

ORDINANCE NO 04:2015

**AN ORDINANCE AMENDING THE CITY OF MOREHEAD, KENTUCKY
CODE OF ORDINANCES, TITLE IX, GENERAL REGULATIONS,
CHAPTER 99, SMOKING IN PUBLIC PLACES, SECTION 99.01 DEFINITIONS OF THE CITY OF MOREHEAD
CODE OF ORDINANCES TO AMEND THE DEFINITION OF SMOKE OR SMOKING TO INCLUDE
ELECTRONIC SMOKING DEVICES, INCLUDING BUT NOT LIMITED TO E-CIGARETTES, E-CIGS; TO ADD
THE DEFINITION OF ELECTRONIC SMOKING DEVICE; AND
TO CORRECT TYPOGRAPHICAL ERRORS**

WHEREAS, there are currently no federal regulations on the manufacture and sale of E-cigarettes and like products;

WHEREAS, it is known that E-Cigarettes and like products give off tiny particles that lodge in the lungs and cause disease and according to a more recent study, electronic cigarette emissions are made up of high concentration of ultrafine particles and the particle concentration is higher than in conventional tobacco cigarette smoke;

WHEREAS, E-Cigarettes appeal to our youth due to marketing techniques that make it appear glamorous and with sweet, candy-like flavorings available;

WHEREAS, in order to serve the public health, safety and general welfare of our citizens and visitors, E-Cigarettes or E-Cigs should be included in the definition of smoke or smoking that is prohibited in enclosed public places, places of employment and outdoor arenas and stadiums;

WHEREAS, cigarette 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;

WHEREAS, there are some typographical errors that need to be corrected;

NOW, THEREFORE, BE IT ORDAINED by the Board of City Council of the City of Morehead, Kentucky that Title IX, General Regulations, Chapter 99 Smoking in Public Places, Sections 99.01, Definitions and 99.11 Enforcement shall be amended as follows:

CHAPTER 99: SMOKING IN PUBLIC PLACES

Section

- 99.01 Definitions
- 99.02 Government owned facilities
- 99.03 Prohibition of smoking in enclosed public places
- 99.04 Prohibition of smoking in places of employment
- 99.05 Prohibition of smoking in outdoor arenas and stadiums
- 99.06 Reasonable distance
- 99.07 Where smoking is not regulated
- 99.08 Declaration of establishment as nonsmoking
- 99.09 Posting of signs

- 99.10 Non-retaliation and non-waiver of rights
- 99.11 Enforcement
- 99.12 Public Education
- 99.99 Penalty

§ 99.01 DEFINITIONS.

“BAR.” An establishment that is devoted to the serving of alcoholic beverages for consumption by the guests on the premises, including but not limited to taverns, nightclubs, cocktail lounges and cabarets.

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

“ELECTRONIC SMOKING DEVICE.” Any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of 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.

“EMPLOYEE.” 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.

“EMPLOYER.” A person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

“ENCLOSED AREA.” All space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways) which extend from the floor to the ceiling.

“HEALTH CARE FACILITY.” 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 therapist, 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.

“PLACE OF EMPLOYMENT.” An 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 rooms, meeting rooms, classrooms, employee cafeterias and hallways. A private residence is not a place of employment, unless it is used as a childcare, adult day care, or health care facility.

“PRIVATE CLUB.” 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.

“PUBLIC PLACE.” An enclosed 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, public transportation 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 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.

“RESTAURANT.” 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.

“SERVICE LINE.” An indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

“SHOPPING MALL.” An enclosed public walkway or hall area that serves to connect retail or professional establishments.

~~["SMOKING." Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe or other lighted tobacco product or any other lighted substance, whether otherwise legally possessed or consumed such as marijuana, in any manner or in any form.]~~

“SMOKE OR SMOKING”. The act of inhaling or exhaling from, or the burning, heating or carrying of, any lighted or heated cigarette, cigar, pipe, 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 Ordinance, including but not limited to an E-Cigarette or E-Cig.”

“SPORTS ARENA.” Sports pavilions, stadiums, 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 sports or other events.

§ 99.02 GOVERNMENT-OWNED FACILITIES.

All enclosed facilities, including buildings and vehicles and all seating areas, including bleachers, of all outdoor stadiums or field areas used by spectators at sporting and other public events, owned, leased or operated by the city shall be subject to the provisions of this chapter. All facilities owned or operated by the county or the Commonwealth of Kentucky shall be governed by regulations adopted by said entity.

