

FY 2014-2015  
ORD. # \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF MIDDLESBOROUGH, KENTUCKY  
PROHIBITING SMOKING IN PUBLIC PLACES**

WHEREAS, in order to serve the public health, safety and general welfare, it is the declared purpose of this Ordinance to prohibit smoking in all public places.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF MIDDLESBOROUGH as follows:

**SECTION 1 - DEFINITIONS:**

1. DWELLING means any place used as a primary residence; including but not limited to, private rooms in nursing homes (except private residences when used as a childcare, adult daycare, or health care facility, which shall not be considered a "dwelling" for purpose of this Ordinance).
2. PUBLIC PLACE means an enclosed area to which the public is invited or any building in which a portion is open to the public, including but not limited to, banks, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, convenience stores, gas stations, recreational areas including parks and public pools and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult daycare or health care facility.
3. PRIVATE ORGANIZATION means an establishment which maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a members' guest and has been granted an exemption from the payment of federal income tax as a non-profit organization under 26 USC Section 501.
4. SMOKE OR SMOKING means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, or pipe or any other lighted or heated tobacco or plant product intended for inhalation in any manner or in any form.

**SECTION 2: - SMOKING PROHIBITED**

Smoking shall be prohibited in all public places as those terms are defined in Section 1 above, Including all city and county owned facilities and all places of employment within the city of Middlesborough.

### **SECTION 3: WHERE SMOKING IS NOT PROHIBITED**

1. The prohibition set forth in Section 2 above shall not apply to any of the following:
  - a – In any dwelling
  - b – A private organization except when the establishment is open to the public.
2. 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 Marshall.

### **SECTION 4: POSTING OF SIGNS**

1. An owner, lessee, principal manager, or person in control of a public place shall 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 enclosed in a red circle with a red bar across it conspicuously either on all public entrances or in a position clearly visible on entry into the public place.
2. The owner, operator, manager or designee or employee of every public place shall inform persons violating this ordinance of the applicable provisions thereof and require compliance.
3. All ashtrays except for ashtrays displayed for sale and not for use on the premises and including receptacles located outside the enclosed public place used only for disposal shall be removed from any areas where smoking is prohibited and shall not be permitted by the owner, operator, manager or other person having control of the public place. Any permanent structure that functioned or was used as an ashtray shall be disabled or altered to prevent its use as an ashtray.
4. The requirements of this section do not apply to any areas where smoking is not prohibited.

### **SECTION 5: DUTIES OF PERSONS IN CONTROL OF PUBLIC PLACES**

1. An owner, lessee, principal manager or person in control of a public place shall:
  - a – Ask smokers to refrain from smoking in any non-smoking area;
  - b - Use any other legal means which may be appropriate to further the intent of this chapter.
2. An owner, principal manager, proprietor, or any other person in control of the public place shall ensure compliance by subordinates, employees, and agents with this chapter.

## **SECTION 6: ENFORCEMENT**

Enforcement of this Ordinance shall be by citation issued by any police officer of the City Of Middlesborough. Notice of the provisions of the Ordinance shall be provided by publication.

## **SECTION 7: VIOLATIONS AND PENALTIES**

1. An owner, manager, proprietor, lessee or other person in control of the premises who violates any provision herein, including a person who smokes in an area where smoking prohibited, shall be subject to the following penalties:
  - a – A fine of \$25 for the first offense;
  - b – A fine of \$100 for the second offense;
  - c – A fine of \$250 for the third and each subsequent offense;
  - d – 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 trespass if they do not leave when asked.
  - e – If the person who violates any provisions of this Ordinance is the owner, manager, proprietor, lessee or other person in control of the premise, the fines described in sub-paragraphs, a, b, and c above shall be doubled.
2. Each citation shall constitute a separate and distinct offense.

## **SECTION 8: PROHIBITION OF SMOKING IN OUTDOOR AREAS**

Smoking is prohibited within 20 feet from the main outside entrance for the public to any public place as to ensure that tobacco smoke does not enter the public place or through entrances, windows, ventilation systems or other means.

## **SECTION 9: NONRETALIATION; NONWAIVER OF RIGHTS**

1. 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 Ordinance.
2. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

**SECTION 10: EFFECTIVE DATE**

This Ordinance shall become effective ninety (90) days after enactment and publication.

Enacted this the 19 day of May, 2015.

VP Kelley  
MAYOR

ATTEST:

Sandra Wilson  
City Clerk