

CITY OF PADUCAH
ORDINANCE NO. 2018-4-8521

AN ORDINANCE AMENDING CHAPTER 54, ARTICLE II “SMOKING IN PUBLIC PLACES,” DIVISION 2, “PUBLIC BUILDINGS” OF THE CODE OF ORDINANCES OF THE CITY OF PADUCAH, KENTUCKY

WHEREAS, the City Commission hereby finds that:

- (a) Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution.
- (b) According to the 2014 U.S. Surgeon General's Report, *The Health Consequences of Smoking—50 Years of Progress*, secondhand smoke exposure causes stroke, heart disease, lung cancer, breast cancer in premenopausal women, and sudden infant death syndrome in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke.²
- (c) 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.³ Establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control exposure of nonsmokers to secondhand smoke.
- (d) 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. The World Health Organization (WHO) recommends that electronic smoking devices not be used indoors, especially in smoke-free environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smoke-free laws.⁴
- (e) During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations.⁵ Nonsmokers who spend six-hour periods in

outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smoke-free outdoor area.⁶ Smoking tobacco is a form of air pollution, a positive danger to health, and a material public nuisance.

WHEREAS, as a result of the foregoing the City Commission hereby declares that it is in the interest of public health, welfare, and policy to amend Chapter 54, Article II, Division 2 of the Paducah Code of Ordinances to prohibit the smoking of tobacco products in enclosed public places, places of employment, and certain outdoor places.

NOW, THEREFORE, be it ordained by the City Commission of the City of Paducah as follows:

Section 1. That the heading for Chapter 54, Article II is amended to read as follows:

ARTICLE II. - SMOKING IN PUBLIC PLACES

Section 2. That the subheading for Chapter 54, Article II, Division 2 is amended to read as follows:

DIVISION 2. - PUBLIC BUILDINGS ENCLOSED PUBLIC PLACES, PLACES OF EMPLOYMENT, AND CERTAIN OUTDOOR PLACES

Section 3. That Section 54-51, "Definitions," is hereby amended to read as follows:

Section 54-51. - Definitions.

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

(1) ~~*Building* means any structure open to the public that is enclosed from the weather, whether or not windows or doors are actually left open. If a person owns, leases, or possesses only a portion of a building, the term building applies to the ownership, leasehold, or possessory interest as well.~~

(1) *Bar* means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(2) *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,

and architectural, or other professional services are delivered; and private clubs.

~~(2)~~(3) Common Area means any area where individuals may congregate such as hallways, lobbies, restrooms, and elevators.

(4) Dwelling means 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.~~ This does not include a hotel or motel room or suite, or a hospital, hospice, assisted living facility or nursing home.

~~(3)~~(5) Electronic smoking device means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner 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.

~~Enclosed area~~ means any place that is closed 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 walls or other coverings of any material, whether permanent or temporary.

~~(4)~~(6) 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 non-profit entity.

~~(5)~~(7) Employer means a person, business, partnership, association, unincorporated association, limited liability company, corporation, including a municipal corporation, trust, or non-profit entity, that employs the services of one or more individual persons.

(8) Enclosed public place means any place that:

- a) is closed overhead by a roof or other covering of any material, whether permanent or temporary;
- b) has forty percent (40%) or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary, but not a screened in gazebo; and
- c) the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, adult day cares, assisted living 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, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, assisted living facility or health care facility.

~~(6)~~(9) Hookah means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the heating or burning of material including, but not limited to, tobacco, shisha, or other plant matter.

(10) Person shall include the owner, lessee, principal manager, or any individual or corporation, limited liability company, business, partnership, association, unincorporated association, municipal corporation, trust, or any non-profit entity having control of a building, as the term building is defined herein, or the agent or employee of any such owner, lessee, principal manager, individual or corporation.

~~(7)~~(11) Place of Employment means an enclosed area (as defined in Section 2 A. (8) (a) and (b) above) under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, common area, construction sites, and temporary offices., and vehicles. A private residence is not a “place of employment” unless it is used as a child care, adult day care, assisted living facility or health care facility.

(12) Playground means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on publically or privately school owned grounds or on Paducah grounds, municipally owned grounds, owned by the city of Paducah or an agency thereof.

~~(13)~~ -Private organization or club means an establishment which maintains selective members, is operated by the membership, does not provide food, drink, entertainment, or lodging for pay to anyone who is not a member or accompanied by a member and is not profit oriented whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for organization 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 a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws 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.

(14) Restaurant means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school 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.

