

Ordinance No. , Series 2008

AN ORDINANCE AMENDING CHAPTER 90 OF THE
LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT CODE OF ORDINANCES [LMCO]
RELATING TO THE PROHIBITION OF SMOKING IN
DESIGNATED AREAS (AS AMENDED).

Sponsored By: President Rick Blackwell

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT [THE COUNCIL] AS
FOLLOWS:

SECTION I. LMCO Chapter 90 is hereby amended and re-enacted to read as follows:

§ 90.01 POLICY.

In order to serve the public health, safety and general welfare, it is the declared purpose of this subchapter to prohibit smoking in all buildings open to the public and other establishments where employees work on the premises.

§ 90.02 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDING. Any structure enclosed from the weather, whether or not windows or doors are open, which is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has 80% or more of its perimeter closed in by walls or other non-porous coverings of any material, whether permanent or temporary. If ~~a person~~ an establishment 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.

ESTABLISHMENT. An entity, endeavor or organization, including its owners, operators, directors, shareholders, partners, employees and possessions.

SMOKE or SMOKING. The act of inhaling or exhaling the smoke from any lighted cigarette, cigar, or pipe, or other combustible tobacco product.

TOBACCO BUSINESS. Facilities that are owned or leased by tobacco manufacturers or wholesalers for the promotion, testing, research and/or development of tobacco products. For purposes of this subsection (2), a tobacco manufacturer or wholesaler shall be an establishment that generates 75% or more of its total annual gross revenues from the sale of tobacco products.

§ 90.03 PROHIBITION OF SMOKING IN PUBLIC BUILDINGS AND EXCEPTIONS.

(A) No person shall smoke within any building or establishment, which is open to the public, used to host or hold a public event, or employs one or more persons which work on the premises, except in

(1) Any dwelling. This exception does not extend to a lobby, common elevator, common hallway, or any other common area of a building containing attached dwelling units, hotel rooms or motel rooms, but if a hospital, hospice, or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with a non-smoker without that person's consent. This exception does not extend to private

residences when they are used as a licensed childcare, adult day care, or health care facility.

(2) Tobacco Businesses.

(B) Nothing in this subchapter shall prevent an owner, lessee, principal manager or person in control of any place, 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.

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

§ 90.04 POSTING OF SIGNS; REMOVAL OF ASHTRAYS.

(A) No owner, lessee, principal manager, or person in control of a building or an establishment in any building shall fail to post signs, with letters of not less than one inch high or symbols no less than three inches high, using the words "No Smoking" or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette surrounded by a red circle with a red bar across it conspicuously either on all public entrances or in a position clearly visible on entry into building or establishment.

(B) The owner, operator, manager, or designee or employee of every establishment in a building shall inform persons violating this subchapter of the applicable provisions thereof and require compliance.

(C) All ashtrays that are intended to be used on the premises of an establishment for the collection of ashes, butts, and or residue from smoking shall be removed from any area where smoking is prohibited by this subchapter and shall not be

permitted by the owner, operator, manager or other person having control of the establishment. Any permanent structure that functioned or was used as an ashtray shall be disabled or altered to prevent its use as an ashtray.

(D) The requirements of this section do not apply to any exempt ~~dwelling area~~.

§ 90.05 DUTIES OF OWNERS OF BUILDINGS AND/OR ESTABLISHMENTS.

(A) No owner, lessee, principal manager, or person in control of a building or establishment in a building shall fail to:

(1) Ask smokers to refrain from smoking in any no-smoking area;

(2) Demand a smoker leave the premises if the smoker refuses to extinguish any smoking materials after being requested to do so;

~~(3) Immediately contact the Louisville Metro Police Department, or any other law enforcement agency with jurisdiction, and request they remove the offending smoker from the premises if the smoker has refused to extinguish the smoking materials and refuses to leave.~~

(B) No owner, principal manager, proprietor, or any other person in control of a business shall fail to ensure compliance by subordinates, employees, and agents with this subchapter.

§ 90.06 ENFORCEMENT.

