

AN ORDINANCE AMENDING SECTION 14-97(1) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO AMEND THE DEFINITION OF BUILDING TO INCLUDE STRUCTURES WITH FORTY PERCENT (40%) OR MORE OF ITS PERIMETER PERMANENTLY OR TEMPORARILY ENCLOSED; AMENDING SECTION 14-97(2) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO AMEND THE DEFINITION OF DWELLING TO INCLUDE BUILDING; AMENDING SECTION 14-97(3) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO DELETE THE DEFINITION FOR ENCLOSED AREA AND REPLACE IT WITH A DEFINITION FOR ESTABLISHMENT AND OPEN TO THE PUBLIC; AMENDING SECTION 14-97(4) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO AMEND THE DEFINITION OF PRIVATE ORGANIZATION TO DELETE ESTABLISHMENT AND NOT BE OPEN TO THE PUBLIC AND BE INCOME TAX EXEMPT; AMENDING SECTION 14-97(5) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO AMEND THE DEFINITION OF RETAIL TOBACCO STORE CHANGING FIFTY PERCENT (50%) TO TWENTY-FIVE PERCENT (25%); AMENDING SECTION 14-97(6) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO AMEND THE DEFINITION OF SMOKE OR SMOKING TO INCLUDE BURNING OR CARRYING OF A TOBACCO PRODUCT; AMENDING SECTION 14-97(7) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO DELETE THE DEFINITION FOR TOBACCO WAREHOUSE AND REPLACE IT WITH A DEFINITION FOR WORKPLACE IN BUILDINGS OR A PORTION THEREOF; AMENDING SECTION 14-98(1) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO PROHIBIT SMOKING IN AN ESTABLISHMENT, WORKPLACE AND PUBLIC TRANSPORTATION VEHICLES; AMENDING SECTION 14-98(1)(a) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO INCLUDE A BUSINESS WITHIN A DWELLING; AMENDING SECTION 14-98(1)(b) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO DELETE THE WORD "IN", ADD THE WORD "RENTAL", AND MOVE THE REMAINDER OF SECTION (b) TO SECTION (c); AMENDING SECTION 14-98(1)(c) RELATED TO SMOKING INDOORS TO ALLOW FOR EXCEPTIONS FOR TREATMENT OF NICOTINE ADDICTION BY LICENSED HEALTHCARE PROFESSIONALS INDEPENDENTLY VENTILATED ROOMS IN HOSPITAL, HOSPICE OR NURSING HOMES; AMENDING SECTION 14-98(1)(d) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO ALLOW AN EXCEPTION FOR A RETAIL TOBACCO STORE; AMENDING SECTION 14-98(1)(e) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO ALLOW AN EXCEPTION FOR PERFORMERS IN A THEATRICAL PRODUCTION AND TO DELETE THE EXISTING SECTION; AMENDING SECTION 14-98(1)(f) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO ALLOW AN EXCEPTION FOR BUILDINGS USED BY A PRIVATE ORGANIZATION NOT OPENED TO THE PUBLIC; DELETING SECTION 14-98(1)(g) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS IN A TOBACCO WAREHOUSE; AMENDING SECTION 14-98(2) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO INCLUDE BUILDING OR ESTABLISHMENT; CREATING SECTION 14-98(4) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS MAKING BUILDINGS OR VEHICLES OWNED, LEASED OR OPERATED BY THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT SUBJECT TO THE PROVISIONS OF SECTIONS 14-97 TO 14-104; AMENDING SECTION 14-99(1) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO INCLUDE WORKPLACE; AMENDING SECTION 14-99(2) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO APPLY TO ANY BUILDING OR WORKPLACE; AMENDING SECTION 14-99(3) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO INCLUDE ASHTRAYS IN ESTABLISHMENTS; AMENDING SECTION 14-99(4) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO REPLACE THE WORD "DWELLING" WITH "BUILDING, ESTABLISHMENT, WORKPLACE, AND PRIVATE ORGANIZATION"; AMENDING SECTION 14-100(1) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO INCLUDE WORKPLACE; AMENDING SECTION 14-100(1)(a) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO ADD SMOKING MATERIALS; AMENDING SECTION 14-100(1)(b) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO INCLUDE ALL PERSONS IN CONTROL OF A BUILDING OR WORKPLACE TO DEMAND PERSONS WHO