§ 99.03 PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES.

Smoking is prohibited in all enclosed public places, as defined in § 99.01 above, within the city limits of the city.

§ 99.04 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.

(A) Smoking is prohibited in all enclosed facilities within places of employment. This prohibition includes, but is not limited to, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs and restrooms.

(B) This prohibition on smoking shall be communicated to all existing employees by the effective date of this chapter and to all prospective employees upon their application for employment.

§ 99.05 PROHIBITION OF SMOKING IN OUTDOOR ARENAS AND STADIUMS.

Smoking is prohibited in the seating areas of all outdoor arenas, stadiums and amphitheatres including bleachers and grandstands which are used by spectators for viewing said event.

§ 99.06 REASONABLE DISTANCE.

Smoking is prohibited within a reasonable distance of the outside entrance to or open windows of any enclosed area in which smoking is prohibited by this chapter and from the air intake of a ventilation system serving an enclosed area where smoking is prohibited, in order to insure that tobacco smoke does not enter that enclosed area through entrances, windows, ventilation systems or other means.

§ 99.07 WHERE SMOKING IS NOT REGULATED.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of §§ 99.03 and 99.04:

(A) Private residences except when used as a licensed childcare, 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 twenty (20%) percent 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 chapter. The status of 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, the prohibitions set out in §§ 99.03 and 99.04 shall apply.

(D) Outdoor areas of places of employment except those covered by the provisions of §§ 99.05 and 99.06.

§ 99.08 DECLARATION OF ESTABLISHMENT AS NONSMOKING.

Notwithstanding any other provision of this chapter, an owner, operator, manager or other authorized person in control of an establishment, facility or outdoor area may declare an entire establishment, facility or outdoor area as a nonsmoking place regardless of its designation under this chapter. Within such premises if an authorized nonsmoking designation has been made and signage conforming to the specifications set out in § 99.09(A) is posted, smoking shall be prohibited as if otherwise prohibited by this chapter.

§ 99.09 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 public place and place of employment where smoking is prohibited by this chapter. The party responsible for the placement of the signage is the owner, operator, manager or other person in control of the premises.

(B) A conspicuous sign clearly stating that smoking is prohibited shall be posted at each entrance utilized by the public entering and exiting public places within which smoking is prohibited by this chapter. A conspicuous sign clearly stating that smoking is prohibited shall be posted at each entrance utilized by employees entering and exiting places of employment within which smoking is prohibited by this chapter.

(C) All ashtrays shall be removed from any area within which this chapter 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.

§ 99.10 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, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

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

§ 99.11 ENFORCEMENT.

(A) The city's Code Enforcement Officers and the City Police Department and all other City officials and employees designated by the Mayor or Board of City Council shall enforce this chapter.

(B) Notice of the provisions of this chapter shall be given to all applicants for a business license in the City of Morehead, Kentucky.

(C) Any citizen who desires to register a complaint under this chapter may initiate enforcement with any of the authorized persons listed above.

(D) The Building Inspectors, Alcohol Beverage Control officers or their designees shall, while in an establishment performing otherwise legal inspections, inspect for compliance with this chapter.

(E) Owners, managers, operators, or employees of establishments regulated by this chapter shall inform persons seen violating this chapter of the requirements of this chapter. In the event an owner, manager, operator or employee of an establishment regulated by this chapter observes a person or persons violating this chapter, he or she shall immediately direct the person or persons in violation to extinguish the item being smoked.

(1) In the event the [if] person or persons violating this chapter complies with this directive, no violation shall exist for the owner, manager, operator or employee witnessing the violation. If an owner, manager, operator or employee of an establishment regulated by this chapter observes a person or persons violating this

chapter and fails to immediately direct the person or persons in violation to extinguish the items being smoked, the owner, manager, operator or employee failing to take appropriate steps required by this chapter shall be in violation of this chapter.

