

NON-SMOKING ORDINANCE

City of Hazard Ordinance No. 2016-08

AN ORDINANCE pertaining to public health, regulating smoking in public and governmental buildings and spaces within the City of Hazard and providing a penalty for the violation of the provisions of this ordinance.

Pursuant to Kentucky Revised Statutes ("KRS") 61.165 and related administrative regulations, the City of Hazard hereby adopts the following smoking policy for governmental buildings and other businesses within the City of Hazard.

NOW, THEREFORE, be it ordained by the Mayor and City Commissioners of the City of Hazard, Kentucky, that this ordinance shall be known as the Non-Smoking Ordinance.

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General Provisions

§ 2016-08.01 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply.

ARENA. Ballparks, sports pavilions, stadiums, gymnasiums, amphitheater, swimming pools, roller rinks, bowling alleys, and other similar places within the City of Hazard, including places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports. Arena also includes places for events such as music concerts, plays or public performances along with other similar gathering places.

BUSINESS. A sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit. Examples of a business include retail establishments where goods or services are sold; offices for legal, medical, dental, engineering, architectural, or other professional services; private clubs and restaurants.

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.

DWELLING. Any building used primarily for sleeping overnight and activities of daily living, including a house, apartment or other type of structure.

EMPLOYER. A person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one (1) or more individual persons.

ENCLOSED AREA. A space that is enclosed on all sides, including ceiling and floor, by doors, walls and/or windows, with areas for ingress and egress being the only openings.

FREESTANDING BAR. An establishment where all patrons, guests and customers must be twenty-one (21) years old or older to enter the premises and a current distilled spirits, wine and malt beverage retail drink license, issued by the Commonwealth of Kentucky and the City of Hazard and serves alcoholic beverages for consumption by guests/patrons within a totally enclosed area as defined herein. A freestanding bar is not within or attached to a restaurant.

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,

includes, but not limited to, hospitals, clinics, doctor's offices, outpatient surgery centers, radiology service centers, nursing homes, hospice care centers, laboratories, chiropractor's offices, physical therapists, dental offices, and all other facilities, offices and/or centers that accommodate licensed medical professionals. This definition shall include all waiting rooms, hallways, bathrooms, private rooms, semiprivate rooms, wards and all other places a patient may be located within health care facilities.

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. The club operation is solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain. The club may be licensed for and sell 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. The club 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. § 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 and vehicles, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, 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.

REASONABLE DISTANCE. A measure of distance, a minimum of ten (10) feet from a fixed location, in order to prevent tobacco smoke and secondhand smoke from permeating into a place protected from smoking under this ordinance.

RESTAURANT. An eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich shop, 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. A restaurant is not a freestanding bar.

RETAIL TOBACCO STORE. A retail establishment that generates seventy-five percent (75%) or more of its total annual gross revenues from the sale of tobacco products including smokeless tobacco products and vaporizing and/or electronic cigarettes.

SMOKING. Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, other lighted tobacco product, smokeless tobacco products and vaporizing and/or electronic cigarettes in any manner or in any form.

WORKPLACE. An area under the control of a public or private employer, including, but not limited to, work areas, employee lounges, bathrooms, conference rooms, meeting rooms, classrooms, employee cafeterias and hallways. A private residence is not a WORKPLACE unless it is used as a childcare, adult day care, or health care facility.

Prohibitions

§2016-08.02 APPLICABILITY TO CITY OF HAZARD FACILITIES

(A) Smoking policies concerning buildings, facilities and workplaces owned or operated by the City 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 locations, this chapter shall apply.

(B) Any and all City of Hazard government buildings, including City Hall, City maintenance facilities and any other building or location that the City operates will be indoor smoke-free facilities.

§2016-08.03 SMOKING ADJACENT TO SCHOOLS OR DAYCARE CENTERS

Smoking is prohibited in all public places including all public grounds or property that are within twenty-five (25) feet of the property boundaries of a school, college or daycare.

§2016-08.04 SMOKING IN ENCLOSED PUBLIC PLACES PROHIBITED

Smoking is prohibited in all enclosed public places within the city limits including all indoor areas of restaurants and public parks.

§2016-08.05 SMOKING IN WORKPLACES PROHIBITED.

(A) Smoking is prohibited in all indoor workplaces 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 bathrooms.

(B) It is the duty of the employer, or his/her designee or assignee, to inform each employee of this prohibition on smoking in the workplace.

