

November 9, 2010

ORDINANCE NO. 451.15

AN ORDINANCE OF THE FISCAL COURT OF THE COUNTY OF KENTON, COMMONWEALTH OF KENTUCKY, PROHIBITING SMOKING IN PUBLIC BUILDINGS, ESTABLISHMENTS IN PUBLIC BUILDINGS, AND PLACES OF EMPLOYMENT.

WHEREAS, Kentucky Revised Statute Section 67.083 authorizes the Kenton County Fiscal Court to enact ordinances to promote the public welfare; and

WHEREAS, secondhand smoke is a Group A carcinogen, as is asbestos and has been proven to cause cancer at levels in which secondhand smoke is typically found; and

WHEREAS, several studies have found that tobacco smoke is a major contributor to indoor air pollution. Breathing secondhand smoke is a possible cause of disease in healthy nonsmokers. These diseases include heart disease, stroke, respiratory disease and lung cancer; and

WHEREAS, secondhand smoke is a possible cause or contributing factor of sudden infant death syndrome (SIDS), low birth weight, acute respiratory infections, ear infections and asthma attacks in infants and children; and

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; and

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, copies of the above studies have been reviewed and are hereby adopted in support of the legislative action of the Fiscal Court in adopting this Ordinance; and

WHEREAS, the Kenton County Fiscal Court's obligation is to protect the health, safety, and welfare of the citizens, while promoting the economic well-being of Kenton County; and

WHEREAS, the Fiscal Courts of the Counties of Campbell and Kenton determine that it is good public policy to promulgate a consistent ordinance, which is to be implemented at the same time.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF KENTON, COMMONWEALTH OF KENTUCKY:

Section I- That a new Section of the Code of Ordinances be and hereby is created to read as follows:

(1) Findings and Intent:

The Fiscal Court of the County of Kenton hereby finds and determines that it is in the best interest of the citizens of this County to protect nonsmokers from involuntary exposure to secondhand smoke in most places of employment, public buildings, and establishments in public buildings. The Fiscal Court further finds and determines that a balance should be struck between the health concerns of non-consumers of tobacco products and the need to minimize regulation of private spheres of conduct and choice with respect to the use or nonuse of tobacco products in certain designated public buildings, establishments in public buildings, and in private places. Therefore, the Fiscal Court hereby declares that the purpose of this Ordinance is to preserve and improve the health, comfort, and environment of the people of this County by limiting exposure to secondhand smoke.

(2) Definitions:

For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ASHTRAY. Any item intended to be used on the premises of a public building or an establishment in a public building for the collection of ashes, butts, or residue from smoking.

BUILDING. Any 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 more than fifty percent (50%) of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary. If an establishment leases or possesses only a portion of a building, the term “building” applies to the leasehold or possessory interest. The term “building” does not include outdoor open air patio areas.

DWELLING. Any place used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, 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.

EMPLOYEE. A person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or a person who volunteers their service.

EMPLOYER. A person, business, partnership, association, corporation, trust, or non-profit entity that employs the services of one or more individual persons.

ESTABLISHMENT. An entity, endeavor or organization, including its owners, operators, directors, shareholders, partners, employees and possessions.

PLACE OF EMPLOYMENT. A building or establishment in a building under the control of a public or private employer that employees normally frequent during the course of employment, but not a dwelling unless used as a licensed childcare, adult day care, or health care facility.

PRIVATE CLUB. An organization, whether incorporated or not, which: 1) is the owner, lessee, or occupant of a building or establishment in a building that is under the exclusive control and management of the club; 2) which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain; 3) 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; 4) has established bylaws and/or a constitution to govern its activities; and 5) has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

PUBLIC BUILDING. A building to which the public is invited or in which the public is permitted, including a private club when being used for a function to which the general public is invited, but not a dwelling unless used as a licensed childcare, adult day care, or health care facility.

SMOKE or SMOKING. The act of inhaling, exhaling, or carrying any lighted or heated cigarette, cigar, pipe, or other combustible tobacco product.

(3) Prohibition of Smoking in Public Buildings and Places of Employment and Exceptions.

(A) No person shall smoke within any public building, an establishment in a public building, or place of employment, except in the following locations:

(1) Any dwelling. This exception does not extend to private residences when they are used as a licensed childcare, adult day care, or health care facility.

(2) A private club. This exception does not extend to private clubs when being used for a function to which the general public is invited.

(B) Nothing in this subchapter shall prevent an owner or proprietor, including, without limitation, any motor vehicle, outdoor area, or dwelling, from prohibiting smoking completely in such place, and no person shall fail to abide by such a private prohibition.

(C) 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.

