

ORDINANCE REGARDING SMOKING

**SUMMARY: AN ORDINANCE OF THE CITY OF HENDERSON, KENTUCKY RELATED TO THE PROTECTION OF THE PUBLIC HEALTH AND WELFARE BY REGULATING SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT. THE ORDINANCE INCLUDES FINDINGS THAT SMOKING PRODUCTS ARE A FORM OF AIR POLLUTION WHICH IS A DANGER TO HEALTH; CONTAINS DEFINITIONS; PROHIBITS SMOKING IN ENCLOSED PUBLIC PLACES, PLACES OF EMPLOYMENT, OUTDOOR ARENAS AND STADIUMS AND WITHIN A REASONABLE DISTANCE OF AN ENCLOSED AREA; EXEMPTS PRIVATE RESIDENCES, DESIGNATED HOTEL AND MOTEL SMOKING ROOMS UP TO 20% OF THE ROOMS WHICH ARE TO BE CONTIGUOUS AND ABLE TO BE ACCESSED BY HANDICAPPED PERSONS, RETAIL TOBACCO STORES, PRIVATE CLUBS WITH NO EMPLOYEES, OUTDOOR AREAS OF PLACES OF EMPLOYMENT, AND OTHER DESIGNATED OUTDOOR AREAS OF A BUSINESS SUCH AS COURTYARDS, DECKS, GAZEBOS, PATIOS AND OPEN AIR SEATING INCLUDING THOSE OUTDOOR AREAS IN EXISTENCE ON EFFECTIVE DATE OF ORDINANCE, AND CHARITABLE GAMING EVENTS IN LICENSED CHARITABLE GAMING FACILITY; PROVIDES FOR POSTING OF SIGNS AND REMOVAL OF ASHTRAYS; PROHIBITS RETALIATION; PROVIDES FOR ENFORCEMENT AND INSPECTION; AND PROVIDES THE FOLLOWING FINES: “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); 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 A FINE NOT EXCEEDING FIFTY DOLLARS (\$50.00) FOR A FIRST VIOLATION WITHIN A ONE-YEAR PERIOD; A FINE NOT EXCEEDING ONE HUNDRED (\$100.00) FOR A SECOND VIOLATION WITHIN ONE (1) YEAR AND A FINE NOT EXCEEDING TWO HUNDRED FIFTY (\$250.00) FOR EACH ADDITIONAL VIOLATION WITHIN ONE (1) YEAR; PROVIDES FOR PUBLIC EDUCATION; AND EFFECTIVE DATE OF OCTOBER 1, 2006.**

WHEREAS, the Board of Commissioners 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 after significant study and debate of the issues deems it to be in the best interests of the citizens of Henderson, Kentucky, to adopt this regulation of smoking in public places and places of employment.

NOW, THEREFORE, BE IT ORDAINED by the City of Henderson, Kentucky, as follows:

Section 1. Findings and Intent: The City of Henderson Board of Commissioners 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., "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, "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 butts 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.

Accordingly, the Board of Commissioners adopts the foregoing as justification for this Ordinance, the purpose of which is

(1) To protect the public health and welfare by prohibiting smoking in public places and places of employment; and

(2) To guarantee the right of nonsmokers to breathe smoke-free air; and

(3) To recognize that the public's need to breathe smoke-free air shall have priority over the individual's desire to smoke.

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

A. "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.

B. "Common Area" means any area where individuals may congregate such as hallways, lobbies, restrooms and elevators.

C. "Employee" means 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" 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.

E. "Enclosed Area" means 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" 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 treatment facilities for drug addiction, alcoholism, and the like, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, 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" means 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" 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.

I. "Public Place" means 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" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, national and regional chains, 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. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

L. "Service Line" means 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.

M. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

N. "Smoking" means 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.

O. "Sports Arena" means 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 3. Prohibition of Smoking in Enclosed Public Places.

Smoking is prohibited in all enclosed public places as defined in Section 2. I. above, within the City of Henderson, 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 amphitheatres.

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 smokers shall not obstruct the entrance at any time while smoking; and smoking is also prohibited within a reasonable distance from the air intake of a ventilation system serving an enclosed area where smoking is prohibited, in order to insure tobacco smoke does not enter that enclosed area through entrances, windows, ventilation systems or other means.

