

ORDINANCE NO. 14-24

**AN ORDINANCE OF THE CITY OF RICHMOND, KENTUCKY REGULATING
SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT IN THE
CITY OF RICHMOND**

WHEREAS, numerous studies have concluded that tobacco smoke is a major contributor to indoor air pollution, that breathing secondhand smoke is a cause of disease, including lung cancer, in non-smokers, and that at special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function; and

WHEREAS, in order to provide a safe environment for persons in public places and places of employment in the City the Board of Commissioners finds and declares it to be in the public interest and in the interest of the health and safety of persons in the City to regulate smoking in the workplace and in public places;

NOW, THEREFORE, BE IT ORDAINED as follows:

SECTION I

DEFINITIONS

As used in this Ordinance, the following terms shall be deemed to have these meanings:

"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.

"Business" means any business entity of all kinds and description formed or operated for profit-making purposes.

"E-cigarette" means any electronic oral device, such as one composed of a heating element, battery, and/or electronic circuit, which provides a vapor of nicotine or any other substances, and the use or inhalation of which simulates smoking. The term shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, or under any other product name or descriptor.

"Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or salary and any person who volunteers his or her services for an employer.

"Employer" means any person or entity which employs the services of one or more individual person.

"Enclosed area" means all space between a floor and ceiling which is enclosed on all sides by walls or windows, whether or not same have doors or passage areas, which extend from the floor to the ceiling, but including also all space therein screened by partitions which do not extend to the ceiling or are not solid.

"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 the aging or chronically ill, laboratories, and offices of health care providers of all kinds, and shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

"Place of employment" means any enclosed area under the control of a public or private employer that employees normally frequent during the course of employment including but not limited to work areas, employee lounges, restrooms, conference and meeting rooms, class rooms, employee cafeterias, hallways, together with the interior of any employer-owned vehicle. A private residence is not a place of employment unless it is used as a childcare, adult day care, or health care facility.

"Public place" means any enclosed area to which the public is invited or in which the public is permitted including but not limited to such areas in banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters and facility used for the exhibition of any motion picture, stage, drama, lecture, musical recital or other performance, bingo halls, gaming facilities, and waiting rooms. A private residence is not a public place.

"Private club" means an organization which the owner, lessee, or occupant of a building or portion thereof used 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 fact that a so-called member of an organization which has styled itself a private club is required to pay an entrance fee each time the member seeks to gain entrance shall be deemed to be conclusive evidence that the organization is not a private club; that fact, however, shall not be deemed to be the sole criteria to be utilized in assessing whether an organization is a true private club under this definition. In order to qualify as a private club, the organization shall have been granted an exemption from the payment of federal income taxes as a club under the provisions of 26 U.S.C. Section 501.

"Private function" shall mean a function as to which no entrance fee is charged, no tickets are sold, and no public announcements are made inviting attendance by the public.

"Restaurant" means any coffee shop, cafeteria, sandwich stand, private and public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the

premises for serving or consumption elsewhere, including catering facilities, except that the term "restaurant" shall not include a cocktail lounge or tavern if same is a "bar" as above defined.

"Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

"Service line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

"Shopping mall" or "flea markets" means an enclosed walkway or hall area that serves to connect retail or professional establishments or booths.

"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 the inhalation into or through the mouth in any manner or in any form of the smoke or other vapor produced by same. "Smoking" also includes the use of an e-cigarette which creates a vapor in any manner or form or the use of any other device intended for the inhalation into or through the mouth of such vapor, or tobacco or other plant product smoke.

"Sports arena" means sports pavilions, gymnasiums, 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 sporting events.

SECTION II

PROHIBITION OF SMOKING IN PUBLIC PLACES

Smoking is prohibited in all enclosed public places within the City of Richmond, Kentucky, including, but not limited to the following places:

1. Elevators
2. Restrooms, lobbies, reception areas, hallways and any other common use areas
3. All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public
4. Service lines
5. Restaurants
6. Bars
7. Public areas such as galleries, libraries and museums
8. Sports arenas and convention halls
9. Rooms, chambers, places of meeting or public assembly
10. Waiting rooms, hallways, wards, private and semi-private rooms of health care facilities, including, but not limited to, hospitals, clinics, physical

therapy facilities, doctors' offices, dentists' offices, and any other health care providers

11. Auction houses and indoor flea markets
12. Licensed childcare and adult day care facilities
13. Lobbies, hallways, and other common areas of hotels and motels
14. Private clubs when used for a function to which the general public is invited

SECTION III

NO LIMITATION ON GOING SMOKE FREE

Any owner, operator, manager or other person who controls a public place or place of employment may declare that entire establishment or facility as a nonsmoking establishment.