(4) Conditions and Qualifications for Exceptions

(A) In order to be excepted under this subchapter, a private club must submit a Letter requesting exemption to this ordinance, accompanied by verifiable supporting documentation, to the Northern Kentucky Independent District Health Department claiming an exception under this subchapter. The Northern Kentucky Independent District Health Department shall have the authority to determine if the request meets the conditions and qualifications for exception.

(5) Posting of Signs; Removal of Ashtrays

(A) An owner, lessee, principal manager, or person in control of a public building or an establishment in a public building shall post signs, with letters of not less than one inch high or symbols no less than three inches high, using the words "No Smoking" or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette surrounded by a red circle with a red bar across it conspicuously either on all public entrances or in a position clearly visible on entry into a public building or an establishment in a public building.

(B) All ashtrays shall be removed from any area where smoking is prohibited by this subchapter and shall not be permitted by the owner, operator, manager or other person having control of the public building or establishment in a public building. Any permanent structure that functioned or was used as an ashtray shall be disabled or altered to prevent its use as an ashtray.

(C) The requirements of this section do not apply to any exempt dwelling.

(6) Duties of Owners of Public Buildings and/or Establishments in Public Buildings

(A) An owner, lessee, principal manager, or person in control of a public building or establishment in a public building shall:

(1) Ask smokers to refrain from smoking in any no-smoking area;

(2) Require a smoker leave the premises if the smoker refuses to extinguish any smoking materials after being requested to do so.

(B) An owner, principal manager, proprietor, or any other person in control of a business shall ensure compliance by subordinates, employees, and agents with this subchapter.

(C) The owner, operator, manager or his designee, or employee of every establishment in a public building shall inform persons violating this subchapter of the applicable provisions thereof and require compliance.

(7) Enforcement

(A) The Fiscal Court requests the assistance of the Northern Kentucky Independent District Health Department in enforcement of this ordinance. Upon its Board of Health's agreement, the Northern Kentucky Independent District Health Department shall enforce the provisions of this subchapter through the issuance of citations or notices of violation, and for this purpose during times when employees are scheduled to work or the public building or establishment in a public building is open to the public, or other reasonable time, may enter that portion of the premises of any public building or establishment in a public building where the public is invited or where employees perform their duties and take breaks, including but not limited to those areas where food and beverages, alcoholic or otherwise, are served, prepared or stored. Nothing herein shall be construed to prevent any peace officer with jurisdiction from issuing a citation for a violation of this subchapter committed in his or her presence.

(B) Notice of the provisions of this subchapter shall be given by the Fiscal Court to all applicants for any license required to conduct business activity.

(C) Any citizen who desires to register a complaint under this subchapter may initiate such by contacting the Northern Kentucky Independent District Health Department through a telephone complaint line or other means of communication designated by the Department.

(D) The Health Department, Fire Department, or their designees shall, while a public building or an establishment in a public building is undergoing otherwise mandated inspections, inspect for compliance with this Article.

(8) Violations and Penalties

(A) Except as otherwise provided in subsection (B) hereof, any establishment, employer, or employee in violation of this subchapter shall be subject to the following penalties:

- (1) A warning for the first offense;
- (2) A fine of one hundred dollars (\$100) for the second offense within one (1) year;
- (3) A fine of two hundred and fifty dollars (\$250) for the third and each subsequent offense within one (1) year.

(B) Persons who smoke in an area where smoking is prohibited and who refuse to extinguish their smoking material when asked, shall be required to leave the premises, and shall be subject to prosecution for criminal trespass if they do not leave when asked. A person who smokes in an area where smoking is prohibited shall also be subject to a fine of one hundred dollars (\$100) per offense.

(C) Each calendar day during which the violation occurs shall constitute a separate and distinct offense.

(9) Non-Retaliation

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 reports or attempts to prosecute a violation of this Ordinance.

(10) Severability

If any provision, clause, sentence, or paragraph of this subchapter or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are declared to be severable.

Section II- This Ordinance shall become effective April 15, 2011.

Section III- Pursuant to KRS 67.083(7), this Ordinance shall be enforced throughout the entire area of the County of Kenton to include the unincorporated and incorporated areas of the county unless the legislative body of a city within the county has adopted an ordinance pertaining to the same subject matter, which is the same as or more stringent than the standards that are set forth in this Ordinance. A copy of this Ordinance shall be forwarded to the mayor of each city in the County of Kenton.

2nd Reading this _____ day of December, 2010 Vote: ___ Yes, ___ No

FISCAL COURT OF
KENTON COUNTY, KENTUCKY

BY: _____
RALPH A. DREES
COUNTY JUDGE/EXECUTIVE

ATTEST:

FISCAL COURT CLERK