(C) Employers may elect as an exception to the smoking prohibition to provide an enclosed smoking area for the use by employees during normal work hours.

§2016-08.06 SMOKING IN OUTDOOR ARENAS PROHIBITED.

Smoking is prohibited in outdoor arena seating areas, concession areas, and bathrooms. The owners, lessees or operators of arena venues may designate a smoking area(s) in areas of the arena not prohibited herein as long as such area is outdoors, well ventilated and at a reasonable distance from any main path, entrance, window or ventilation system.

Other Regulatory Provisions

§2016-08.07 OUTDOOR SMOKING AND REASONABLE DISTANCE.

In order to ensure that smoking does not enter into any place where smoking is prohibited, an outside smoking area must be placed at a reasonable distance from the entrance and exits of enclosed areas, from the designated path to the entrance and exits of a business, from the ventilation system intake serving the protected place so that the public will not be exposed to secondhand smoke. A reasonable distance shall be determined by the owner, lessee or other authorized person(s) permitted to make such decision for the premises but shall not be less than ten (10) feet from the specific protected area(s).

§2016-08.08 INDOOR SMOKING AREAS.

Owners and other authorized person(s) may decide to designate an indoor, enclosed, smoking area within the private premises. In order to designate an indoor smoking area in compliance with this ordinance the premises must not be owned, leased or

otherwise occupied by any unit of government. In addition, the indoor smoking area must be enclosed with a ventilation system that does not cause the smoke to infiltrate the non-smoking areas of the premises.

§2016-08.09 EXCEPTIONS.

(A) Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt:

(1) Any private dwelling, unless smoking is prohibited in the dwelling by law or other policy applicable to the dwelling. This exception does not extend to a lobby, common elevator, common hallway, or any other common area of the building containing attached dwelling units, but if a hospital, hospice, or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with a non-smoker without that person's consent. This exception does not extend to private residents when they are used as a licensed childcare, adult day care, or health care facility.

(2) Workplace enclosed areas that may be designated at the employer's discretion for the purpose of being a stand-alone "enclosed smoking area" for the use of employees who smoke.

(3) Retail tobacco stores, provided that smoke from these premises does not infiltrate into areas where smoking is prohibited.

(4) Hotel and motel rooms that are rented to guests and are designated, prior to the guest check-in, and labelled as smoking rooms. This does not include public areas of the hotel and motel including lobbies, bathrooms, restaurants and meeting rooms.

(5) Private clubs, provided that the areas of such clubs used as restaurants or for functions open to the general public are not exempted and the prohibitions set out in this ordinance shall apply.

(6) Freestanding bars, such facility must stand alone or be an enclosed area separate from any other public place or restaurant where the smoke may not be able to infiltrate into any public place protected under this ordinance. Doorways and windows leading to other public places shall remain closed at all times except to allow entrance or exit. Signs prohibiting patrons or guest under at least twenty-one (21) years of age to enter shall be clearly and conspicuously posted. It shall be the obligation of the owners, operators and/or employees to enforce the twenty-one (21) years of age restriction required herein.

(7) Outdoor smoking areas designated by employers at the workplace, such areas must be compliant with the provisions of this ordinance.

(8) Bingo parlors, licensed by the Commonwealth of Kentucky, where the patrons, guests and workers must be at least eighteen (18) years of age or older to enter as specified by state and/or federal law. Signage stating that the bingo parlor is a smoking facility must be posted in a conspicuous place at all outside entrances at the sole expense of the parlor owner, operator or designee.

(9) Off-track betting parlors licensed by the Commonwealth of Kentucky where the patrons, guests and workers must be at least eighteen (18) years of age or older to enter as specified by state and/or federal law. Signage stating that the off-track betting parlor is a smoking facility must be posted conspicuous place at all outside entrances at the sole expense of the parlor owner, operator or designee.

(B) Nothing in this subchapter shall prevent an owner, lessee, manager or person in control of any place, building, premises, including but not limited to, any privately owned motor vehicle service, outdoor area, or dwelling, from prohibiting smoking completely in such place, and no person shall fail to abide by such private prohibition.

(C) Nothing in this subchapter shall authorize smoking in any place where it is otherwise prohibited by law, court order, statute, ordinance, and regulation or by order of the Fire Marshal.

§2016-08.10 DECLARATION NON-SMOKING ESTABLISHMENT.

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 non-smoking place regardless of its designation under this ordinance. If a non-smoking designation has been made and signage is posted, smoking shall be prohibited as if otherwise prohibited by this ordinance and is subject to penalties as outlined in §2016-08.99.

