

Chapter 120 Public Smoking

Cross-Reference:

All City of Pikeville Government building and maintenance facilities have been and will continue to be smoke free facilities.

K.R.S. 61.615; K.R.S. 511.080

§ 120.01 FINDINGS AND INTENT.

The Board of Commissioners finds that:

(A) In June 2006 the U.S. Surgeon General issued a report reviewing the health consequences of involuntary exposure to tobacco smoke. The report concluded that:

(1) Secondhand smoke causes premature death and **disease in children** and adults who do not smoke;

(2) Children exposed to secondhand smoke are at an increased risk for sudden death syndrome (SIDS), acute respiratory infections, ear problems and more severe asthma;

(3) Exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer;

(4) The scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke;

(5) Many millions of Americans, both children and adults, are still exposed to secondhand smoke;

(6) Eliminating smoking in indoor spaces fully protects nonsmokers from exposure to second hand smoke.

(B) 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.)

(C) 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.)

(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 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.)

(G) 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 days 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.)

(H) 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.)

(I) 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.)

(J) 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.)

(K) Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or 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 burns and ash stains on merchandise and fixtures cause 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.

The Board of Commissioners adopts the foregoing findings of fact as the Board's basis for its action, and states that the purpose of the adoption of this chapter is:

(1) To protect the public health and welfare of those we serve but more important our children 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.

§ 120.02 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ARENA Ballparks, 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 such as music concerts, plays or public performances.

BUSINESS. 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.

EMPLOYEE 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.

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

ENCLOSED AREA All space between a floor and ceiling that is enclosed on all sides by solid doors, walls and/or windows, which the combination of extend from the floor to the ceiling.

FREESTANDING BAR An establishment within a building that is not a restaurant nor an attached bar, as those terms are defined herein, has a current distilled spirits and wine retail drink license, restaurant drink license, restaurant wine license or malt beverage license issued by the Commonwealth of Kentucky and City of Pikeville Government and serves alcoholic beverages for consumption by guests/patrons within a totally "enclosed area" as defined herein.

HEALTH CARE FACILITY 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 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 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 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 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 and vehicles, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, sports arenas, theaters, service lines 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 An eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, 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 except a "free standing bar" as defined herein where all employee, guest or patrons must be at least 21 years of age to enter.

RETAIL TOBACCO STORE Facilities that are owned or leased by tobacco manufacturers or wholesalers for the promotion, testing, research and/or development of tobacco products. The purposes of this chapter, a tobacco manufacturer or wholesaler shall be an establishment that generates 75% or more of its total annual gross revenues from the sale of tobacco products. This would include newsstands, but does not include grocery stores, restaurants or drugstores.

SERVICE LINE An indoor or outdoor line in which one or more persons are waiting for or receiving service of any kind or purchasing items, whether or not the service involves the exchange of money.

SHOPPING MALL An enclosed public walkway or hall area that serves to connect retail or professional establishments.

SMOKING Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe or other lighted tobacco product, in any manner or in any form.

§ 120.03 APPLICATION TO CITY, COUNTY AND STATE FACILITIES.

Smoking policies concerning facilities owned or operated by the city, county or the state shall be governed by regulations adopted in compliance with KRS

61.165. To the degree not in conflict with this statute or other existing statutory scheme affecting such facilities, this chapter shall apply.

§ 120.04 PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES.

Smoking is prohibited in all enclosed public places, as defined in § [120.02](#) above, within the city limits of the city. Smoking is prohibited in all areas of restaurants as defined by § [120.02](#).

§ 120.05 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 or location of the enclosed smoking areas shall be communicated to all existing employees by the effective date of this chapter and to all prospective employees upon their application for employment.
- c) Employers may elect as an exception under § [120.02](#) to provide an “Enclosed Smoking Area” as defined by § [120.08](#) section (b)

§ 120.06 PROHIBITION OF SMOKING IN OUTDOOR ARENAS AND STADIUMS.

Smoking is prohibited in the seating areas, concession areas, bathrooms of all outdoor arenas, venues, stadiums and amphitheaters or as further defined under § [120.02](#). The Owners, lessees or operators of these venues may designate a “smoking area(s)” in other areas of the arena, stadium or amphitheaters not prohibited herein as long as such area is outdoors, well ventilated and at a reasonable distance from any main path, entrance, window or ventilation system as outlined in § [120.07](#).

§ 120.07 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 chapter and from the air intake of a ventilation system serving an enclosed area where smoking is prohibited, in order to insure that tobacco smoke does not enter that enclosed area through entrances, windows, ventilation systems or other means. In these areas the ventilation must be so that the public will not be exposed to second hand smoke by walking the designated path to the entrance of a business.

§ 120.08 WHERE SMOKING IS NOT REGULATED.

1. Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of §§ [120.04](#) and [120.05](#):

- a. Any dwelling. This exception does not extend to a lobby, common elevator, common hallway, or any other common area of the building containing attached dwelling units, but if a hospital, hospice, or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with a non-smoker without that person's consent. This exception does not extend to private residents when they are used as a licensed childcare, adult day care, or health care facility.
- b. Enclosed areas as defined by § [120.02](#) that may be designated at the employer's discretion for the purpose of being a stand alone "Enclosed Smoking Area" for the use of employees who smoke.
- c. Retail tobacco stores, provided that smoke from these premises does not infiltrate into areas where smoking is prohibited under the provisions of this chapter.
- d. Hotel and motel rooms that are rented to guests and are designated as smoking rooms. This does not include those public areas of the hotel and motel including, lobbies, restaurants and meeting rooms.
- e. Private clubs, provided that those areas of such clubs used as restaurants or other for functions open to the public are not exempted and the prohibitions set out in §§ [120.04](#) and [120.05](#) shall apply.
- f. Freestanding Bars as defined by § [120.04](#) where the patrons or guest must be at least 21 years of age to enter. As defined by §

[120.04](#) such facility must stand alone or be an “enclosed area” separate from an other “public place” or restaurant where as to smoke may not be able to infiltrate into any public place not exempt under this section. Doorways and windows leading to other “public place” shall remain closed at all times except to allow entrance or exit. Signs prohibiting patrons or guest under at least 21 years of age to enter shall be clearly and conspicuously posted. It shall be the owners, operator and/or employees obligation to enforce the 21 years of age restriction required herein.