(2) In the event [if] the person or persons violating this chapter fails or refuses to comply with this directive, the owner, manager, operator or employee directing the person or persons violating this chapter shall take immediate and reasonable steps to obtain the removal of the person or persons from the premises. The following is an example of reasonableness: In the event of If an intoxicated person or a person unable to safely drive or conduct himself or herself is in violation of this chapter, the owner, manager, operator or employee may determine to allow the person violating this chapter to remain on the premises until appropriate arrangements may be made for the person's removal. In the event the person or persons violating this chapter is timely removed from the premises, no violation shall exist for any owner, manager, operator or employee related to the establishment in which these events occurred. Under no circumstances shall an owner or agent of the premises [~~shall not~~] be entitled to forcibly remove the person violating the Ordinance. Compliance is achieved under this subsection if the owner or agent of the premises orders the person violating the Ordinance to leave its premises and promptly notifies the police if the person refuses.

(3) In the event, [if] the person or persons violating this chapter fails or refuses to comply with this directive, and the owner, manager, operator or employee observing the violation or person directing him/her to leave the premises, fails to take immediate and reasonable steps to obtain the removal of the person or persons from the premises, the owner, manager, operator or employee failing to take appropriate steps required by this chapter shall be in violation of this chapter.

(4) In all events, [if] the establishment in which a violation occurs shall be in violation of this chapter for each violation that occurs on its premises and in which the owner, manager, operator or employee fail to take appropriate steps required by this chapter.

(5) An employee who observes a person or persons violating this chapter may immediately notify his or her owner, manager, or supervisor of the violation in satisfaction of the employee's responsibility under this chapter. The failure of the employee's owner, manager or supervisor to take appropriate steps required by this chapter in response to the employee's notice shall not constitute a violation on the part of the employee.

(6) In the event, [if] all duties required under this Section are satisfied yet the person violating this chapter persists in his or her violation and/or refuses to vacate the premises on which the violation occurred, the owner, manager, supervisor and/or employee shall immediately contact one or more of the agencies or department authorized above to enforce this chapter informing the agency or department of the circumstances of the violation.

(7) 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.

(F) Notwithstanding any other provision of this chapter, the City of Morehead, its employees or any person aggrieved by a failure to comply with this chapter, whether by commission or omission, including violations on the part of an owner, operator, manager, employee or other person or persons in control of a public place or a place of employment covered by this chapter, may bring legal action to enforce this chapter, either by civil action seeking injunctive relief or by criminal complaint in a court of competent jurisdiction.

§ 99.12 PUBLIC EDUCATION.

The Code Enforcement Officers shall take steps to offer a continuing program by which the purpose and requirements of this chapter are made clear to citizens and to the owners, operators, managers, and employees required to comply with it. The program may include publication of a brochure, publication of news release or public meetings.

§ 99.99 PENALTY.

(A) A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be guilty of a violation, punishable by a fine not exceeding \$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 chapter shall be guilty of a violation, punishable by:

(1) A fine not exceeding fifty dollars (\$50.00) for a first violation within a one-year period.

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

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

(C) In addition to the fines established by this Section, violations of this chapter 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 occurred.

(D) Violation of this chapter 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 chapter occurs shall be considered a separate and distinct violation.

INTRODUCED, SECONDED AND GIVEN FIRST READING at a duly convened meeting of the Board of City Council of the City of Morehead, Kentucky held on this the 9th day of February, 2015.

INTRODUCED, SECONDED AND GIVEN SECOND READING at a duly convened meeting of the Board of City Council of the City of Morehead, Kentucky held on this the 9th day of March, 2015.

APPROVED:

ATTESTED:



JAMES T. TRENT, MAYOR



JONI MRAZ, CITY CLERK

ORDINANCE SUMMARY
ORDINANCE NUMBER 04:2015

An Ordinance of City of Morehead, Kentucky amending the City of Morehead, Kentucky, Code of Ordinances, Title IX, General Regulations, Chapter 99, Smoking in Public Places, Section 99.01 Definitions of the City of Morehead Code of Ordinances to amend the definition of smoke or smoking to include electronic smoking devices, including but not limited to e- cigarettes, e-cigs, hookahs, etc., to add the definition of electronic smoking device and to correct typographical errors in Section 99.11 was given first reading on Monday, February 9, 2015 and second reading on Monday, March 9, 2015.

The full text of this Ordinance may be reviewed by any interested citizen at the Administrative Offices Building, 314 Bridge Street, Morehead, Kentucky, Office of the City Clerk, Monday through Friday 8:00 a.m. to 4:30 p.m. This is to certify that the foregoing is a true summary of the ordinance for the City of Morehead, Kentucky.

This the 10th day of March 2015.

Joyce P. Stevens
Joyce Planck Stevens, City Attorney

