

NON-SMOKING ORDINANCE 2019-08

Repeal and Replace City of Hazard Ordinance No. 2016-08 that was passed on the 28th day of June, 2016.

AN ORDINANCE pertaining to the protection of the public health and welfare by regulating smoking of tobacco, alternative nicotine products and vapor products (a/k/a electronic tobacco products) in enclosed public places, places of employment and in certain outdoor public places 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 public places and places of employment 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.

GENERAL PROVISIONS

SECTION 1. DEFINITIONS.

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

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- B. "Business" means 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. "Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
- D. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or a person who volunteers his or her services for a non-profit entity.

- E. "Employer" means 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.
- F. "Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
- G. "Health Care Facility" means 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, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, 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.
- H. "Hookah" means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.
- I. "Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- J. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City grounds.
- K. "Private Club" means 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.
- L. "Public Event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

- M. "Public Place" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and 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 residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- N. "Recreational Area" means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.
- O. "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.
- P. "Service Line" means an indoor or outdoor 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, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- Q. "Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.
- R. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of in this Article.
- S. "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

PROHIBITIONS

SECTION 2. APPLICABILITY TO CITY OF HAZARD FACILITIES

All enclosed area, including buildings and vehicles owned, leased, or operated by the City of Hazard as well as all outdoor property adjacent to such buildings and under the control of the City of Hazard, shall be subject to the provisions of this ordinance.

SECTION 3. PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES

Smoking shall be prohibited in all enclosed public places within the City of Hazard including but not limited to 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 and, but not limited to the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gambling facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Parking structures.
- N. Polling places.
- O. Public transportation vehicles, including buses and taxicabs, under the authority of the City of Hazard, and public transportation facilities, including bus, train, and airport facilities.

- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores.
- S. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the City of Hazard or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of Hazard.
- T. Service lines.
- U. Shopping malls.
- V. Sports arenas, including enclosed places in outdoor arenas.
- W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

SECTION 4. 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.

SECTION 5. SMOKING SHALL BE PROHIBITED IN ALL PRIVATE CLUBS.

SECTION 6. PROHIBITION OF SMOKING IN ENCLOSED RESIDENTIAL FACILITIES THAT ARE NURSING HOMES, HOTELS, OR MOTELS.

OTHER REGULATORY PROVISIONS

SECTION 7. 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 a minimum of 15 feet 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.

SECTION 8. PROHIBITION OF SMOKING IN OUTDOOR PLACES OF EMPLOYMENT

- A. Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, and temporary offices such as trailers, restroom facilities, and vehicles.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

SECTION 9. SMOKING NOT REGULATED

Notwithstanding any other provision of this Ordinance to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility.

SECTION 10. 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.

SECTION 11. 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 12. 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.
- 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.

SECTION 13. 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.

SECTION 14. PENALTY.

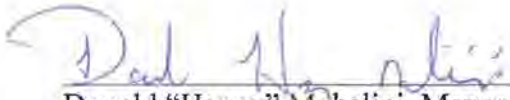
- A. A person who smokes in an area where smoking is prohibited by the provisions of this ordinance shall be guilty of a violation, punishable by a fine not exceeding fifty dollars (\$50.00).
- B. Failure of a person directed to extinguish his or her smoking item shall result in the violator being directed 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.

A. 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: June 17, 2019

SECOND READING: June 25, 2019

PASSED AND APPROVED THIS 25th day of June 2019.



Donald "Happy" Mabelini, Mayor

ATTESTED:



Linda Steele, City Clerk