

AN ORDINANCE AMENDING SECTION 14-97(6) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO AMEND THE DEFINITION OF SMOKE OR SMOKING TO INCLUDE ELECTRONIC SMOKING DEVICES, INCLUDING BUT NOT LIMITED TO, E-CIGARETTES OR E-CIGS; CREATING SECTION 14-97(8) OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO DEFINE ELECTRONIC SMOKING DEVICE.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 — In order to serve the public health, safety and general welfare, it is declared that E-Cigarettes or E-Cigs be included in the definition of smoke or smoking that prohibits smoking in all buildings open to the public or used as workplaces in Sections 14-97 to 14-104.

Section 2 – That Section 14-97 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

For the purpose of Sections 14-97 to 14-104, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(1) *Building.* Any structure whose floor area is enclosed overhead by a roof or other covering of any material, whether permanent or temporary, and has forty (40) percent or more of its perimeter permanently or temporarily enclosed by walls, windows, doors, or other coverings of any material. Any structure whose floor area is enclosed overhead by a roof or other covering of any material, whether permanent or temporary, that has 40% or more of the perimeter temporarily enclosed by walls, windows, doors or other coverings of any materials shall not be subject to the definition of a building when the temporary walls, windows, doors or other coverings are not in place.

(2) *Dwelling.* Any building used primarily for sleeping overnight and conducting activities of daily living, including, without limitation, a single or multi-family residential housing unit, a hotel or motel room or suite or a hospital, hospice or nursing home room.

(3) *Establishment.* Any business or other entity operating or otherwise located in a building or portion thereof, and open to public, including but not limited to banks, laundromats, retail stores, professional offices, restaurants, bars, gaming facilities such as bingo halls, pool halls, bowling alleys, child day care facilities, and adult day care facilities, among others.

(a) Open to the public. Buildings, portions thereof, or establishments therein, are "open to the public" when their physical nature, function, custom, usage, or notice would cause a reasonable person to believe no invitation or permission to enter is required.

(4) *Private organization.* An organization which is the owner, lessee, or occupant of a building, that is not open to the public. The building will be used exclusively for the organization's or a member's purposes at all times. The organization must maintain selective members, and be operated by the membership. The organization neither provides food, drink, nor lodging for pay to anyone who is not a member or a member's guest, nor permits others to provide food, drink, or lodging for pay to anyone who is not a member or a member's guest. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. § 501.

(5) *Retail tobacco store.* A retail store devoted primarily to the sale of any tobacco product, including but not limited to cigarettes, cigars, pipe tobacco and chewing tobacco, and accessories and in which the sale of other products is incidental. The sale of such other products shall be considered incidental if such sales generate less than twenty-five (25) percent of the total annual gross sales.

(6) *Smoke or smoking.* The act of inhaling or exhaling from, or the

burning, heating or carrying of, any lighted or heated cigarette, cigar, pipe, other combustible tobacco product, or electronic smoking device or any oral smoking device including but not limited to an E-Cigarette or E-Cig.

(7) *Workplace.* Any building or portion thereof in which an establishment is located, including, but not limited to, work areas, private offices, lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias, and hallways.

(8) *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 to simulate smoking through inhalation of 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.

Section 3 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: November 13, 2014

/s/ Jim Gray
MAYOR

ATTEST:

/s/ Meredith Nelson

CLERK OF URBAN COUNTY COUNCIL

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