

ORDINANCE NO. 12-2016

**AN ORDINANCE OF THE CITY OF PRESTONSBURG, KENTUCKY AMENDING
ORDINANCE NO. 07-2009 TO AMEND AND ADD PROHIBITION OF VAPOR
PRODUCTS IN ALL PUBLIC PLACES AND PLACES OF EMPLOYMENT WITHIN
THE CITY**

**ORDINANCE NO. 07- 2009
AN ORDINANCE OF THE CITY OF PRESTONSBURG,
KENTUCKY, RELATED TO THE PROTECTION OF THE
PUBLIC HEALTH AND WELFARE BY REGULATING
SMOKING IN PUBLIC PLACES AND PLACES OF
EMPLOYMENT WITHIN THE CITY.**

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WHEREAS, the Prestonsburg City Council makes the following findings establishing that the smoking of tobacco products produce a form of air pollution, a danger to health and a material public nuisance. And after significant study and debate of the issues deems it to be in the best interests of the citizens of Prestonsburg, Kentucky, to adopt this regulation of smoking in public places and places of employment;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF
PRESTONSBURG, KENTUCKY:**

SECTION 1. FINDINGS AND INTENT: The Prestonsburg City Council finds that:

(A) In June 2006 the U.S. Surgeon General issued a Report reviewing the Health Consequences of Involuntary Exposure to Tobacco Smoke. The report concluded that 1) Secondhand smoke causes premature death and disease in children and adults who do not smoke; 2) Children exposed to secondhand smoke are at an increased risk for sudden death syndrome (SIDS), acute respiratory infections, ear problems and more severe asthma; 3) Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; 4) The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke; 5) Many millions of Americans, both children and adults, are still exposed to secondhand smoke; 6) Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke.

(B) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution. Breathing secondhand smoke is a cause of disease in healthy nonsmokers. These diseases include heart disease, stroke, respiratory disease and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control

Monograph 10,” Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI), August 1999.)

(C) The Public Health Service’s National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), “Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens,” U.S. Department of Health and Human Services (DHHS), Public Health Service, NTP, 2000; reaffirmed by the NTP in subsequent reports on carcinogens, 2003, 2005.)

(D) Secondhand smoke is particularly hazardous to the elderly, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental Protection Agency (Cal EPA), “Health effects of exposure to environmental tobacco smoke”, *Tobacco Control* 6(4): 346-353, Winter, 1997.)

(E) The Americans With Disabilities Act, which mandates access to public places and workplaces for persons with disabilities, deems impaired respiratory function to be a disability. (Daynard, R.A., “Environmental tobacco smoke and the Americans with Disabilities Act,” *Nonsmokers’ Voice* 15(1):8-9.)

(F) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. (Environmental Protection Agency (EPA), “Indoor air facts no. 5” environmental tobacco smoke,” Washington, D.C.: Environmental Protection Agency (EPA), June 1989.)

(G) The Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a days and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking. (Pechacek, Terry F.; Babb, Stephen, “Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke?” *British Medical Journal*, 328: 980-983, April 24, 2004.)

(H) 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 (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.)

(I) Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke. (“The high price of cigarette smoking,” *Business & Health* 15(8),

Supplement A: 6-9, August 1997.)

(J) A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local law eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease. (Sargent, Richard P.; Shepard, Robert M.; Glantz, Stanton A., "Reduced incidence of admissions for myocardial infarction associated with public smoking ban: before and after study," *British Medical Journal* 328: 977-980, April 24, 2004.)

(K) Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or appositive economic impact after enactment of laws requiring workplaces to be smoke-free. Creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A.; Smith, L., *The Effect of Ordinances Requiring Smoke-Free Restaurants on Restaurant Sales in the United States. American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared or Tobacco Control Unit, Nova Scotia Department of Health, "GPI Atlantic, September 2001.)

(L) Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to business health 15(8), Supplement A: 6-9, August 1997.)