The Louisville Metro Health Department shall enforce the provisions of this subchapter through the issuance of citations, and for this purpose during times when employees are scheduled to work or the building or establishment is open to the public, may at all reasonable times enter in and on any that portion of the premises of any building or establishment where the public is invited or where employees perform their

duties and take breaks, including but not limited to those areas where food and beverages, alcoholic or otherwise, are served, prepared or stored. Nothing herein shall be construed to prevent any peace officer with jurisdiction from issuing a citation for a violation of this subchapter committed in his or her presence. Notice of the provisions of this subchapter shall be given by Metro Government to all applicants for a business or other license.

§ 90.07 VIOLATIONS AND PENALTIES.

(A) Except as otherwise provided in subsection (B) hereof, any violation of this subchapter, including a person who smokes in an area where smoking is prohibited, shall be classified as a civil offense and shall be enforced through the Code Enforcement Board ("Board") as provided in §§ 32.275 through 32.290, or as it may be amended. The civil penalties for violations of §§ 90.01 through 90.09 are as follows:

(1) A minimum penalty of no less than \$50 400 50 nor more than and a maximum penalty of \$100 ~~250~~ 100 for the first offense within a one-year period;

(2) A minimum penalty of \$150 no less than \$250 150 nor more than and a maximum penalty fine of \$250 ~~500~~ 250 for the second offense within a one-year period; and

(3) A minimum penalty fine of \$350 no less than \$500 \$350 and a maximum penalty of \$500 nor more than \$1,000 500 for the third and each subsequent offense within a one-year period.

(4) Any person cited for violation of this subchapter as provided in subsection (A) hereof may pay the minimum civil penalty within seven days from the date of issuance or request a hearing regarding such penalty to the Board in

accordance with §§ 32.275 et seq. If the person fails to respond to the citation within seven days as referenced above, the person shall be deemed to have waived the right to a hearing. In this event, the Board shall enter a final order determining that the violation was committed and impose the civil penalty as set forth in the citation.

(B) Persons who smoke in an area where smoking is prohibited and who refuse to extinguish their smoking material when asked, may be required to leave the premises, and shall be subject to prosecution for criminal trespass if they do not leave when asked.

(C) ~~Each calendar day during which a violation of this subchapter occurs shall constitute a separate and distinct offense.~~ All violations discovered upon a single inspection by the Louisville Metro Health Department or in the instant presence of a peace officer shall constitute a single offense for purposes of the issuance of a citation under this subchapter to an owner, operator, or employee of a building or an establishment, or a smoker therein, as the case may be.

§ 90.08 REASONABLE DISTANCE.

Smoking is prohibited within a reasonable distance from the outside entrance to any building so as to ensure that tobacco smoke does not enter the building through entrances, windows, ventilation systems, or other means.

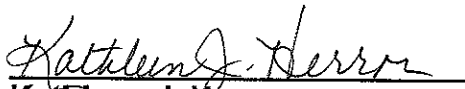
§ 90.09 NON-RETALIATION.

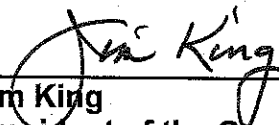
No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this subchapter.

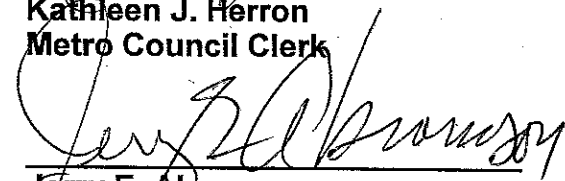
§ 90.98 SEVERABILITY.

If any provision, clause, sentence, or paragraph of this subchapter or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are declared to be severable.

SECTION II. This Ordinance shall take effect immediately upon its passage and approval.


Kathleen J. Herron
Metro Council Clerk


Jim King
President of the Council


Jerry E. Abramson
Mayor

Approved: 1-11-08
Date

APPROVED AS TO FORM AND LEGALITY:
Irv Maze
Jefferson County Attorney

**LOUISVILLE METRO COUNCIL
READ AND PASSED**
January 10, 2008

By: 
01082008 Committee Amendment epm
Council 01102008 Floor Amendment #3.doc

ORDINANCE NO. 083, SERIES 2017

**AN ORDINANCE AMENDING CHAPTER 90 OF THE
LMCO RELATING TO THE PROHIBITION OF SMOKING
IN DESIGNATED AREAS. (AS AMENDED)**