SECTION IV

PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT

It shall be the responsibility of the employer to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications to accomplish same. Each employer having an enclosed place of employment located within the City of Richmond shall adopt, implement, and make known to its employees a written smoking policy as follows:

"Smoking is prohibited in all enclosed facilities without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, employer-owned vehicles, and all other enclosed areas and facilities."

All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

An employer may provide an outdoors designated smoking area. Any such area shall be located at a reasonable distance from any entrance or exit, window, or ventilation units of any enclosed area to insure that smoke does not enter the area through entrances, windows, ventilation systems or any other means.

SECTION V

AREAS WHERE SMOKING IS NOT REGULATED

The following areas shall be exempt from the provisions of this Ordinance:

1. Private residences, except when used as a childcare, adult day care, health care facility or as a place of business in which business invitees and/or employees may be present
2. Up to 25% of hotel and motel rooms rented to guests. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate areas where smoking is otherwise prohibited under the provisions of this Ordinance.
3. Outdoor areas of places of employment

SECTION VI

POSTING OF SIGNS; REMOVAL OF ASHTRAYS

"No Smoking" signs or signs depicting the international No Smoking symbol shall be clearly and conspicuously posted in every building or other area where smoking is prohibited by this Ordinance by the owner, operator, manager or other person having control of such building or other area. Every public place where smoking is prohibited by this Ordinance shall have such a sign posted at every entrance. All ashtrays shall be removed from every area where smoking is prohibited by this Ordinance.

SECTION VII

ENFORCEMENT

If any owner, manager, operator, or employee of an establishment regulated by this Ordinance shall observe a person violating this Ordinance, he or she shall immediately direct the person in violation to stop smoking. If the person violating the regulations does not comply with the request, that person shall be asked to leave the premises. If the person in violation does not leave, the police shall be called, and the person in violation shall be deemed to be in criminal trespass as well as in violation of this Ordinance.

The Madison County Health Department (the "Department") shall be deemed to be the entity charged with the primary responsibility for enforcement of the provisions of this Ordinance. The Department shall, while in any establishment for purposes of conducting any other required inspection, inspect for compliance with this Ordinance. Any citizen who desires to register a complaint for the violation of this Ordinance shall do so with the Department. Any establishment, business, or other entity, and its owner, manager, employees or agents charged with duties hereunder, shall be charged with a violation of this Ordinance only if the smoking prohibitions herein set forth are not adhered to and such person or persons, knowing that a violation was taking place, failed to take the action required of him or her as herein set forth.

SECTION VIII

RETALIATION PROHIBITED

No person or employer shall discharge, refuse to hire, or in any other manner retaliate against any employee, applicant for employment, or customer because of such person's exercise of the right to the smoke-free environment mandated by this Ordinance. An employee who continues to work in a setting where an employer wrongfully permits smoking in violation of this Ordinance shall not be deemed to have waived or otherwise surrendered any right the employee may have against the employer or any other party.

SECTION IX

VIOLATIONS

1. Willful violation of this Clean Indoor Air Ordinance is an unlawful act.
2. Any Person who smokes in a area where smoking is prohibited by the provisions of this Chapter shall be guilty, punishable by a fine not exceeding \$50.00.
3. 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 Chapter shall be guilty of a violation, punishable by:
 - a. A fine not exceeding \$100.00 for the first violation within a one (1) year period.
 - b. A fine not exceeding \$300.00 for a second violation within one (1) year.
 - c. A fine not exceeding \$250.00 for each additional violation within one (1) year.
 - d. In addition to the fines stabled by this Section, violation of this Chapter by a person who owns, manages, 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 occurred.
 - e. Persons who smoke in an area where smoking is prohibited and who refuses 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.
 - f. Each day on which violation of this Regulation occurs shall be considered a separate and distinct violation.

SECTION X

OTHER APPLICABLE LAWS

This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable law or regulation.

SECTION XI

SEVERABILITY

If any provisions of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, such invalidity shall not affect the other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

SECTION XII

EFFECTIVE DATE

This Ordinance shall be effective when enacted by the Board of Commissioners after second reading, and publication in accordance with the requirements of applicable Kentucky law.

DATE OF FIRST READING: August 26, 2014
MOTION BY: Commissioner Blythe
SECONDED BY: Commissioner Newby

DATE OF SECOND READING: September 9, 2014
MOTION BY: Commissioner Baird
SECONDED BY: Commissioner Blythe

VOTE	YES	NO
Commissioner Baird	x	
Commissioner Blythe	x	
Commissioner King	x	
Commissioner Newby	x	
Mayor Barnes	x	



Mayor Barnes

ATTEST:



City Clerk