~~(8)~~(15) Retail Tobacco Store means a retail store devoted primarily to the sale of any tobacco product, including, but not limited to, cigarettes, cigars, pipe tobacco and chewing tobacco, and accessories 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.

~~(9)~~(16) Smoke or Smoking shall mean the act of possessing, carrying, burning, inhaling or exhaling the smoke of any lighted cigarette, cigar, or pipe, or other combustible tobacco product. ~~any lighted or heated cigarette, cigar, 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 in any form. Smoking also includes the use of an electronic smoking device which creates an aerosol or 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.

(17) Sports Arena means a place open to the public where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, athletic fields, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, tennis courts, pickleball courts, bocce ball courts, and bowling alleys.

~~Tobacco Warehouse means any warehouse building offering tobacco for purchase at auction and meeting the definition established in KRS 248.010(4).~~

Section 4. That Section 54-52, "Prohibition," is hereby amended to read as follows:

Section 54-52. - Prohibition in Enclosed Public Places and Places of Employment.

A. No person shall smoke within any building or enclosed area public place except in one of the following locations:

(1) In any dwelling, unless the dwelling is also used as a childcare facility, adult day care center, assisted living facility, hotel/motel guest room, or meets the definition of a common area as defined herein. ~~health care facility.~~

(2) In a private vehicle. ~~In a building, room, or hall being used by a person or group for a purely 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; in any room used for psychological treatment of nicotine addiction by a licensed healthcare professional; or in a physically separate and independently ventilated room in a hospital, hospice facility, or nursing home open to all residents as a smoking room and for no other purpose.~~

(3) In a retail tobacco store.

~~(4) A performer as part of a theatrical production so long as adequate notice is provided to patrons before the performance.~~

~~B. (4) (5) Indoor smoking~~ Smoking areas provided in state or federal governmental office buildings or workplaces pursuant to KRS 61.165.

(5) In all enclosed places owned and occupied by private organizations or clubs. ~~Facilities not open to the public operated by private organizations.~~

~~C. In a tobacco warehouse.~~

B. Smoking shall be prohibited in all places of employment, except as otherwise expressly provided in Section 54.52 A above.

C. Smoking shall be prohibited in all private and semiprivate rooms in all health care facilities, nursing homes, assisted living facilities, and hotel and motel guest rooms.

D. Nothing in this chapter shall prevent a person in control of any place whatsoever from prohibiting smoking completely in such place, and no person shall fail to abide by such a private prohibition.

E. 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 5. That Section 54-52.1, "Prohibition in Certain Outdoor Places" is hereby added to this Article and shall read as follows:

Section 54-52.1. – Prohibition in Certain Outdoor Places.

Smoking shall be prohibited in the following outdoor places:

- A. In all municipally-owned and all public or private school-owned outdoor sports arenas and amphitheaters.
- B. In all public or private owned outdoor playgrounds, shelters, swimming pools, and spray-grounds.
- a- C. In all municipally-owned outdoor public parks, playgrounds, trails, shelters, swimming pools, and spray-grounds, except outdoors at Paxton Park Golf Course.

Section 6. That Section 54-53, “Posting Signs,” is hereby amended to read as follows:

Section 54-53. - Posting Signs.

- A. ~~Not less than two (2)~~ “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 building and enclosed ~~area~~public place. The party responsible for the placement of the signage is the owner, employer, operator, lessee, manager, or other person in control of the building or enclosed ~~area~~public place.
- B. Nothing in this chapter shall authorize the removal of no-smoking signs required by other statute, regulation, or ordinance.
- C. All ashtrays or ash containers shall be removed from buildings and enclosed ~~area~~public places, except for ashtrays for sale and not for use on the premises. Any permanent structure that previously functioned or was used as an ashtray shall be disabled or altered to prevent its use as an ashtray.
- D. One sign stating that smoking is prohibited shall be posted on every City-owned vehicle.

Section 7. That Section 54-54, “Reasonable Distance,” is hereby amended to read as follows:

Section 54-54. – Reasonable Distance.

- A. Smoking is prohibited within a reasonable distance from the outside entrance to any building or enclosed ~~area~~public place so as to ensure that tobacco smoke does not enter the building or enclosed ~~area~~public place through entrances, windows, ventilation systems, or other means. Unless directed otherwise by the City Manager, the distance of fifteen (15) feet shall be deemed reasonable.

Section 8. That Section 54-55, “Non-retaliation and Non-waiver,” is hereby amended to read as follows:

Section 54-53. - 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 that employee, applicant for employment or customer exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this ordinance.

B. 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 9. That Section 54-56, "Enforcement," is hereby amended to read as follows:

Section 54-56 - Enforcement.

