

**AN ORDINANCE RELATING TO THE PROHIBITION OF SMOKING
INDOORS – KOC-06-820-464**

BE IT ORDAINED by the Fiscal Court of the County of Oldham, Commonwealth of
Kentucky as follows:

WHEREAS, secondhand smoke is a Group A carcinogen, such as asbestos, radon gas and benzene and has been proven to cause cancer at level which secondhand smoke is typically found, and

WHEREAS, 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. Children exposed to secondhand smoke have an increased risk of respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer.

WHEREAS, a significant amount of secondhand smoke exposure occurs in the workplace and employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke.

WHEREAS, The Environmental Protection Agency and the American Society of Heating, Refrigeration and Air Conditioning Engineers 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.

WHEREAS, the Environmental Protection Agency, the Department of Health and Human Services, the National Cancer Institute, and the Centers for Disease Control and Prevention, agree that secondhand smoke is harmful to health, and

WHEREAS, the Oldham County Fiscal Court's first obligation is to protect the lives of the citizens of Oldham County, and

Accordingly, the Oldham County Fiscal Court 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 recognize and guarantee that the public's need to breathe smoke-free air shall have priority over the individual's desire to smoke.

1. DEFINITIONS

For the purpose of this ordinance, the following definitions shall apply:

- (a) Dwelling: Any place used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, private residences, a hotel or motel room or suite or a hospital, hospice or nursing home room, but not a hotel, motel, hospital, hospice or nursing home lobby, common elevator, common hallway or other common area.
- (b) Enclosed Area: All space in a structure enclosed from the weather, whether or not windows or doors are open, which is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has 80% or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary. If a person or organization leases or possesses only a portion of an enclosed area, the term "enclosed area" applies to the leasehold or possessory interest as well.
- (c) Place of Employment: An enclosed 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.
- (d) Private Organization: An establishment without paid employees, which maintains selective members, is operated by the membership, does not provide food or lodging for pay to anyone who is not a member or a member's guest and is not profit oriented.
- (e) "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. The sale of such other products shall be considered incidental if such sales generate less than 50% of the total annual gross retail sales.
- (f) Smoke or smoking: The act of inhaling or exhaling the smoke from any lighted cigarette, cigar, pipe, or other combustible tobacco product.

2. PROHIBITION OF SMOKING INDOORS. EXCEPTIONS.

- (a) Except as otherwise provided in section (b) no person shall smoke within any place of employment or enclosed area in Oldham County, Kentucky, including but not limited to restaurants, bingo halls, bars, retail stores, and entertainments venues.

- (b) Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Section 2(a):
 - (i) A person's own dwelling, or in the dwelling of another with said owner's permission, or in a physically separate and independently ventilated room in a hospital, hospice, or nursing home.
 - (ii) Facilities operated by private organizations; provided that when such clubs are being used for functions to which the general public is invited, the prohibitions set out in Section 2(a) shall apply.
 - (iii) 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. All smoking rooms on the same floor must be contiguous. Smoke from the designated smoking rooms shall not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
 - (iv) Retail tobacco stores, provided that smoke from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance.
 - (v) Indoor smoking areas provided in state or federal governmental office buildings or workplaces pursuant to KRS 61.165.
- (c) Smoking is prohibited within a reasonable distance of the outside entrance to or open windows of any enclosed area in which smoking is prohibited by this Ordinance and from the air intake of a ventilation system serving an enclosed area where smoking is prohibited, in order to insure tobacco smoke does not enter that enclosed area through entrances, windows, ventilation systems or other means.
- (d) All enclosed areas owned, leased or operated by the County of Oldham Kentucky shall be subject to the provisions of this Ordinance.
- (e) Nothing in this subchapter shall prevent an owner, lessee, principal manager or person in control of any place, including, without limitation, any enclosed area, motor vehicle, outdoor area, or dwelling, from prohibiting smoking completely in such place. Within such premises as an authorized nonsmoking designation has been made and signage is posted, smoking shall be prohibited as if otherwise prohibited by Section 2(a) of this Ordinance.
- (f) Nothing in this subchapter shall authorize smoking in any place where it is otherwise prohibited by statute, ordinance, regulation or by order of the Fire Marshal.

3. 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.

4. 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:
 - (i) A fine of fifty dollars (\$50.00) for the first offense;
 - (ii) A fine of one hundred (\$100.00) for the second offense
 - (iii) A fine of two hundred and fifty (\$250.00) for the third and each subsequent offense.
- (c) Persons who smoke in areas where smoking is prohibited and who refuse to extinguish their smoking material when asked, may be required to leave the premises, and shall be subject to prosecution for trespass if they do not leave when asked,
- (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 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 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.

5. ENFORCEMENT

A. The Oldham County Health Department and County's Code Enforcement Officer and the City and County Police shall assume enforcement responsibilities; and all other County officials and employees designated by the County Judge Executive or Fiscal Court shall enforce this Ordinance.

B. Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the County of Oldham.

6. REMOVAL OF ASHTRAYS

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.

7. POSTING 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 Article, by the owner, operator, manager, or other person in control of that place.

B. Every public place and place of employment where smoking is prohibited by this Article shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

8. SEVERABILITY

If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which may be given effect independent of the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

9. EFFECTIVE DATE

This Ordinance shall become effective February 1, 2007 at the hour of 12:01AM.

This ordinance shall become effective upon its passage and advertisement according to law.

Dated this __5th__ day of __December__, 2006.

File _____

____/s/ Signed Copy on

MARY ELLEN KINSER
Oldham County Judge/Executive

ATTEST:

/s/ Signed Copy on File _____
Tina M. Schaaf
Oldham County Fiscal Court Clerk