Section 7. Where Smoking 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 percent (20%) of rooms rented to guests in a hotel or motel may be so designated, and that designated smoking rooms shall be contiguous and shall be able to be accessed by handicapped persons. 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. Retail tobacco stores, provided that smoke from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.

D. 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 4 and 5 shall apply.

E. Outdoor areas of places of employment, except those covered by the provisions of Sections 5 and 6.

1) Other specific outdoor areas designated for smoking by a business owner, manager, or other authorized person and are reasonably distanced from and do not obstruct the entrances to the business; and may be attached or freestanding, including but not limited to courtyards, decks, gazebos, patios, and arranged open air seating, and shall include those outdoor areas or facilities which are in existence on the effective date of this Ordinance.

F. Indoor smoking areas provided in state or federal government office buildings or work places pursuant to KRS 61.165.

G. At a charitable gaming event, sponsored by a licensed charitable gaming organization as defined by KRS 238.505 (3) held in a licensed charitable gaming facility as defined by KRS 238.505 (11). "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter. Charitable gaming shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races.

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 that entire establishment, facility, or outdoor area as a nonsmoking place regardless of its designation under this Ordinance. Within such premises as 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 Officer, the City Police, the Fire Department, the Henderson County Health Department [subject to formal determination by the Health Board that the Henderson Health Department shall assume enforcement responsibilities] and all other City officials and employees designated by the City Manager or Board of Commissioners 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 Henderson.

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 Health Department, Fire Department, or their designees shall, while in an establishment performing otherwise legal inspections, shall 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 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. In the event 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 item 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 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.

As an example of the reasonableness required, if there is a person violating the ordinance who, the owner, manager, operator or employee of an establishment regulated by this Ordinance is required to remove from the premises, but the person is intoxicated or otherwise reasonably believed to be unable to safely drive or conduct himself or herself if required to leave those premises, in this event the owner, manager, operator or employee may reasonably 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. In no event is an owner or agent of the premises 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 the person [or persons] violating this Ordinance fails or refuses to comply with this directive and the owner, manager, operator or employee who observed the violation or if a different person who directed the person [or persons] in violation 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, 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.

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 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 departments 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 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, the Henderson County Health Department, 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 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 fifty dollars (\$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 one (1) year.
3. A fine not exceeding two fifty hundred dollars (\$250.00) for each additional violation within one (1) year.

C. The fines set out above shall be enforced by administrative citation payable at the Finance Department of the City. Failure to pay the citation within ten (10) days will result in appropriate action being taken in the Henderson District Court for violation of this Ordinance.

D. 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.

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 13. Public Education:

The City Manager's Office 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 14. Governmental Agency Cooperation: The City requests the Henderson County Health Department for its assistance in the effective implementation of this Ordinance.

Section 15. Other Applicable Laws: This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Section 16. Construction: This Ordinance shall be construed so as to further its stated purposes.

Section 17. 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 18. Effective Date: This Ordinance shall be effective on October 1, 2006.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

On first reading of the foregoing ordinance, it was moved by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, that the ordinance be adopted on its first reading.

On roll call the vote stood:

Commissioner Mills: \_\_\_\_\_ Commissioner Hall: \_\_\_\_\_  
Commissioner Sights: \_\_\_\_\_ Mayor Lackey: \_\_\_\_\_  
Commissioner Deep: \_\_\_\_\_

WHEREUPON, Mayor Lackey declared the ordinance adopted on first reading and ordered that it be presented for a second reading at a meeting of the Board of Commissioners.

On second reading of the ordinance, it was moved by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, that the ordinance be adopted.

WHEREUPON, the vote was called. On roll call the vote stood:

Commissioner Mills: \_\_\_\_\_ Commissioner Hall: \_\_\_\_\_  
Commissioner Sights: \_\_\_\_\_ Mayor Lackey: \_\_\_\_\_  
Commissioner Deep: \_\_\_\_\_

WHEREUPON, Mayor Lackey declared the ordinance adopted, affixed his signature and the date and ordered that it be recorded.

