

AN ORDINANCE AMENDING SECTION 14-97 OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO CREATE SECTION 14-97(9) DEFINING RETAIL E-CIGARETTE STORES; AMENDING SECTION 14-98 OF THE CODE OF ORDINANCES RELATED TO SMOKING INDOORS TO CREATE SECTION 14-98(1)(g) TO CREATE AN ENFORCEMENT EXEMPTION FOR RETAIL E-CIGARETTE STORES.

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

Section 1 – 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:

**Sec. 14-97. Regulation of smoking indoors—Definitions.**

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.]* 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 vapor pen, or under any other product name or descriptor.

(9)

*Retail Electronic Cigarette Store.* A retail store devoted primarily to the sale of any electronic smoking device, 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, and in which the sale of other products is incidental. The sale of other such products shall be incidental if the sales generate less than twenty-five (25) percent of the total annual gross sales.

Section 2 – That Section 14-98 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Sec. 14-98. Same—Prohibition; exceptions.

(1)

No person shall smoke within any building or any establishment therein, that is open to the public, or any workplace. No person shall smoke within any public transportation vehicle, including buses and taxicabs, nor within any ticket, boarding and waiting area of public transportation

buildings enclosed overhead by a roof. The prohibition does not apply to the following locations, provided that smoke does not infiltrate into areas where smoking is prohibited under the provisions of sections 14-97 to 14-104

(a)

Any dwelling. This exception also extends to a business located in the dwelling and owned or leased by the occupant living in the dwelling; provided, however, that the business is not operating as a child care, adult day care, or health care facility. This exception does not extend to a lobby, common elevator, common hallway, or any other common area of a building containing attached dwelling units or hotel or motel rooms. If a hospital, hospice, or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with another person without that person's consent.

(b)

A rental room or hall being used by a person or group for a private social function that is not open to the public.

(c)

Any room used for psychological treatment of nicotine addiction by a licensed health care professional, or in a physically separate and independently ventilated room in a hospital, hospice, or nursing home open to all residents as a smoking room and for no other purpose.

(d)

A retail tobacco store.

(e)

A theatrical production by a performer as part of the performance so long as adequate notice is provided patrons both before the performance and by specific signage at the theater.

(f)

A building operated or used by a private organization, provided that the building is not open to the public.

(g)

A retail electronic cigarette store.

(2)

Nothing in this chapter shall prevent an owner, lessee, principal manager or person in control of any building or establishment therein, or any other place, including, without limitation, any motor vehicle, outdoor area, or dwelling, from prohibiting smoking completely in any such place.

(3)

Nothing in this chapter shall authorize smoking in any place where it is otherwise prohibited by statute, ordinance, regulation or by order of the fire marshal.

(4)

All buildings or vehicles owned, leased, operated by or under the jurisdiction of the Lexington-Fayette Urban County Government or any unit thereof shall be subject to the provisions of sections 14-97 to 14-104 unless the Lexington—Fayette Urban County Government Council adopts a written policy pursuant to KRS 61.165(3) (a) or (b), in which

event the written policy shall apply to the extent KRS 61.165(3) is controlling.

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

PASSED URBAN COUNTY COUNCIL: May 7, 2015

/s/ Jim Gray  
MAYOR

ATTEST:

/s/ Meredith Nelson  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: May 14, 2015-1t

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