

**ORDINANCE NO. \_\_\_\_, 2006 SERIES**

**AN ORDINANCE RELATED TO THE PROTECTION OF THE PUBLIC HEALTH  
AND WELFARE BY REGULATING THE SMOKING OF TOBACCO PRODUCTS IN  
BUILDINGS OPEN TO THE PUBLIC**

WHEREAS, the City Commission 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 deems it to be in the best interests of the citizens of Frankfort, Kentucky, to adopt this ordinance regulating the smoking of tobacco products in buildings open to the public.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF FRANKFORT, KENTUCKY, as follows:

Section 1. Findings and Intent: The Frankfort City Commission finds that:

A. 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.)

B. 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.)

C. 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., 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.)

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 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.)

G. 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.)

H. 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, A Commentary: How acute and reversible are the cardiovascular risks of secondhand smoke? @ British Medical Journal, 328: 980-983, April 24, 2004.)

I. 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.)

J. 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.)

K. 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 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 for 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.

N. A survey of the indoor air quality of eleven locations in Frankfort, Kentucky, including ten restaurants and one miscellaneous entertainment venue, reflected that individuals at those locations are exposed to tobacco smoke constituents at approximately 2.7 times the National Ambient Outdoor Standard and the level of indoor air pollution at these locations as measured by the average PM 2.5 level was approximately 9.6 times higher than the Lexington, Kentucky post smoking regulation law average PM 2.5 level.

Accordingly, the Frankfort City Commission hereby adopts the foregoing findings as justification for the Ordinance, the purpose of which is:

- 1) To protect the public health and welfare by regulating smoking in buildings open to the public; and
- 2) To guarantee the right of non-smokers to breath smoke-free air; and
- 3) The recognize the public's need to breath smoke-free air shall have priority over the individual's desire to smoke.

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

A. Building means any structure open to the public that is enclosed from the weather, whether or not windows or doors are open. If a person owns, leases or possesses only a portion of a building, the term building applies to the ownership, leasehold or possessory interest as well.

B. Dwelling means any place used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, a hotel or motel room, but not a hotel or motel lobby, common elevator, common hallway or other common area. A dwelling does not include a hospital room, hospice facility, or nursing home room.

C. An Enclosed Area means an area that:

- 1) is closed in overhead by a roof or other covering of any material, whether permanent or temporary; and
- 2) has forty (40) percent or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary.

D. Private Organization means an establishment which maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest and is not profit oriented.

E. Retail Tobacco Store means a retail store devoted primarily to the sale of any tobacco product, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco, and accessories and in which the sale of other products is merely incidental. The sale of such other products shall be considered incidental if such sales generate less than fifty (50) percent of the total annual gross sales.

F. Tobacco Warehouse means any warehouse building offering tobacco for purchase at auction and meeting the definition established in KRS 248.010(4).

G. Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product.

### Section 3. Prohibition:

A. No person shall smoke within any building except in one of the following locations:

1. In any dwelling. This exception does not extend to a lobby, common elevator, common hallway, or any other common area of a building containing attached dwelling units, hotel rooms or motel rooms.

2. In a room or hall being used by a person or group for a private social function that is not open to the public, in any room used for psychological treatment of nicotine addiction by a licensed health care professional, or in a physically separate and independently ventilated room in a hospital, hospice facility, or nursing home open to all residents as a smoking room and for no other purpose;

3. In a retail tobacco store.

4. A performer as part of a theatrical production so long as adequate notice is provided patrons both before the performance and by specific signage at the theater.

5. Indoor smoking areas provided in state or federal governmental office buildings or workplaces pursuant to KRS 61.165.

6. Facilities not open to the public operated by private organizations.

7. In a tobacco warehouse.

B. Nothing in this chapter shall prevent an owner, lessee, principal manager or person in control of any place, including, without limitation, any motor vehicle, outdoor area, or dwelling, from prohibiting smoking completely in such place, and no person shall fail to abide by such a private prohibition.

C. Nothing in this chapter shall authorize smoking in any place where it is otherwise prohibited by statute, ordinance, regulation or by order of the Fire Marshal.

Section 4. Reasonable distance: Smoking is prohibited within a reasonable distance of the outside entrance to or open windows of any building and from the air intake of a ventilation system serving a building in order to ensure that tobacco smoke does not enter the building through entrances, windows, ventilation systems or other means.

Section 5. Posting signs:

A. No Smoking signs or the international No Smoking symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted in every building. The party responsible for the placement of the signage is the owner, operator, lessee, manager or other person in control of the building.

B. A conspicuous sign clearly stating that smoking is prohibited shall be posted at each entrance utilized by the public entering and exiting the building. A conspicuous sign clearly stating that smoking is prohibited shall be posted at each entrance utilized by employees entering or exiting a building.

C. All ashtrays shall be removed from any building, except for ashtrays displayed for sale and not for use on the premises. Any permanent structure that functioned or was used as an ashtray shall be disabled or altered to prevent its use as an ashtray.

D. Nothing in this chapter shall authorize smoking in any place where it is otherwise prohibited by statute, ordinance, regulation or by order or the Fire Marshal.

Section 6. Non Retaliation and Non Waiver of Rights:

A. No person or employer shall discharge, refuse to hire, or 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.

Section 7. Enforcement:

A. The City Manager's Office shall designate the departments responsible for enforcing this Ordinance.

B. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the City of Frankfort.

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 following departments, or their designees, shall, while in a building performing otherwise legal inspections, inspect for compliance with this Ordinance; Fire Department, Code Enforcement Department, Public Works Department and Finance Department.

E. The owner, operator, manager or lessee of a building or the owner, operator, manager, designee or employee of every place of employment in a building shall inform persons violating this Ordinance of the applicable provisions thereof and require compliance.

F. No owner, lessee, principal manager, or person in control of a building or place of employment in a building shall fail to:

(1) Immediately ask smokers to refrain from smoking in any no-smoking area;

(2) Use any other legal means which may be appropriate to further the intent of this chapter.

G. No owner, principal manager, proprietor, or any other person in control of a building or place of employment in a building shall fail to ensure compliance by subordinates, employees, and agents with this Ordinance.

H. The mere presence of a person smoking within a building governed by this Ordinance does not constitute a violation on the part of the building's owner, manager, lessee or designee or the owner, manager, lessee, employee or designee of a place of employment in a building. A violation of this Ordinance shall only be charged if the responsible person or agent[s] of the building or place of employment fails to timely satisfy each responsibility prescribed for them in this Ordinance.

I. Notwithstanding any other provision of this Ordinance, the City, 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 building or place of employment in a building 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, leases or otherwise controls a building or is an employee in a place of employment within a building 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 fifty hundred dollars (\$250.00) for each additional violation within one (1) year.

C. Persons who smoke in an area where smoking is prohibited and who refuse to extinguish their smoking material when asked, may be required to leave the premises, and shall be subject to prosecution for trespass if they do not leave when asked.

D. In addition to the fines established by this Section, violations of this Ordinance by a person who owns, manages, operates, leases or otherwise controls a building or place of employment within a building may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

E. 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.

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

#### Section 9. Public Education:

The City 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. 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.

First reading on the 26<sup>th</sup> day of June, 2006.  
Final adoption on the \_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Summary: This ordinance protects the public health and welfare by regulating the smoking of tobacco products in buildings open to the public.

\_\_\_\_\_  
City Solicitor

Published \_\_\_\_\_