\_\_\_\_\_  
Henry G. Lackey, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Carolyn Williams, City Clerk

**APPROVED AS TO FORM AND  
LEGALITY THIS \_\_\_\_ DAY OF  
AUGUST, 2006.**

By: \_\_\_\_\_  
Joseph E. Ternes, Jr.  
City Attorney

ORDINANCE AMENDING SMOKING ORDINANCE

**SUMMARY:** AN ORDINANCE AMENDING REGULATION OF SMOKING ORDINANCE FOR THE CITY OF HENDERSON BY PROVIDING FOR EXEMPTION FOR BARS THAT MEET DEFINITION AND WHICH SATISFY REQUIREMENTS OF EXEMPTION THAT THE BAR AREA BE FULLY ENCLOSED AND PHYSICALLY SEPARATED BY SOLID WALLS OR OTHER SOLID ENCLOSURE, HAVE A VENTILATION SYSTEM WHICH VENTS AIR DIRECTLY FROM THE SEPARATE BAR AREA TO THE OUTSIDE, AND DOES NOT ALLOW FILTRATION OF SMOKE FROM THE BAR AREA INTO OTHER DINING AREAS OR OTHER AREAS AS THE CASE MAY BE WITHIN A RESTAURANT

BE IT ORDAINED by the City of Henderson, Kentucky, that Section 16-51, *Definitions*, and Section 16-56, *Where Smoking Not Regulated*, of Article IV, *Smoking In Public Places and Places of Employment*, of Chapter 16, *Offenses*, of the City's Code of Ordinances, are hereby amended by adding the following provisions:

**Sec. 16-51. Definitions.**

Bar means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.

**Sec. 16-56. Where smoking not regulated.**

(h) Bar, provided that the area must be:

- (1) fully enclosed and physically separated by solid walls or other solid enclosure and that any doors in the walls or enclosure shall be closed at all times except when used for entering or exiting the area;
- (2) have a heating, ventilating and air conditioning (HVAC) system which vents air directly from the separate bar area to the outside; and
- (3) allows no filtration of smoke from the bar area into other dining areas or other areas as the case may be within the restaurant.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

This ordinance shall become effective upon its legal adoption.

On first reading of the foregoing ordinance, it was moved by Commissioner Robert M. Mills, seconded by Commissioner Mike Farmer, that the ordinance be adopted on its first reading. On roll call the vote stood:

Commissioner Sights: <u>AYE</u>	Commissioner Mills: <u>AYE</u>
Commissioner Farmer: <u>AYE</u>	Mayor Davis: <u>ABSTAIN</u>
Commissioner White: <u>NAY</u>	

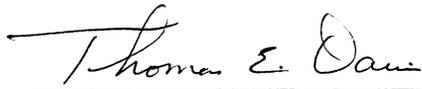
WHEREUPON, Mayor Davis declared the ordinance adopted on first reading and ordered that it be presented for second reading at a meeting of the Board of Commissioners.

On second reading of the ordinance, it was moved by Commissioner Mike Farmer, seconded by Commissioner Robert M. Mills, that the ordinance be adopted.

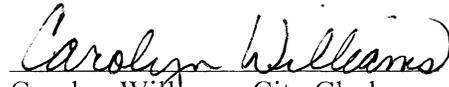
WHEREUPON, the vote was called. On roll call the vote stood:

Commissioner Sights: <u>AYE</u>	Commissioner Mills: <u>AYE</u>
Commissioner Farmer: <u>AYE</u>	Mayor Davis: <u>ABSTAIN</u>
Commissioner White: <u>NAY</u>	

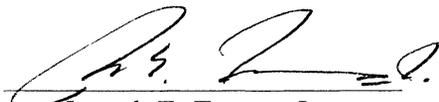
WHEREUPON, Mayor Davis declared the ordinance adopted, affixed his signature and the date and ordered that it be recorded.