REFUSE TO STOP SMOKING TO LEAVE THE PREMISES; CREATING SECTION 14-100(1)(c) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO ALLOW REFUSAL OF SERVICE TO PERSONS WHO ARE SMOKING; CREATING SECTION 14-100(1)(d) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO ALLOW PERSONS IN CONTROL OF BUILDINGS AND WORKPLACES TO TAKE LEGAL MEANS TO STOP SMOKING IN THE PREMISES; AMENDING SECTION 14-100(2) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO INCLUDE BUILDING, ESTABLISHMENT OR WORKPLACE; CREATING SECTION 14-100(3) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS EXEMPTING BUILDINGS, ESTABLISHMENTS, WORKPLACE AND PRIVATE ORGANIZATIONS COVERED IN SECTION 14-98; AMENDING SECTION 14-101 OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO ALLOW ENFORCEMENT OF THIS SUBCHAPTER BY THE HEALTH DEPARTMENT; AMENDING SECTION 14-102(1)(b) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO ESTABLISH A ONE YEAR LIMIT; AMENDING SECTION 14-102(1)(c) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO ESTABLISH A ONE YEAR LIMIT; DELETING SECTION 14-102(2) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS; AMENDING SECTION 14-104 OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO ALLOW ANY PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION TO APPLY FOR INJUNCTIVE OR OTHER LEGAL RELIEF.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 — In order to serve the public health, safety and general welfare, it is the declared purpose of Sections 14-97 to 14-104 to prohibit smoking in all buildings open to the public or used as workplaces.

Section 2 – That Section 14-97 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

For the purpose of Sections 14-97 to 14-104, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- (1) *Building.* Any structure whose floor area is enclosed overhead by a roof or other covering of any material, whether permanent or temporary, and has forty (40) percent or more of its perimeter permanently or temporarily enclosed by walls, windows, doors, or other coverings of any material. Any structure whose floor area is enclosed overhead by a roof or other covering of any material, whether permanent or temporary, that has 40% or more of the perimeter temporarily enclosed by walls, windows, doors or other coverings of any

materials shall not be subject to the definition of a building when the temporary walls, windows, doors or other coverings are not in place.

- (2) *Dwelling.* Any building used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, a single or multi-family residential housing unit, a hotel or motel room or suite or a hospital, hospice or nursing home room.
- (3) *Establishment.* Any business or other entity operating or otherwise located in a building or portion thereof, and open to public, including but not limited to banks, laundromats, retail stores, professional offices, restaurants, bars, gaming facilities such as bingo halls, pool halls, bowling alleys, child day care facilities, and adult day care facilities, among others.
 - (a) Open to the public. Buildings, portions thereof, or establishments therein, are "open to the public" when their physical nature, function, custom, usage, or notice would cause a reasonable person to believe no invitation or permission to enter is required.
- (4) *Private organization.* An organization which is the owner, lessee, or occupant of a building, that is not open to the public. The building will be used exclusively for the organization's or a member's purposes at all times. The organization must maintain selective members, and be operated by the membership. The organization neither provides food, drink, nor lodging for pay to anyone who is not a member or a member's guest, nor permits others to provide food, drink, or lodging for pay to anyone who is not a member or a member's guest. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. § 501.
- (5) *Retail tobacco store.* 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 incidental. The sale of such other products shall be considered incidental if such sales generate less than twenty-five (25) percent of the total annual gross sales.

- (6) *Smoke or smoking.* The act of inhaling or exhaling from, or the burning or carrying of, any lighted cigarette, cigar, pipe, or other combustible tobacco product.
- (7) *Workplace.* Any building or portion thereof in which an establishment is located, including, but not limited to, work areas, private offices, lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias, and hallways.

Section 3 – That Section 14-98 of the Code of Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

- (1) No person shall smoke within any building or any establishment therein, that is open to the public, or any workplace. No person shall smoke within any public transportation vehicle, including buses and taxicabs, nor within any ticket, boarding and waiting area of public transportation buildings enclosed overhead by a roof. The prohibition does not apply to the following locations, provided that smoke does not infiltrate into areas where smoking is prohibited under the provisions of Sections 14-97 to 14-104:
 - (a) Any dwelling. This exception also extends to a business located in the dwelling and owned or leased by the occupant living in the dwelling; provided, however, that the business is not operating as a child care, adult day care, or health care facility. This exception does not extend to a lobby, common elevator, common hallway,

or any other common area of a building containing attached dwelling units or hotel or motel rooms. If a hospital, hospice, or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with another person without that person's consent.