(M) The smoking of tobacco is a form of air pollution, a danger to health and a material public nuisance.

The Prestonsburg City Council adopts the foregoing findings of fact as the Council's basis for its action, and states that the purpose of the adoption of this ordinance is:

1. To protect the public health and welfare by prohibiting smoking and vapor products in public places and places of employment; and
2. To guarantee the right of nonsmokers to breathe smoke-free air; and
3. To recognize that the public's need to breathe smoke-free air shall have priority over the individual's desire to smoke.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESTONSBURG CITY COUNCIL AS FOLLOWS:

SECTION 2. DEFINITIONS.

(A) "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, architectural, or other professional services are delivered; and private clubs.

(B) "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.

(C) “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or ore individual persons.

(D) “Enclosed Area” means 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.

(E) “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.

(F) “Place of Employment” means 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.

(G) “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.

(H) “Public Place” means 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, service lines 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.

(I) “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 or an outdoor service area, enclosed or not.

(J) “Retail Tobacco Store” means a retail store where the sale of tobacco

products and accessories is a primary portion of its business and in which the sale of other products is merely incidental. This would include newsstands, but does not include grocery stores, restaurants or drugstores.

(K) "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind or purchasing items, whether or not the service involves the exchange of money.

(L) "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(M) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe or other lighted tobacco product, in any manner or in any form.

(N) "Sports Arena" means ballparks, 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.

(O) "Vapor Product" means any noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size and including the component parts and accessories thereto, that can be used to deliver vaporized nicotine or other substances to users inhaling from the device...Includes but is not limited to any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and every variation thereof, regardless of whether marketed as such, and any vapor cartridge or other container of a liquid solution or other material that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or some other similar product or device.

SECTION 3. APPLICATION OF ORDINANCE TO CITY, COUNTY AND STATE FACILITIES.

Smoking policies concerning facilities owned or operated by the City, Floyd County or the Commonwealth of Kentucky shall be governed by regulations adopted in compliance with KRS 61.165. To the degree not in conflict with this statute or other existing statutory scheme affecting such facilities, this Ordinance shall apply.

SECTION 4. PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES.

Smoking **and vapor products** is prohibited in all enclosed public places, as defined in Section 2(H) above, within the city limits of the City of Prestonsburg, Kentucky. Smoking **and vapor products** is prohibited in all areas of restaurants as defined by Section 2 (I).

SECTION 5. PROHIBITION OF SMOKING AND VAPOR PRODUCTS IN PLACES OF EMPLOYMENT.

(A) Smoking **and vapor products** 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 **and vapor products** shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon

their application for employment.

SECTION 6. PROHIBITION OF SMOKING AND VAPOR PRODUCTS IN OUTDOOR ARENAS AND STADIUMS.

Smoking and vapor products is prohibited in the seating areas of all outdoor arenas, venues, stadiums and amphitheaters.

SECTION 7. REASONABLE DISTANCE.

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

SECTION 8. WHERE SMOKING AND VAPOR PRODUCT IS NOT REGULATED.

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 4 and 5:

(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. This does not include those public areas of the hotel and motel including, lobbies, restaurants and meeting rooms.

(C) Retail tobacco stores, provided that smoke from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.

(D) Private Clubs, provided that those areas of such clubs used as restaurants or other for functions open to the public are not exempted and the prohibitions set out in Sections 4 and 5 shall apply.

(E) Outdoor areas of places of employment except those covered by the provisions of Sections 6 and 7 of this Ordinance.

(F) Private functions at otherwise regulated locations, provided that smoke from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.

(G) A retail electronic cigarette store, to the extent that no tobacco product shall be smoked inside the store.

SECTION 9. DECLARATION OF ESTABLISHMENT AS NONSMOKING.