  
 \_\_\_\_\_  
 Thomas E. Davis, Mayor  
 Date: March 13, 2007

ATTEST:

  
 Carolyn Williams, City Clerk

APPROVED AS TO FORM AND LEGALITY THIS 23<sup>rd</sup> DAY OF FEBRUARY, 2007

By:   
 Joseph E. Ternes, Jr.  
 City Attorney

*Record of Ordinances of Meetings in 2017*

ORDINANCE NO. 16-17

ORDINANCE AMENDING CODE OF ORDINANCES  
PERTAINING TO SMOKING

**SUMMARY:** AN ORDINANCE AMENDING ORDINANCE 19-06 PERTAINING TO SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT SO AS TO ADD DEFINITIONS OF VAPOR PRODUCT, RETAIL VAPOR STORE, AND CLARIFY THEIR TREATMENT IN SAID ORDINANCE, AND ADDING SMOKING PROHIBITION WITHIN 15 FEET OF PLAYGROUNDS AND WATER FEATURES IN CITY PARKS AND TO ADD NON-SMOKING OR SMOKING DESIGNATED AREAS TO PERMITTED SPECIAL EVENTS, TO BECOME EFFECTIVE AT MIDNIGHT ON JUNE 1, 2017

WHEREAS, the Kentucky General Assembly passed Senate Bill 109 on March 31, 2014, defining “alternative nicotine product”, “tobacco product” and “vapor product”, in an effort to ban the sale of e-cigarettes to minors based on health concerns regarding same, by a vote of 93-7 in the House and 35-1 in the Senate; and

WHEREAS, the Governor signed said bill into law on April 10, 2014, editing the negative impact of said products; and

WHEREAS, the United States Food and Drug Administration has proposed rules to regulate alternative nicotine products and vapor products including electronic cigarettes, cigars, pipe tobacco, nicotine gels, water pipe tobacco and hookahs to require health warning labels; and

WHEREAS, the Board of Commissioners deems it necessary and appropriate to amend its existing ordinance pertaining to smoking in public places and places of employment to include the new statutory definitions of “vapor product” and “retail vapor store” so as to clarify what actions are not permitted in public places and places of employment, to add a prohibition on smoking within 15 feet of playgrounds or water features in city parks, and to add a non-smoking or smoking designated option to permitted special events.

NOW, THEREFORE, BE IT ORDAINED by the City of Henderson, Kentucky, that Article IV- *Smoking in Public Places and Places of Employment*, Section 16-51. *Definitions*, Section 16-54. *Prohibition of Smoking in Outdoor Arenas and Stadiums*, and Section 16-56. *Where smoking not regulated*, of Chapter 16 *Offenses* of the Code of Ordinances is hereby amended as follows:

**Sec. 16-51. - Definitions.**

The following words and phrases, whenever used in this article, shall be construed as defined in this section:

*Bar* means an area which is devoted to the serving of alcoholic beverages for consumption by patrons on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term "bar" shall not include the restaurant dining area.

*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.

PUBLICATION DATE: 05/27/2017

FIRST READ: 04/25/2017  
SECOND READ: 05/23/2017

ORDINANCE NO. 16-17

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*Common area* means any area where individuals may congregate such as hallways, lobbies, restrooms and elevators.

*Employee* means 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 nonprofit entity.

*Employer* means a person, business, partnership, association, corporation, including a municipal corporation, trust, or nonprofit entity that employs the services of one or more individual persons.

*Enclosed area* means 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.

*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 treatment facilities for drug addiction, alcoholism, and the like, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, 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.

*Place of employment* means 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.

*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.

*Public place* means 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.

*Restaurant* means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, national and regional chains, 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.

*Retail tobacco store* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

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ORDINANCE NO. 16-17 (CONT.)

Retail Vapor Store - A retail store devoted primarily to the sale of any vapor or electronic smoking product, including but not limited to e-cigarettes, e-cigars, e-pipes, e-hookah, or vapor pen, or under any other product name or descriptor and accessories, including any vapor cartridge or other container of a liquid solution or other material that is intended to be used with or in an electronic smoking device and in which the sale of other products is incidental. The sale of other such products shall be incidental.

*Service line* means 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.

*Shopping mall* means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

*Smoking* means 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. *Smoking* also includes the use of a vapor product which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this section.

*Sports arena* means 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.

Vapor product means any noncombustible product that employs a heating element, battery, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size and including the component parts and accessories thereto, that can be used to deliver vaporized nicotine or other substances to users inhaling from the device. *Vapor product* includes but is not limited to any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, e-hookah or similar product or device and every variation thereof, regardless of whether marketed as such, and any vapor cartridge or other container of a liquid solution or other material that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar product or device.

