

**ORDINANCE NO. 2020-0921B
SMOKE FREE ORDINANCE**

AN ORDINANCE pertaining to public health, regulating smoking in public and governmental buildings and spaces within Knott County 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, Knott County hereby adopts the following smoking policy for governmental buildings and other businesses within the county.

NOW, THEREFORE, be it ordained by the Judge Executive and Magistrates of Knott County, 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.

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.

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.

ARENA. Ballparks, sports pavilions, stadiums, gymnasiums, amphitheaters, swimming pools, roller rinks, bowling alleys, and other similar places within Knott County, including places where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports. Arena also includes places for events such as music concerts, plays or public performances along with other similar gathering places.

BUSINESS. A sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit. Examples of a business include retail establishments where goods or services are sold; offices for legal, medical, dental, engineering, architectural, or other professional services; private clubs and restaurants.

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. **DWELLING.** Any building used primarily for sleeping overnight and activities of daily living, including a house, apartment or other type of structure.

EMPLOYER. A person, business, partnership, association, corporation, including a municipal corporation, trust, or nonprofit entity that employs the services of one (1) or more individual persons.

ENCLOSED AREA. A space that is enclosed on all sides, including ceiling and floor, by doors, walls and/or windows, with areas for ingress and egress being the only openings.

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FREESTANDING BAR. An establishment where all patrons, guests and customers must be twenty-one (21) years old or older to enter the premises and a current distilled spirits, wine and malt beverage retail drink license, issued by the Commonwealth of Kentucky and the Knott County Fiscal Court and serves alcoholic beverages for consumption by guests/patrons within a totally enclosed area as defined herein. A freestanding bar is not within or attached to a restaurant.

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, includes, but not limited to, hospitals, clinics, doctor's offices, outpatient surgery centers, radiology service centers, nursing homes, hospice care centers, laboratories, chiropractor's offices, physical therapists, dental offices, and all other facilities, offices and/or centers that accommodate licensed medical professionals. This definition shall include all waiting rooms, hallways, bathrooms, private rooms, semi private rooms, wards and all other places a patient may be located within health care facilities.

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. The club operation is solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain. The club may be licensed for and sell 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. The club 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. § 501.

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 and vehicles, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, sports arenas, theaters, service lines 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.

REASONABLE DISTANCE. A measure of distance, a minimum of 15 (15) feet from a fixed location, in order to prevent tobacco smoke and secondhand smoke from permeating into a place protected from smoking under this ordinance.

RESTAURANT. An eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich shop, 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. A restaurant is not a freestanding bar.

RETAIL TOBACCO STORE. A retail establishment that generates seventy-five percent (75%) or more of its total annual gross revenues from the sale of tobacco products including smokeless tobacco products and vaporizing and/or electronic cigarettes.

SMOKING. 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. "Smoking" includes the use of an electronic smoking device which creates an aerosol or vapor, in a manner or in any form, or the use of any oral smoking device.,

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,

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or other plant matter.

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.

WORKPLACE. An area under the control of a public or private employer, including, but not limited to, work areas, employee lounges, bathrooms, conference rooms, meeting rooms, classrooms, employee cafeterias and hallways. A private residence is not a WORKPLACE unless it is used as a childcare, adult day care, or health care facility.

Shopping Mall. Means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.

Service Line. Means an indoor or outdoor line in which one 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.

Prohibitions

Section 2 APPLICABILITY TO KNOTT COUNTY

All enclosed areas, including buildings and vehicles owned, leased, or operated by the Knott County Fiscal Court as well as all outdoor property adjacent to such buildings and under the control of the Knott County Fiscal Court, 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 County of Knott, Kentucky including but not limited to Any and all Knott County government buildings, including the court house, county maintenance facilities and any other building or location that the county 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 nonprofit 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.

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- 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 Knott County Fiscal Court, 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 Knott County or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the Knott County Fiscal Court.
- 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.

(A) 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.

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(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.

(C) Smoking shall be prohibited in all private clubs.

Section 5 Prohibition of Smoking in Enclosed Residential Facilities that are nursing homes, hotels, or motels.

Other Regulatory Provisions

Section 6 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. Smoking is prohibited in public outdoor spaces including but not limited to, outdoor shopping malls, playgrounds, parking structures, outdoor arenas, stadiums, amphitheaters, bleachers, grandstands for use by spectators at sporting and other public events, and outdoor service lines.

Section 7 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 on the premises.

Section 8 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 9 ENFORCEMENT

(A) The County Code Enforcement Officers, the County Manager, police officers, the fire department, and any other County official and employee designated by the Fiscal Court or County Judge Executive shall enforce this ordinance.

(B) This non-smoking ordinance shall be posted in Court House so all applicants for a business

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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 County Judge-Executive at the Knott County Courthouse. 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 County Judge-Executive, or his/her designee, will investigate the written complaint and at the County Judge-Executive's sole discretion, instruct the appropriate official to resolve the incident stated in the complaint. The reporting person may contact the County Judge-Executive to find out the results of the investigation but it is in the County Judge-Executive'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 Fiscal Court or Judge Executive, in writing, within 14 days after notice of the finding is presented or not disclosed per the County Judge-Executive. The Fiscal Court may take up the appeal during the next regularly scheduled meeting or at a special meeting scheduled at the sole discretion of the Fiscal Court.

(D) The 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 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

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civil action seeking injunctive relief or by criminal complaint in a court of competent jurisdiction.

Section 10 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 11 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 County or its designated agents by restraining order, preliminary and permanent injunction, or other means provided for by law. The County may recover the reasonable costs, including court costs and reasonable attorney fees, of any court enforcement action seeking abatement of this nuisance.

(F) 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.

Publication of the first reading of this Ordinance shall be by summary; publication upon passage of this Ordinance shall be by summary; the full text of the Ordinance is available at the office of the Knott County Judge Executive, 54 W Main Street, Hindman, Kentucky, during ordinary business hours.

This ordinance shall be read on two separate days and become effective upon publication pursuant to KRS Chapter 424.

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Given First Reading the 16th day of November, 2020.

Given Second Reading and Passed the 3rd day of December, 2020.

Motion for adoption of this resolution was made by Largus Martin, seconded by Calvin Waddles, and vote taken as follows:

FOR

AGAINST

Largus Martin
Calvin Waddles

Avery Strum

Attest:
By: 
Knott County Fiscal Court Clerk


Knott County Judge-Executive

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly qualified and acting Fiscal Court Clerk of Knott County, Kentucky; that the foregoing is a true and complete copy of a certain Ordinance duly adopted by the Fiscal Court of Knott County, Kentucky, at a duly convened public meeting properly held on **December 3, 2020**; that said Ordinance appears as a matter of public record in the official records of the Fiscal Court; that said meeting was duly held in accordance with all applicable requirements of Kentucky law, including Page 10 of 10 KRS 61.805 to 61.850; that a quorum was present at said meeting; that said Ordinance has not been amended, modified, revoked or repealed; and that same is now in full force and effect.

IN TESTIMONY WHEREOF, witness my signature this **December 3, 2020**.


Fiscal Court Clerk