**SPONSORED BY: COUNCILMEMBERS WELCH, SHANKLIN, HOLLANDER,
BUTLER, JOHNSON, COAN, BLACKWELL, SEXTON SMITH, JAMES, AND FLOOD**

WHEREAS, on May 10, 2016 the Food and Drug Administration (FDA) issued a final rule extending FDA's tobacco product authorities to include "Electronic Nicotine Delivery Systems," which include e-cigarettes and other tobacco products like e-cigarettes; and

WHEREAS, FDA based their findings on studies which show that e-liquid products contain chemicals that are dangerous to consumers when inhaled including but not limited to nicotine, propylene glycol, glycerin, tobacco specific nitrosamines, tobacco alkaloids, carbonyls, ethylene glycol, diacetyl, and acetyl, and that e-liquid aerosols contain chemicals such as nicotine, carbonyls, tobacco specific nitrosamines, heavy metals, and volatile organic compounds; and

WHEREAS, studies show that hookah usage presents significant health risks, whether users smoke tobacco-containing or tobacco-free products; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) through studies have concluded that hookah and the corollary smoke therefrom contain carbon monoxide and other toxic agents known to increase the risks for smoking-related cancers, heart disease, and lung disease; and

WHEREAS, air quality studies in hookah lounges show dangerously high levels of respirable particulate matter, far exceeding the ambient air quality standards

established by the Environmental Protection Agency and directly comparable to those in establishments that allow cigarette smoking; and

WHEREAS, the CDC has found youth usage of e-cigarettes and hookah have surpassed youth usage of conventional cigarettes since 2011; and

WHEREAS, it is a long recognized high priority of government to promote and safeguard public health, it is the intent of Louisville Metro Government in proposing this revision to the existing Ordinance to prohibit smoking in public indoor places and places of employment; in doing so Louisville Metro Government recognizes the right to breathe clean indoor air, protect the public from exposure to secondhand smoke, and facilitate uniform and consistent enforcement of the Ordinance.

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: LMCO § 90.02 is hereby amended as follows:

§ 90.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BUILDING. Any structure enclosed from the weather, whether or not windows or doors are open, which is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has 80% or more of its perimeter closed in by walls or other non-porous coverings of any material, whether permanent or temporary. If an establishment leases or possesses only a portion of a building, the term “building” applies to the leasehold or possessory interest.

~~**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.~~

~~**E-CIGARETTE.** A product that is designed to, when heated, convert its contents into a vapor form that delivers nicotine or other substances to a user. Said product may be composed of a rechargeable, battery-operated heating element, a replaceable cartridge, and an atomizer that converts the contents of the cartridge into a vapor.~~

~~**E-CIGARETTE ACCESSORIES.** Any fitment, add-on, auxiliary or attachment type device that is designed to be utilized in conjunction with or during the usage of an e-cigarette.~~

~~**ELECTRONIC SMOKING RETAIL STORE.** A business operation with at least eighty-five (85%) percent of sales dedicated to the sale of electronic smoking devices, accessories, and/or products. To meet the definition, the electronic smoking retail store shall not allow any minors in the building, sell alcoholic beverages (under LMCO Chapter 113), be licensed as a Food Service Establishment (under LMCO Chapter 118), or have an entrance that opens to a common area with other retail establishments.~~

~~**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.

ESTABLISHMENT. An entity, endeavor or organization, including its owners, operators, directors, shareholders, partners, members, employees and possessions.

EXTENDED STAY LODGING. Accommodations for persons away from their permanent place of residence, which are available on at least a thirty (30) day basis and may include kitchen facilities. This term does not include hotel, motels, inns, bed and breakfasts, short term rentals, boarding and lodging houses, nursing homes or assisted living residences, wherein a unit could be rented or leased for less than a thirty day period.

HERBAL SHISHA. A non-tobacco product, which its primary intended use by the producer, manufacturer or seller of such product, is to be smoked in a waterpipe, which may be commonly referred to or known as a hookah, narghile or shisha.

HOOKAH. Any water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, herbal shisha, or other plant matter.