A. It is the legislative intent that ~~T~~this smoke-free ordinance will be enforced primarily by the Citizens of Paducah themselves. It is expected that the first step will be that an offended person will ask people to follow the law and stop smoking or using electronic smoking devices in violation of this ordinance.

~~A.B.~~ The City Manager's Office shall ~~may~~ designate the City departments ~~staff~~ responsible for enforcing this Ordinance.

C. Written notice of the provisions of this Ordinance shall be given to all applicants for a business license within the City of Paducah.

~~B.D.~~ Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with a written complaint to the City Manager.

~~C.E.~~ The following departments, or their designees, shall ~~may~~, while performing otherwise legal inspections, inspect for compliance with this Ordinance: Fire Department ~~Fire Prevention Division, Inspection Department, Parks and Recreation Department, Public Works Department, and Finance Department~~ and Police Department.

~~D.F.~~ A person in control of a building or enclosed ~~area~~ public place shall inform persons violating this Ordinance of the applicable provisions thereof and report non-compliance to City Manager.

~~E.G.~~ No person having control of a building or enclosed ~~area~~ public place shall fail to:

- (1) Immediately ask smokers to refrain from smoking in any no smoking area;
- (2) Use any other legal means which may be appropriate to further the intent of this chapter, including the action required by paragraph ~~FE.~~, above.

~~F.~~ Notwithstanding any other provision of this Ordinance, the City, or any person aggrieved by a failure to comply with this Ordinance, whether by commission or omission, including violations on the part of a person in control of a building or enclosed area 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 10. That Section 54-57, "Violations and Penalties," is hereby amended to read

as follows:

Section 54-57 - 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 of the same, which violation shall be punishable by a fine not exceeding fifty dollars (\$50.00).

B. A person in control of a building or enclosed area-public place who fails to comply with the provisions of this Ordinance shall be guilty of a violation punishable by:

(1) A fine not exceeding fifty dollars (\$50.00) for a first violation within a twelve month period.

(2) A fine not exceeding one-hundred dollars (\$100.00) for a second violation within a twelve month period.

(3) A fine not exceeding two hundred fifty dollars (\$250.00) for each additional violation within a twelve month period.

C. Persons who smoke in an area where smoking is prohibited by this Ordinance 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.

D. In addition to the fines established by this Section, violation of this Ordinance by a person who controls a building or enclosed area-public place more than three (3) times in any twelve-month period may result in the suspension or revocation of any permit or business license issued by the City to the person 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 calendar day on which a violation of this Ordinance occurs shall be considered a separate and distinct offense.

Section 11. That Section 54-58, "Public Education" is hereby added to this Article and shall read as follows:

Section 54-58. - Public Education

The McCracken County Agency for Substance Abuse Policy (ASAP), or other such organizations organized and operated for the education and prevention of substance abuse in regard to tobacco, alcohol and other drugs shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it.

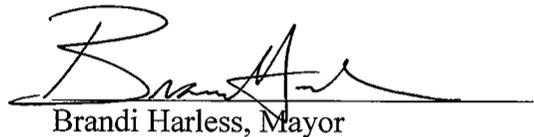
Section 12. Severability.

If any section or portion of this ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, that section or portion shall be deemed severable and shall not affect the validity of the remaining sections of the ordinance.

Section 13. Effective Date.

This Article shall be effective 30 days from the date of its adoption and publication.

Section 14. This ordinance shall be read on two separate days and shall be published in accordance with KRS Chapter 424.



Brandi Harless, Mayor

ATTEST:



Tammara Sanderson, City Clerk

Introduced by the Board of Commissioners, March 27, 2018
Adopted by the Board of Commissioners April 10, 2018
Recorded by Tammara S. Sanderson, City Clerk April 10, 2018
Published by *The Paducah Sun* on April 13, 2018
\\ord\54-smoking ban FINAL VERSION

REFERENCES

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2. U.S. Department of Health and Human Services. How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2010.
3. 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.
4. World Health Organization (WHO), "Electronic nicotine delivery systems," *World Health Organization (WHO)*, 2014.
5. Klepeis, N.; Ott, W.R.; Switzer, P., "Real-time measurement of outdoor tobacco smoke particles," *Journal of the Air & Waste Management Association* 57: 522-534, 2007.
6. Hall, J.C.; Bernert, J.T.; Hall, D.B.; St Helen, G.; Kudon, L.H.; Naeher, L.P., "Assessment of exposure to secondhand smoke at outdoor bars and family restaurants in Athens, Georgia, using salivary cotinine," *Journal of Occupational and Environmental Hygiene* 6(11): 698-704, November 2009.