoking in public places and places of employment; and to recognize and guarantee that the public's need to breathe smoke-free air shall have priority over the individual's desire to smoke; and

WHEREAS, secondhand smoke is a Group A carcinogen, such as asbestos, radon gas and benzene and has been proven to cause cancer; no level of secondhand smoke is safe; and

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution. Breathing secondhand smoke is a cause of disease in healthy nonsmokers. These diseases include heart disease, stroke, respiratory disease and lung cancer. Children exposed to secondhand smoke have an increased risk of respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer; and

WHEREAS, a significant amount of secondhand smoke exposure occurs in the workplace and employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function; and

WHEREAS, the U. S. 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; and

WHEREAS, the Environmental Protection Agency and the American Society of Heating, Refrigeration and Air Conditioning Engineers has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, the Environmental Protection Agency, the U. S. Department of Health and Human Services, the National Cancer Institute, and the Centers for Disease Control and Prevention, agree that secondhand smoke is harmful to health; and

WHEREAS, high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," that closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system, have been proven to contain numerous risks to human health. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent." According to a more recent study, electronic cigarette emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke. Electronic cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions; and

WHEREAS, smoking is a form of air pollution and constitute both a danger to health and a material public nuisance.

1. DEFINITIONS

For the purpose of this Ordinance, the following definitions shall apply:

(a) Dwelling: a house, apartment, or other place of residence used primarily for conducting activities of daily living, including, without limitation, private residences, a hospital, hospice or nursing home room. A private residence is a PLACE OF EMPLOYMENT if it is used as a childcare, adult day care or other healthcare facility.

(b) Electronic Smoking Device: any device containing or delivering nicotine or any other substance that can be used in a manner for the purpose of inhaling the vapor, smoke and/or aerosol from the device. The term includes any such device, i.e. whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other name or product descriptor.

(c) Enclosed Area: All space in a structure enclosed from the weather, being permanent or temporary, enclosed by walls and roof with door/s.

(d) Place of Employment: any location either public or private where an owner, employer or employee perform their designated duties. This includes, but is not limited to, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. **A DWELLING** is not a place of employment unless it is used as a childcare, adult day care or health care facility.

(e) Smoking: the use of any device used to ignite or heat tobacco, or any other substance whether natural or synthetic for the purpose of i.e. inhalation, exhalation, burning or carrying any lighted or heated cigar, cigarette, pipe, hookahs or any other lighted or heated product intended for inhalation, in any manner or form. Smoking also includes the use of an electronic smoking device which creates an aerosol, smoke or vapor in any manner or form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

2. PROHIBITION OF SMOKING INDOORS

(a) Except as otherwise noted in section (b) smoking is prohibited at places of employment and in enclosed areas.

(b) Smoking is prohibited within a reasonable distance of the outside entrance to, open window of, air intake of a ventilation system in any enclosed area in which smoking is prohibited by this Ordinance.

(c) Smoking is prohibited in any enclosed areas or vehicles owned, leased, rented, operated or controlled by the City of LaGrange.

(d) Nothing in this subchapter shall authorize smoking in any location where it is otherwise prohibited by statute, ordinance, and regulation or by order of the Fire Marshal.

3. WHERE SMOKING IS NOT REGULATED

(a) Notwithstanding any other provision of this ordinance to the contrary, the following area shall be exempt from the provisions of Section 2 above:

- i. A person's private dwelling, unless used as a childcare, adult day care or health care facility.

4. NON-RETALIATION AND NON-WAIVER OF RIGHTS

(a) No employer shall refuse to hire an applicant for employment, retaliate against or discharge an employee because they exercise their rights afforded by this Ordinance to report in an attempt 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.

5. PENALTIES

(a) An individual found guilty of violating this Ordinance is punishable by a fine not less than fifty dollars (\$50.00).

(b) An individual who owns, manages, operates, or otherwise controls a public place or place of employment and found guilty of violating this Ordinance is punishable by a fine;

(i) of not less than fifty dollars (\$50.00) for the first offense;

(ii) of not less than one hundred (\$100.00) for the second offense

(iii) of a fine of not less than two hundred and fifty (\$250.00) for the third and each subsequent offense.

(c) An individual who violates this Ordinance by refusing to extinguish their smoking material when requested, shall be requested to leave the establishment and if refused, may also be subject to prosecution for trespass.

(d) In addition to the fines established by (4b), violation of this Ordinance by an individual who owns, manages, operates, or otherwise controls a public place or place of employment shall result in the suspension and/or revocation of any or all permit/s or license/s issued 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 day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

6. POSTING SIGNS

"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 at every entrance/exit of an enclosed public area.

7. SEVERABILITY

If any provisions, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which may be given effect independent of the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

This Ordinance shall become effective and be in force from and after its date of passage, approval, and publication as required by law.

FIRST READING: August 6, 2018

SECOND READING: September 4, 2018



Joe Davenport, Mayor

ATTEST:



Stephanie R. Cooper, City Clerk

VOTE:

FOR: 5
AGAINST: 1
ABSTAINED: 1
PRESENT: 7