

**CITY OF MANCHESTER, KENTUCKY
ORDINANCE # 2011-010**

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

WHEREAS, the City Council of the City of Manchester, pursuant to KRS 61.165, adopted Ordinance No. 2011-010, regulating smoking in and on all properties owned or used by the City of Manchester, 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 City Council has received and considered the results of an Indoor Air Quality assessment of certain establishments and places of employment in Clay County, facilitated by the Cumberland Valley District Health Department, which study establishes that employees and patrons in Clay County public venues are exposed to harmful levels of SHS. On average, workers and patrons in Clay County were exposed to indoor air pollution levels approximately 2.2 times the National Ambient Air Quality Standard, and the level of indoor air pollution in these venues was 3.8 times higher than Georgetown and 4.2 times higher than Lexington’s average PM_{2.5} levels after implementation of their smoke free laws as seen in Exhibit 1; and

WHEREAS, the City Council 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 Manchester, Kentucky, to adopt this regulation of smoking in all public places and places of employment within the City of Manchester;

Now, therefore, be it ordained by the City Council of the City of Manchester as follows:

SECTION 1. Findings and Intent: The City Council of the City of Manchester finds that:

- A.** In June 2006 the U.S. Surgeon General issued a report reviewing the health consequences of involuntary exposure to tobacco smoke. The report concluded that:
 - 1. Secondhand smoke causes premature death and disease in children and adults who do not smoke;
 - 2. Children exposed to secondhand smoke are at an increased risk for sudden death syndrome (SIDS), acute respiratory infections, ear problems and more severe asthma;
 - 3. Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer
- B.** 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. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), “Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10, “ Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.)

- C. The Public Health Service's National Toxicology Program (NTP) has listed second hand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report of Carcinogens," U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.)
- D. Secondhand smoke is particularly hazardous to the elderly, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental Protection Agency (Cal EPA). "Health effects of exposure to environmental tobacco smoke", Tobacco Control 6(4): 346-353, Winter, 1997.)
- E. The Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, "Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?" British Medical Journal, 328: 980-983, April 24, 2004.)
- F. A significant amount of secondhand smoke exposure occurs in the workplace. 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 (Pitsavos, C.; Panagiotakos, D.B.; Chrysohoou, C. Skoumas, J; Tzioumis, K; Stefanadis, C.; Toutouzas, P. "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: The CARDIO2000 case-control study," Tobacco Control 11(3): 220-225, September 2002.)
- G. Residual tobacco contamination, or "thirdhand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings. Gases can be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (offgassed) back into the air and recombine to form harmful compounds. (Singer, B.C.; Hodgson, A.T.; Nazaroff, W.W., "Effect of sorption on exposures to organic gases from environmental tobacco smoke (ETS)," Proceedings: Indoor Air 2002, 2002.) Tobacco residue is noticeably present in dust throughout places where smoking has occurred. (Matt, G.E.; Quintana, P.J.E.; Hovell, M.F.; Bernert, J.T.; Song, S.; Novianti, N.; Juarez, T.; Floro, J.; Gehrman, C.; Garcia, M.; Larson, S., "Households contaminated by environmental tobacco smoke: source of infant exposures," Tobacco Control 13(1): 29-37, March 2004.) Given the rapid sorption and persistence of high levels of residual nicotine from tobacco smoke on indoor surfaces, including clothing and human skin, this recently identified process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion. (Sleiman, M.; Gundel, L.A.; Pankow, J.F.; Jacob III, P.; Singer, B.C.; Destailats, H., "Formation of carcinogens indoors by surface-mediated reactions of nicotine with nitrous acid, leading to potential thirdhand smoke hazards," Proceedings of the National Academy of Sciences of the United States of America (PNAS) 107(15): 6576-6581, February 8, 2010.)
- H. Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After

testing a number of e-cigarettes from two leading manufactures, 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 air control processes used to manufacture these products are inconsistent or non-existent." ([n.a.], "Summary of results: laboratory analysis of electronic cigarettes conducted by FDA, "Food and Drug Administration (FDA), July 22, 2009; <http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm> Accessed on: October 22, 2009.) E cigarettes produce a 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.

- I. Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or appositive economic impact after enactment of laws requiring workplaces to be smoke-free. Create of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A.; Smith, L., The Effect of Ordinances Requiring Smoke-Free Restaurants on Restaurant Sales in the United States. American Journal of Public Health, 87: 1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health, " GPI Atlantic, September 2001.)
- J. Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures can cause economic damage to business health 15(8), Supplement A: 6-9, August 1997.)

Accordingly, the City Council of the City of Manchester 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, trust, or nonprofit entity, with one or more employees.
- D. "Enclosed Area" means all space between a floor and ceiling that is bounded on at least 50% of its sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other 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 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 the 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 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 productions 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 schools 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 which is the sole occupant of the building in which it is located and derives at least 90% of its gross quarterly revenue from the sale of tobacco, tobacco products, or tobacco accessories, such as pipes, matches, lighters, and ashtrays. Revenue generated from cigarette vending machine sales shall not be used to determine whether a retail store satisfies the definition.
- 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 or heated cigar, or any other lighted or heated cigarette or plant product intended for inhalation, in any manner or in any form. “Smoking” also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

- 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 a 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 Manchester, 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 sports arenas, stadiums, and amphitheaters.

SECTION 7. Reasonable Distance:

Smoking is prohibited within a reasonable distance of at least fifteen (15) feet from all entrances, exits, windows, or air intakes of any enclosed area in which [where] smoking is prohibited by this ordinances. A greater distance may be imposed by the owner of the property.

SECTION 8. 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 Section 4 and 5:

- A. Private residences, unless 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 thirty five percent (35%) 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 Ordinances. The status of the rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- C. Private clubs that have no employees; provided that when such clubs are being used for functions to which the general public is invited or permitted, the prohibitions set out in

Section 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 Ordinances.

- D. Outdoor areas of places of employment, except those covered by the provisions of Section 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 an 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 Police and all other City officials or employees designated by the Mayor 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 Manchester.
- C. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with any of the authorized persons listed above.
- D. 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.

- E. 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).
- 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 occurs.
- 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 Manchester shall seek the assistance of the Cumberland Valley 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 liberally construed so as to further its stated purposes.

SECTION 19. Severability:

If any provisions, 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:

SECTION 21. Effective Date:

This Ordinance shall be effective no later than sixty (60) days from and after passage and publication.

BE IT SO ORDAINED BY THE CITY OF MANCHESTER on this the day of 30TH day of November, 2011.

ATTEST:	YEAS	NAYS
Mark Deaton	_____	<u> X </u>
Harvey Hensley	<u> X </u>	_____
John Ed Pennington	<u> X </u>	_____
Betty Meredith	ABSENT	_____
Penny Robinson	_____	<u> X </u>
Fred Rogers	ABSENT	_____
Dorothy Sizemore	_____	<u> X </u>
Terry Wilson	<u> X </u>	_____
Mayor George Saylor	<u> X </u>	_____

 , Mayor

 City Clerk

Date: 11/21/11
(First Reading)

Date: 11/30/11
(Second Reading)

Date: 11/30/11
(Adopted)