**Sec. 16-54.** - Prohibition of smoking in outdoor arenas and stadiums and playgrounds and water features in City Parks and designated special events.

- (a) Smoking is prohibited in the seating areas of all outdoor arenas, stadiums and amphitheaters;
- (b) Smoking is prohibited in a fifteen (15) foot radius of any playground or water feature in a city park; and
- (c) Smoking is prohibited in a city park during any Special Event wherein a sponsor has requested in its Special Event Permit application for the event to be non-smoking or non-smoking with designated smoking areas pursuant to Section 17-51.

**Sec. 16-56.** - Where smoking not regulated.

Notwithstanding any other provision of this article to the contrary, the following areas shall be exempt from the provisions of sections 16-52 and 16-53:

- (a) Private residences, except when used as a licensed childcare, adult day care or health care facility.

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### ORDINANCE NO. 16-17 (CONT.)

- (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, and that designated smoking rooms shall be contiguous and shall be able to be accessed by handicapped persons. Smoke from the designated smoking rooms shall not infiltrate into areas where smoking is prohibited under the provisions of this article. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- (c) Retail tobacco stores and retail vapor stores, provided that smoke and/or vapor from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this article.
- (d) 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 16-53 and 16-54 shall apply.
- (e) Outdoor areas of places of employment, except those covered by the provisions of sections 16-54 and 16-55.

Other specific outdoor areas designated for smoking by a business owner, manager, or other authorized person and are reasonably distanced from and do not obstruct the entrances to the business; and may be attached or freestanding, including but not limited to courtyards, decks, gazebos, patios, and arranged open air seating, and shall include those outdoor areas or facilities which are in existence on the effective date of this article.

- (f) Indoor smoking areas provided in state or federal government office buildings or work places pursuant to KRS 61.165.
- (g) At a charitable gaming event, sponsored by a licensed charitable gaming organization as defined by KRS 238.505(3) held in a licensed charitable gaming facility as defined by KRS 238.505(11). "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter. Charitable gaming shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races.

(h) Bar, provided that the area must be:

- (1) Fully enclosed and physically separated by solid walls or other solid enclosure and that any doors in the walls or enclosure shall be closed at all times except when used for entering or exiting the area;
- (2) Have a heating, ventilating and air conditioning (HVAC) system which vents air directly from the separate bar area to the outside; and
- (3) Allows no filtration of smoke from the bar area into other dining areas or other areas as the case may be within the restaurant.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

The ordinance shall become effective on June 1, 2017 at 12:00 a.m. Central Standard Time.

On first reading of the foregoing ordinance, it was moved by Commissioner Pruitt, seconded by Commissioner Bugg, that the Ordinance be adopted on its first reading.

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## Record of Ordinances of Meetings in 2017

ORDINANCE NO. 16-17 (CONT.)

On roll call the vote stood:

Commissioner Pruitt:	<u>AYE</u>	Commissioner Staton:	<u>NAY</u>
Commissioner Bugg:	<u>AYE</u>	Mayor Austin:	<u>AYE</u>
Commissioner Vowels:	<u>AYE</u>		

WHEREUPON, Mayor Austin declared the ordinance adopted on first reading and ordered that it be presented for a second reading at a meeting of the Board of Commissioners.

On second reading of the ordinance, it was moved by Commissioner Bugg, seconded by Commissioner Vowels, that the Ordinance be adopted. On roll call the vote stood:

Commissioner Pruitt:	<u>AYE</u>	Commissioner Staton:	<u>NAY</u>
Commissioner Bugg:	<u>AYE</u>	Mayor Austin:	<u>AYE</u>
Commissioner Vowels:	<u>AYE</u>		

WHEREUPON, Mayor Austin declared the ordinance adopted, affixed his signature and the date and ordered that it be recorded.



Steve Austin, Mayor

Date: May 23, 2017

ATTEST:

  
Marée Collins, City Clerk

**APPROVED AS TO FORM AND  
LEGALITY THIS 18<sup>th</sup> DAY OF  
APRIL, 2017.**

By:   
Dawn S. Kelsey  
City Attorney