Notwithstanding any other provision of this Ordinance, an owner, operator, manager or other authorized person in control of an establishment, facility or outdoor area may declare that entire establishment, facility or outdoor area as a nonsmoking place regardless of its designation under this Ordinance. Within such premises as an authorized nonsmoking designation has been made and signage conforming to the specifications set out in Section 10(A), is posted, smoking shall be prohibited as if otherwise prohibited by this Ordinance.

SECTION 10. 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 Ordinance. 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 Ordinance. 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 Ordinance.

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

SECTION 11. 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 Ordinance or reports or attempts to prosecute a violation of this Ordinance.

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

SECTION 12. ENFORCEMENT.

(A) The City’s Code Enforcement Officers (primary), the City Police officers, the Fire Department, and any other City officials and employees designated by the Mayor or City Council shall enforce this Ordinance.

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

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

(D) The Health Department, Fire Department, or their designees shall, while in an establishment performing otherwise legal inspections, shall inspect for compliance with this Ordinance.

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

1. In the event the person [or persons] violating this Ordinance complies

with this directive, no violation shall exist for the owner, manager, operator or employee witnessing the violation. In the event an owner, manager, operator or employee of an establishment regulated by this Ordinance observes a person or persons violating this Ordinance and fails to immediately direct the person [or persons] in violation to extinguish the item being smoked, the owner, manager, operator or employee failing to take appropriate steps required by this Ordinance shall be in violation of this Ordinance.

2. In the event the person [or persons] violating this Ordinance fails or refuses to comply with this directive, the owner, manager, operator or employee directing the person [or persons] violating this Ordinance shall take immediate and reasonable steps to obtain the removal of the person [or persons] from the premises.

As an example of the reasonableness required, if there is a person violating the ordinance who, the owner, manager, operator or employee of an establishment regulated by this Ordinance is required to remove from the premises, but the person is intoxicated or otherwise reasonably believed to be unable to safely drive or conduct himself or herself if required to leave those premises, in this event the owner, manager, operator or employee reasonably determine to allow the person violating this ordinance 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 Ordinance 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. In no event is an owner or agent of the premises 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 the person [or persons] violating this Ordinance fails or refuses to comply with this directive and the owner, manager, operator or employee who observed the violation or if a different person who directed the person [or person] in violation 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 Ordinance shall be in violation of this Ordinance.

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

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

6. In the event all duties required under this Section are satisfied yet the person violating this Ordinance 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 departments

authorized above to enforce this Ordinance 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 Ordinance 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 Ordinance 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 Ordinance, the City, the Floyd County Health Department, an employee or any person aggrieved by a failure to comply with this Ordinance, 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 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 13. VIOLATIONS AND PENALTIES.

(A) A person who smokes in an area where smoking **and vapor product** is prohibited by the provisions of this Ordinance shall be guilty of a violation, punishable by a fine not exceeding fifty dollars (\$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 Ordinance 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 one (1) year.

(3) A fine not exceeding two hundred fifty dollars (\$250.00) for each additional violation within one (1) year.

(C) In addition to the fines established by this Section, violations of this Ordinance 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 by the City on which the violation occurred.

(D) 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.

(E) Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

SECTION 14. GOVERNMENTAL AGENCY COOPERATION.

The City thanks the Floyd County Health Department for its assistance in the effective implementation of this Ordinance.

SECTION 15. OTHER APPLICABLE LAWS.

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

SECTION 16. CONSTRUCTION.

This Ordinance shall be construed so as to further its stated purposes.

SECTION 17. SEVERABILITY.

If any provision, clause, sentence, or paragraph of this Ordinance or its application to any person or factual context shall be held invalid, that invalidity shall not affect the remaining provisions of this Ordinance, which may be given effect independent of the provision or application declared invalid.

SECTION 18. EFFECTIVE DATE.

Due to the steps required in preparation for enforcement and notification by employers and retail establishments, including proper posting and education, this Ordinance shall become effective on _____.

/s/ _____
LES STAPLETON
MAYOR

ATTEST

/s/ _____
SHARON SETSER
CITY CLERK