§2016-08.11 POSTING OF SIGNS.

(A) "No Smoking" signs or the international "No Smoking" symbol shall be clearly and conspicuously posted in every public place where smoking is prohibited by this ordinance. The owner, operator, manager or other person in control of the premises shall be responsible for the purchase and placement of the signage including any costs associated with the maintenance of the signage.

(B) A sign clearly stating that smoking is prohibited shall be posted in a conspicuous place at each public and employee entrance in places where smoking is prohibited by this ordinance.

(C) All ashtrays shall be removed from any area where smoking is prohibited by the owner, operator, manager, or other person having control of the area, except for ashtrays displayed for sale and not for use on the premises.

(D) All indoor smoking areas and outdoor designated smoking areas shall be clearly and conspicuously posted by the owner, operator, manager or other person in control of the premises.

§2016-08.12 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.

§2016-08.13 ENFORCEMENT

(A) The City's Code Enforcement Officers, the City Manager, the City police officers, the Fire Department, and any other City official and employee designated by the City Manager or Board of City Commissioners shall enforce this ordinance. The owner, operator or other designated person associated with a freestanding bar must contact the Code Enforcement Officer to approve the bar for compliance with this ordinance before the bar can allow smoking. The Code Enforcement Officer, or his/her designee, shall approve, in writing, all freestanding bars for compliance with this ordinance before smoking is permitted therein.

(B) This non-smoking ordinance shall be posted in City Hall so all applicants for a business license may review the provisions.

(C) Any person who desires to register a complaint under this chapter may do so, in writing, and must deliver the written statement to the City Manager at City Hall. The complaint shall include the name, address and telephone number of the person initiating the complaint. If the person does not want to state their identifying information, the complaint will still be reviewed but the findings will not be published by answering anonymous inquiries regarding the complaint. The complaint must state information about the incident that the person believes is in violation of this ordinance, including the location, date, time and any other relevant information. The City Manager, or his/her designee, will investigate the written complaint and in the City Manager's sole discretion, instruct the appropriate official to resolve the incident stated in the complaint. The reporting person may contact the City Manager to find out the results of the investigation but it is in the City Manager's sole discretion to determine if the information may be released. The person making the complaint may appeal the finding of the investigation including the non-disclosure of the findings to the City Commission, in writing, within 14 days after notice of the finding is presented or not disclosed per the City Manager. The City Commission may take up the appeal during the next regularly scheduled meeting or at a special meeting scheduled at the sole discretion of the City Commission.

(D) The City Police Department, Fire Department, Code Enforcement Officer, or their designees may, while in an establishment performing otherwise legal inspections, 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 or her smoking item shall result in the violator being directed to leave the premise. All violators who refuse to leave the premises when asked to do so may be considered a trespasser and may be subject to a charge of criminal trespass in the third degree pursuant to KRS 511.080. The City Police shall be called in order to assist the establishment in removing the violator from the premises.

(F) 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.

(G) 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 ordinance. 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.

(H) 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 chapter if the responsible agent(s) of the establishment fail to timely satisfy each responsibility prescribed for them in this section.

(I) 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 this chapter, either by civil action seeking injunctive relief or by criminal complaint in a court of competent jurisdiction.

§2016-08.14 SEVERABILITY CLAUSE

The provisions of this ordinance are severable and if any provisions or part thereof shall be held invalid or unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of this ordinance.

§2016-08.99 PENALTY.

(A) A person who smokes in an area where smoking 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) Failure of a person directed to extinguish his or her smoking item shall result in the violator being directed to leave the premise and all violators who refuse to leave the

premises when asked to do so may be considered a trespasser and may be subject to a charge of criminal trespass in the third degree pursuant to KRS 511.080 in addition to the penalty stated in §2016-08.99(A).

(C) 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 (1) 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.

(D) 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 (including but not limited to alcoholic beverage licenses) issued to the person for the premises by the City on which the violation occurred.

(E) 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, including court costs and reasonable attorney fees, of any court enforcement action seeking abatement of this nuisance.

(F) Each incident which a violation of this ordinance occurs shall be considered a separate and distinct violation. An incident is defined as each time a tobacco product is used or each time the use of the tobacco product is ignored or allowed.

FIRST READING:

SECOND READING:

PASSED AND APPROVED THIS _____ day of _____

JIMMY RAY LINDON, Mayor

ATTESTED:

LINDA STEELE, City Clerk