

ORDINANCE NO. 11:2006

**AN ORDINANCE OF THE CITY OF MOREHEAD, KENTUCKY
RELATED TO THE PROTECTION OF THE PUBLIC HEALTH
AND WELFARE BY REGULATING SMOKING IN PUBLIC
PLACES AND PLACES OF EMPLOYMENT**

WHEREAS, the University of Kentucky Survey Research Center conducted a survey at the request of Gateway Health Department to determine the attitudes and perceptions of the citizens of the City of Morehead, Kentucky regarding smoking in public places;

WHEREAS, 386 citizens of the City of Morehead, Kentucky participated in the survey;

WHEREAS, the data collected from the surveys was compiled and presented to the members of the Board of City Council for their review;

WHEREAS, the data collected from the survey found that a majority of the 386 participants favored an ordinance prohibiting smoking in government buildings, recreational facilities and restaurants. Further, a majority of the survey participants thought that exposure to secondhand smoke is a serious health hazard;

WHEREAS, several studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease in healthy nonsmokers;

WHEREAS, the Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen;

WHEREAS, 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.);

WHEREAS, a significant amount of secondhand smoke exposure occurs in the workplace and 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 CARDIO 2000 case-control study, *Tobacco Control* 11(3): 220-225, September 2002.)

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or apposite 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.);

WHEREAS, the smoking of tobacco is a form of air pollution and a danger to health;

WHEREAS, it has been proven that secondhand smoke causes lung cancer in nonsmokers and bronchitis, pneumonia, chronic middle ear disease and asthma in children. Further, it has been proven that second hand smoke reduces lung function in children and increases sudden-infant-death syndrome;

WHEREAS, there is no legal or constitutional “right to smoke” and businesses have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke, but do have a common law duty to provide their workers with a workplace that is not unreasonably dangerous;

WHEREAS, the Board of City Council is obligated to protect the health and welfare of the citizens of the City of Morehead, Kentucky which includes the right of nonsmokers to breath smoke-free air;

WHEREAS, the Board of City Council of the City of Morehead, Kentucky, after significant study and debate of the issue, deems it to be in the best interests of the citizens of the City of Morehead, Kentucky to regulate smoking in public places and places of employment;

NOW, THEREFORE, BE IT ORDAINED, by the City of Morehead, Kentucky Board of City Council as follows:

Section 1: Definitions

(A) Bar --- an establishment that is devoted to the serving of alcoholic beverages for consumption by the guests on the premises, including but not limited to taverns, nightclubs, cocktail lounges and cabarets.

(B) Business --- 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.

(C) 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.

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

(E) Enclosed Area --- 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.

(F) 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, 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 therapist, 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.

(G) Place of Employment --- 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.

(H) 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, 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.

(I) 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, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, 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.

(J) Restaurant --- 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.

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

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

(M) Smoking --- 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.

(N) Sports Arena --- 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.

Section 2 Government-Owned Facilities

All enclosed facilities, including buildings and vehicles and all seating areas, including bleachers, of all outdoor stadiums or field areas used by spectators at sporting and other public events, owned, leased or operated by the City of Morehead, Kentucky shall be subject to the provisions of this Ordinance. All facilities owned or operated by the County of Rowan or the Commonwealth of Kentucky shall be governed by regulations adopted by said entity.

Section 3 Prohibition of Smoking in Enclosed Public Places

Smoking is prohibited in all enclosed public places, as defined in Section 1(I) above, within the city limits of the City of Morehead, Kentucky.

Section 4 Prohibition of Smoking in Places of Employment

(A) Smoking 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 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 5 Prohibition of Smoking in Outdoor Arenas and Stadiums

Smoking is prohibited in the seating areas of all outdoor arenas, stadiums and amphitheaters including bleachers and grandstands which are used by spectators for viewing said event.

Section 6 Reasonable Distance

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

Section 7 Where Smoking Is Not Regulated

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 3 and 4:

(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, provided, however, that not more than twenty (20%) percent of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous. Smoke from the designated smoking rooms shall not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

(C) Private Clubs that have no employees, provided that when such clubs are being used for functions to which the general public is invited, the prohibitions set out in Sections 3 and 4 shall apply.

(D) Outdoor areas of places of employment except those covered by the provisions of Sections 5 and 6 of this Ordinance.

Section 8 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 an entire establishment, facility or outdoor area as a nonsmoking place regardless of

its designation under this Ordinance. Within such premises if an authorized nonsmoking designation has been made and signage conforming to the specifications set out in Section 9(A) is posted, smoking shall be prohibited. ~~as if otherwise prohibited by this Ordinance.~~

Section 9 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 10 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 11 Enforcement

(A) The City’s Code Enforcement Officers and the City Police Department and all other City officials and employees designated by the Mayor or Board of 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 Morehead, 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 Building Inspectors, Alcohol Beverage Control officers or their designees shall, 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.

(1) ~~In the event~~ If 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. If 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 items 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~~ If 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. The following is an example of reasonableness: ~~In the event of~~ If an intoxicated person or a person unable to safely drive or conduct himself or herself is in violation of this ordinance, the owner, manager, operator or employee may ~~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. Under no circumstances, an owner or agent of the premises shall not be entitled 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,~~ If the person or persons violating this Ordinance fails or refuses to comply with this directive, and the owner, manager, operator or employee observing the violation or person directing him/her 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~~ If the establishment in which a violation occurs shall be in violation of this Ordinance for each violation that occurs on its premises and in 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~~ If 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 department 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 of Morehead, its employees 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 or persons 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 12 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 \$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 a one-year period

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

(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 13 Public Education

The Code Enforcement Officers shall take steps to offer a continuing program by which the purpose and requirements of this Ordinance are 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 release or public meetings.

Section 14 Other Applicable Laws

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

Section 15 Construction

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

Section 16 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 17 Effective Date

This Ordinance shall take effect August 1, 2006.

INTRODUCED, SECONDED AND GIVEN FIRST READING at a duly convened meeting of the Board of City Council of the City of Morehead, Kentucky held on this the 8th day of May, 2006.

INTRODUCED, SECONDED AND GIVEN SECOND READING at a duly convened meeting of the Board of City Council of the City of Morehead, Kentucky held on this the 12th day of June, 2006.

Bradley H. Collins, Mayor

Diana Lindsey, City Clerk