

**CITY OF PAINTSVILLE, KENTUCKY
ORDINANCE NO.**

**AN ORDINANCE RELATED TO THE PROTECTION OF THE PUBLIC
HEALTH AND WELFARE BY REGULATING SMOKING IN
RESTAURANTS**

WHEREAS, the City Council has made findings establishing that the smoking of tobacco products produces 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 Paintsville, Kentucky, to adopt this regulation of smoking in restaurants.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL FOR THE CITY OF PAINTSVILLE, KENTUCKY, as follows:

Section 1. Findings and Intent: The Paintsville City Council finds that:

- A. Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free. Creation of smoke-free workplaces in 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 for Tobacco Control Unit, Nova Scotia Department of Health, "GPI Atlantic, September 2001.)
- B. 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 day 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.)

- C. 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 CARDIO200 case-control study, "Tobacco Control 11(3): 220-225, September 2002.)
- D. 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.)
- E. The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. The Health Consequences of Involuntary Smoking: A Report of the Surgeon General. Public Health Service, Centers for Disease Control, 1986.)
- 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 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.)
- H. 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 effect 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.)

- I. A study of hospital admissions for acute myocardial infarction in Helena, Montana before, during, and after a local eliminating smoking in 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.)
- J. 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.)
- K. 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.)
- L. Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures cause 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.

Accordingly, the Paintsville City Council adopts the foregoing as justification for this ordinance, the purpose of which is

- (1) To protect the public health and welfare by prohibiting smoking in restaurants;

Section 2. Definitions: The following words and phrases, whenever used in this Ordinance, shall be construed as defined in this Section:

- A. "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.
- B. "Smoking" means 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.

Section 3. Application of Ordinance to City-owned and County-owned Facilities:

Smoking policies concerning facilities owned or operated by the City, County or Commonwealth shall be governed by regulations adopted in compliance with KRS 61.165. This statute mandates all policies governing smoking in City, County and Commonwealth facilities shall be properly adopted, in writing and "provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted."

Section 4. Prohibition of Smoking in Restaurants.

Smoking is prohibited in all enclosed restaurants as defined in Section 2. A., above, within the City of Paintsville, Kentucky.

- A. This prohibition on smoking shall be communicated to all covered entities by the effective date of this Ordinance and to all prospective employees upon their application for employment.

Section 5. Declaration of Restaurant: Notwithstanding any other provision of this Ordinance, an owner, operator, manager or 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 6, A, is posted, smoking shall be prohibited as if otherwise prohibited by this Ordinance.

Section 6. 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 restaurants 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 restaurants 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 persona having control of the area prohibits smoking, except for ashtrays displayed for sale and not for use on the premises.

Section 7. Enforcement:

A. The City’s Code Enforcement Officer, the City Police, the Fire Department, the Johnson County Health Department [subject to formal determination by the Health Board that the Johnson Health Department shall assume enforcement responsibilities] and all 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 Paintsville.

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.

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 violation 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 may 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 violation the Ordinance to leave its premises and promptly notified 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 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 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 Johnson 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 8. Violations and Penalties:

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. 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 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 9. Public Education:

The Mayor's Office shall take steps to offer a continuing program by which the purpose and requirements of this Ordinance is 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 releases and public meetings.

Section 10. Governmental Agency Cooperation: The City requests the Johnson County Health Department for its assistance in the effective implementation of this Ordinance.

Section 11. Other Applicable Laws: This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 12. Construction: This Ordinance shall be construed so as to further its stated purposes.

Section 13. 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 14. Effective Date: This Ordinance shall be effective upon publication.

The foregoing Ordinance was read for the first time on November 14, 2006, read for the second time, passed and approved on _____.

ATTEST:

VIRGIE CASTLE, CLERK

DOUG PUGH, MAYOR

FIRST READING: _____

SECOND READING: _____

PUBLICATION DATE: _____