

ORDINANCE NO. 20 - 14

AN ORDINANCE OF THE CITY OF BEREА, KENTUCKY, AMENDING THE CODE OF ORDINANCES BY ADDING CHAPTER 57, SECTIONS 57.01-57.11, PROHIBITING SMOKING OF TOBACCO OR PLANT PRODUCTS, OR THE USE OF E-CIGARETTES WHICH CREATE A VAPOR, IN PUBLIC PLACES AND PLACES OF EMPLOYMENT WITHIN THE CITY OF BEREА.

WHEREAS, the City Council of the City of Berea, Kentucky, finds that the exposure to secondhand smoke is known to cause cancer in humans; that secondhand smoke is a known cause of other diseases including pneumonia, asthma, bronchitis, and heart disease; that citizens are often exposed to secondhand smoke in the workplace, and are likely to develop chronic, potentially fatal diseases as a result of such exposure; and

WHEREAS, the City Council desires to protect the health and welfare of all citizens, including workers in their places of employment, and to guarantee the right of non-smokers to breathe smoke-free air and to recognize that the right to breathe smoke-free air shall have priority over the desire to smoke; and

WHEREAS, in order to achieve these goals it is necessary to prohibit smoking in public places and workplaces;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Berea, Kentucky, as follows:

SECTION ONE

That the Code of Ordinances of the City of Berea, Kentucky, be amended by adding Chapter 57, Sections 57.01-57.11, such Sections to read as follows:

CHAPTER 57: CLEAN INDOOR AIR

§ 57.01. DEFINITIONS

As used in this chapter, the following words and phrases shall have the meanings

respectively ascribed to them:

- (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 any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- (3) *"Employee"* means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for an employer.
- (4) *"Employer"* means any person, partnership, corporation, including a municipal corporation, or non-profit entity, which employs the services of one or more individual persons.
- (5) *"Enclosed Area"* means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.
- (6) *"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 surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- (7) *"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, work areas, employee lounges, restrooms, conference and meeting rooms, class rooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care or health care facility.
- (8) *"Public Place"* means any enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, governmental facilities, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters and facilities primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or similar performance, bingo halls, gaming facilities and waiting rooms. A private residence is not a "public place."
- (9) *"Private Club"* means an organization, whether incorporated or not, which is 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 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
- (10) *"Private function"* shall be defined as a function in which no fee is charged and no tickets

are sold, and no public announcements are made to the event and/or function.

(11) *"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 elsewhere, including catering facilities, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Sections 700-011.

(12) *"Service Line"* means any indoor line at which one (1) or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

(13) *"Shopping Mall"* or *"flea markets"* means an enclosed walkway or hall area that serves to connect retail, professional establishments, or booths.

(14) *"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. "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 Chapter.

(15) *"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 either to engage in physical exercise, participate in athletic competition, or witness sports events.

(16) *"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 simulated 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.

§ 57.02. PROHIBITION OF SMOKING IN PUBLIC PLACES

A. Smoking shall be prohibited in all enclosed public places within the City of Berea, including, but not limited to the following places:

1. Elevators.
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
3. Service lines.
4. All areas available to and customarily used by the general public in all businesses and non-profit entities patronized by the public, including but not limited to, attorneys' offices and other offices, banks, and Laundromats.
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 semiprivate 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.

B. Notwithstanding any other provision of this section, 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.

§ 57.03. PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT

A. Smoking is prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

B. It shall be the responsibility of employers to provide a smoke-free workplace for all employees.

§ 57.04. DESIGNATED OUTDOOR SMOKING AREAS

A. Designated smoking areas shall occur at a reasonable distance outside any entrance, exit, window, or ventilation units of any enclosed area where smoking is prohibited to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems or any other means.

§ 57.05. EXEMPTIONS

A. Notwithstanding any other provision of this regulation to the contrary, the following areas shall be exempt from the provisions of this Chapter:

1. Private residences, except when used as a childcare, adult day care or health care facility.
2. No more than twenty-five percent (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 in areas where smoking is prohibited under the provisions of this regulation. The status of rooms as smoking or nonsmoking may not be changed, except to add additional

nonsmoking rooms.

3. Outdoor areas of places of employment.

§ 57.06. POSTING 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 building or other area where smoking is prohibited by this regulation, by the owner, operator, manager or other person having control of such building or other area.

B. Every public place where smoking is prohibited by this ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

§ 57.07. ENFORCEMENT

A. If an owner, manager, operator or employee of an-establishment regulated by this Chapter observes a person violating the provisions of this Chapter, he or she shall immediately direct the person in violation to stop smoking. If the person violating the regulations does not comply with this request, 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.

B. In no event is an owner or agent of the premises to forcibly remove the person violating the provisions of this Chapter regulations. Compliance is achieved under this subsection if the owner or agent of the premises follows these steps.

1. Enforcement of this Regulation shall be the City of Berea with the Madison County Health Department named as it designee.
2. The Health Department shall, while in an establishment and is undergoing otherwise mandated inspections, inspect for compliance of this ordinance.
3. Notice of the provisions set forth in this regulation shall be given to all applicants for business license in the City of Berea.
4. Any citizen who desires to register a complaint under this Chapter may initiate enforcement with Madison County Health Department.
5. The mere presence of a person smoking within the premises of an establishment governed by this Chapter does not constitute a violation on the part of the establishment. The establishment and its agents shall only be charged for a violation of this Chapter if the responsible agent(s) of the establishment fail to timely satisfy each responsibility prescribed for them in this Section.
6. Notwithstanding any other provision of this Chapter, the Madison County Health Department, an employee, or any person aggrieved by the failure to comply with the provisions of this Chapter, whether by commission or

omission, including violations on the part of an owner, operator, manager, employee or other person(s) in control of a public place or a place of employment covered by this Chapter, may bring legal action to enforce the provisions of this Chapter, either by civil action seeking injunctive relief or by criminal complaint in a court of competent jurisdiction.

§ 57.08. NON-RETALIATION

A. No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to a smoke-free environment afforded by this regulation.

B. An employee who continues to work in a setting where an employer allows smoking in violation of this Regulation does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

§ 57.09. VIOLATIONS AND PENALTIES

1. Willful violation of this Clean Indoor Air Ordinance is an unlawful act.
2. Any Person who smokes in an 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 established 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 a violation of this Regulation occurs shall be considered a separate and distinct violation.

§ 57.10. OTHER APPLICABLE LAWS

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

§ 57.11. SEVERABILITY

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

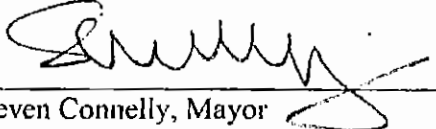
SECTION TWO

This ordinance shall be published according to law.

FIRST READING: August 19, 2014.

SECOND READING AND ENACTMENT: September 2, 2014.

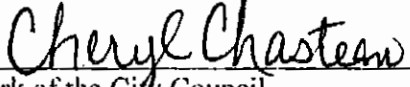
APPROVED BY:



Steven Connelly, Mayor

CITY OF BEREA, KENTUCKY

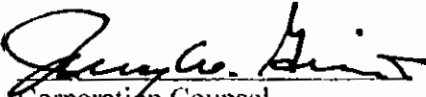
ATTEST:



Clerk of the City Council

Published this 11th day of September, 2014.

PREPARED BY:



Corporation Counsel
City of Berea, Kentucky