- (b) A rental room or hall being used by a person or group for a private social function that is not open to the public.
 - (c) 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, or nursing home open to all residents as a smoking room and for no other purpose.
 - (d) A retail tobacco store.
 - (e) A theatrical production by a performer as part of the performance so long as adequate notice is provided patrons both before the performance and by specific signage at the theater.
 - (f) A building operated or used by a private organization, provided that the building is not open to the public.
- (2) Nothing in this chapter shall prevent an owner, lessee, principal manager or person in control of any building or establishment therein, or any other place, including, without limitation, any motor vehicle, outdoor area, or dwelling, from prohibiting smoking completely in any such place.
- (3) 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.
- (4) All buildings or vehicles owned, leased, operated by or under

the jurisdiction of the Lexington-Fayette Urban County Government or any unit thereof shall be subject to the provisions of Sections 14-97 to 14-104 unless the Lexington-Fayette Urban County Government Council adopts a written policy pursuant to KRS 61.165(3) (a) or (b), in which event the written policy shall apply to the extent KRS 61.165(3) is controlling.

Section 4 – That Section 14-99 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

- (1) An owner, lessee or their assignee in control of a building, an establishment therein or a workplace shall post signs, with letters of not less than one (1) inch high or symbols no less than three (3) inches high, using the words "No Smoking" 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) conspicuously either on all public entrances or in a position clearly visible on entry into the building or establishment therein.
- (2) The owner, lessee, manager, person in control or employee of any building, establishment therein or workplace shall inform persons violating Sections 14-97 to 14-104 of the applicable provisions thereof and require compliance.
- (3) All ashtrays that are intended to be used on the premises of an establishment for the collection of ashes, butts, or other residue from smoking shall be removed from any area where smoking is prohibited by Sections 14-97 to 14-104 and shall not be permitted by the owner, operator, manager or other person having control of the establishment. Any permanent structure that functioned or was used as an ashtray shall be disabled or altered to prevent its use as an ashtray.

- (4) The requirements of this section do not apply to any exempt building, establishment therein, private organization, or workplace as set forth in Section 14-98.

Section 5 – That Section 14-100 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

- (1) An owner, lessee, principal manager, or person in control of a building, any establishment therein or workplace shall:
 - (a) Ask a person who is smoking to refrain from smoking and to extinguish any smoking materials.
 - (b) Demand that a person who is smoking leave the premises if the person refuses to refrain from smoking or refuses to extinguish any smoking materials after being asked to do so.
 - (c) Refuse service to a person who is smoking.
 - (d) Take necessary steps and use any other legal means which may be appropriate to stop a person from smoking and further the intent of Sections 14-97 to 14-104.
- (2) No owner, lessee, principal manager, proprietor, employer, or any other person in control of a building, establishment therein or workplace shall fail to ensure compliance by subordinates, employees, and agents with Sections 14-97 to 14-104.
- (3) The requirements of this section do not apply to any exempt building, establishment therein, private organization, or workplace as set forth in Section 14-98.

Section 6 – That Section 14-101 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Enforcement of Sections 14-97 to 14-104 shall be by citation issued by the Lexington-Fayette Urban County Health Department. Notice of the provisions of the chapter shall be given by the Lexington-Fayette Urban County Government to all applicants for a business or other license.

The Lexington-Fayette Urban County Health Department shall enforce the provisions of this subchapter through the issuance of citations, and, for this purpose, during times when employees are scheduled to work, may enter those portions of the building, establishment or workplace where employees perform their duties or take breaks, including, but not limited to, those areas where food and beverages, alcoholic or otherwise, are served, prepared or stored. Nothing herein shall be construed to prevent a citation officer of the Lexington-Fayette Urban County Health Department from issuing a citation for a violation of any provisions of Section 14-97 to 14-104 committed in his or her presence.

Section 7 – That Section 14-102 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

- (1) Any person who violates any provision of Sections 14-97 to 14-104, including a person who smokes in an area where smoking is prohibited, shall be subject to the following penalties:
 - (a) A fine of one hundred dollars (\$100.00) for the first offense;
 - (b) A fine of two hundred fifty dollars (\$250.00) for the second offense, within one (1) year;
 - (c) A fine of five hundred dollars (\$500.00) for the third and each subsequent offense, within one (1) year.
 - (d) 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.

Section 8 – That Section 14-104 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

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 Sections 14-97 to 14-104. Any person aggrieved by a violation of Section 14-104 may apply for injunctive or other legal relief in any court of competent jurisdiction.

Section 9 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: November 6, 2008


MAYOR

ATTEST:


CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: November 13, 2008-1t

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