HOOKAH ESTABLISHMENT LOUNGES. A business operation primarily dedicated to the allowance of on-site smoking through one or more hookah pipes (also commonly referred to as a hookah, waterpipe, shisha or narghile), including but not limited to establishments known as hookah bars, hookah lounges or hookah cafés. To meet the definition, the establishment lounge must have been in operation as of May 1, 2017 and shall not allow any minors in the building, sell alcoholic beverages (under

LMCO Chapter 113), or be licensed as a Food Service Establishment (under LMCO Chapter 118).

MINOR. A natural person who is under 18 years of age.

RETAILER. Any person, firm, partnership or corporation engaged in the business of buying, selling or merchandising products and/or services for profit.

SMOKE or SMOKING. ~~The act of inhaling, or exhaling, the smoke from any lighted cigarette, cigar, or pipe, or other combustible tobacco product.~~ burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or form. 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 BUSINESS. Facilities that are owned or leased by tobacco manufacturers or wholesalers for the promotion, testing, research and/or development of tobacco products. For purposes of this chapter, a tobacco manufacturer or wholesaler shall be an establishment that generates 75% or more of its total annual gross revenues from the sale of tobacco products.

SECTION II: LMCO § 90.03 is hereby amended as follows:

§ 90.03 PROHIBITION OF SMOKING IN PUBLIC BUILDINGS AND EXCEPTIONS.

(A) No person shall smoke within any building or establishment, which is open to the public, used to host or hold a public event, or employs one or more persons ~~which~~ who work on the premises, except in or with:

~~(1) Any dwelling. This exception does not extend to a lobby, common elevator, common hallway, or any other common area of a building containing attached dwelling units, hotel rooms or motel rooms, but if a hospital, hospice, or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with a non-smoker without that person's consent. This exception does not extend to p~~ Private residences or extended stay lodging, except when they are used as a licensed childcare, adult day care, or health care facility.

(2) Tobacco businesses. Any tobacco business must register with the Louisville Metro Health Department to be eligible for this exception.

~~(3) The consumption of any non-tobacco and non-nicotine related products from an electronic smoking device at an electronic smoking retail store.~~

~~(4) The consumption of any non-tobacco products through a hookah at a hookah Establishment lounge. Any hookah lounge must register with the Louisville Metro Health Department by the effective date of the ordinance and operate continuously with no cessation of its operation to remain eligible for the exception. A registered hookah lounge may move locations under the exception, but additional retail operations are ineligible under the exception. This exception shall expire no later than June 1, 2019.~~

(B) Nothing in this chapter shall prevent an owner, lessee, principal manager or person in control of any place, 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.

(C) Nothing in this chapter shall authorize smoking in any place where it is otherwise prohibited by statute, ordinance, regulation, or by order of the Fire Marshal.

SECTION III: LMCO Chapter § 90.08 is hereby amended as follows:

§ 90.08 REASONABLE DISTANCE.

Smoking is prohibited ~~within a reasonable distance from~~ (15) fifteen feet of the outside entrance to any building so as to ensure that tobacco smoke does not enter the building through entrances, windows, ventilation systems, or other means. The fifteen feet distance restriction does not apply to hookah establishments-lounges.

SECTION IV: LMCO § 90.10 is hereby amended as follows:

§ 90.10 PROHIBITING RETAILERS FROM SELLING OR DISTRIBUTING E-CIGARETTES ELECTRONIC SMOKING DEVICES TO MINORS.

(A) No minor shall use, consume, purchase or possess any electronic smoking device E-cigarette or Herbal Shisha hookah.

(B) No retailer shall ~~sale~~ sell, offer to ~~sale~~ sell or distribute to any minor within the boundaries of Louisville Metro, any E-cigarette electronic smoking device E-cigarette accessories, or Herbal Shisha hookah.

SECTION V: LMCO § 90.07 on VIOLATIONS AND PENALTIES is hereby renumbered to be LMCO § 90.99.

SECTION VI. This Ordinance shall take effect in 90 days upon its passage and approval.



H. Stephen Ott
Metro Council Clerk



Greg Fischer
Mayor



David Yates
President of the Council **PRO - TEM**

5/22/17
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: *Shah J. Martin*

**LOUISVILLE METRO COUNCIL
READ AND PASSED**
May 11, 2017

O-074-17 Final Smoking Ordinance.docx