- g. Outdoor areas of places of employment except those covered by the provisions of §§ [120.06](#) and [120.07](#).
- h. Bingo Parlors where the patrons, guest and workers must be at least 18 years of age or older to enter as specified by state and or federal law.
- i. Offtrack Betting Parlors licensed by the Commonwealth of Kentucky where the patrons, guest and workers must be at least 18 years of age or older to enter as specified by state and or federal law.

2. Nothing in this subchapter shall prevent an owner, lessee, principal manager or person in control of any place, including, without limitation, any motor vehicle (other public transportation services), outdoor area, or dwelling, from prohibiting smoking completely in such place, and no person shall fail to abide by such private prohibition.

3. Nothing in this subchapter shall authorize smoking in any place where it is otherwise prohibited by statute, ordinance, and regulation or by order of the Fire Marshal.

§ 120.09 DECLARATION OF ESTABLISHMENT AS NON-SMOKING.

Notwithstanding any other provision of this chapter, 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 non-smoking place regardless of its designation under this chapter. Within such premises as an authorized nonsmoking designation has been made and signage conforming to the specifications set out in § [120.10\(A\)](#), is posted, smoking shall

be prohibited as if otherwise prohibited by this chapter and is subject to penalties as outlined in § [120.99](#).

§ 120.10 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 chapter. 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 chapter. 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 chapter.

(C) All ashtrays shall be removed from any area where smoking is prohibited by 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.

(D) All "Enclosed Smoking Areas" and "designated smoking areas" shall be clearly and conspicuously posted by the owner, operator, manager or other person in control of the premises.

§ 120.11 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 chapter or reports or attempts to prosecute a violation of this chapter.

(B) An employee who continues to work in a setting where an employer allows smoking in violation of this chapter does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

§ 120.12 ENFORCEMENT.

(A) The city's code enforcement officers, the city project manager, the city police officers, the city traffic patrol officer, the Fire Department, the Pike County Health Department [subject to formal determination by the Health Board that the Pike County Health Department shall assume enforcement responsibilities] and any other city officials and employees designated by the City Manager or Board of City Commissioners shall enforce this chapter. The Code Enforcement officer shall approve all "Freestanding Bar" for compliance with this ordinance before smoking is permitted therein.

(B) Notice of the provisions of this chapter shall be given to all applicants for a business license in the city.

(C) Any citizen who desires to register a complaint under this chapter may initiate enforcement with any of the authorized persons listed above.

(D) The Health Department, Fire Department, Codes Enforcement officer, or their designees shall, while in an establishment performing otherwise legal inspections, inspect for compliance with this chapter.

(E) Owners, managers, operators, or employees of establishments regulated by this chapter shall inform persons seen violating this chapter of the requirements of this chapter. In the event an owner, manager, operator or employee of an establishment regulated by this chapter observes a person or persons violating this chapter, he or she shall immediately direct the person or persons in violation to extinguish the item being smoked. Failure of the person directed to extinguish his or her item shall result in the violator being directed to leave the premise. Owners, managers, operators, or employees of "free standing bars: shall direct all persons under 21 years of age to leave the premise. All violators who refuse to leave the premises when ask to do so shall be considered a trespasser and subject to a charge of Criminal Trespass in the Third Degree pursuant to K.R.S. 511.080.

(1) In the event the person (or persons) violating this chapter 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 chapter observes a person or persons violating this chapter 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 chapter shall be in violation of this chapter.

(2) (a) In the event the person (or persons) violating this chapter fails or refuses to comply with this directive, the owner, manager, operator or employee directing the person (or persons) violating this chapter shall take immediate and reasonable steps to obtain the removal of the person [or persons] from the premises.

(b) 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 chapter 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 reasonably determine to allow the person violating this chapter to remain on the premises until appropriate arrangements may be made for the person's removal.

(c) In the event the person (or persons) violating this chapter 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 chapter. Compliance is achieved under this subsection if the owner or agent of the premises orders the person violating the chapter to leave its premises and promptly notifies the police if the person refuses.

(3) In the event the person (or persons) violating this chapter 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 person) 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 chapter shall be in violation of this chapter.

(4) In all events, the establishment in which a violation occurs shall be in violation of this chapter 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 chapter.

(5) An employee who observes a person [or persons] violating this chapter may immediately notify his or her owner, manager, or supervisor of the violation in satisfaction of the employee's responsibility under this chapter. The failure of the employee's owner, manager or supervisor to take appropriate steps

required by this chapter 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 chapter 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 chapter informing the agency or department of the circumstances of the violation or notify the police that the violator is committing a criminal trespass in the third degree by failing to vacate the premise after being told to leave the premise.

(7) The mere presence of a person smoking within the premises of an establishment governed by this chapter 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 chapter 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 chapter, the city, the county Health Department, an employee or any person aggrieved by a failure to comply with this chapter, 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 chapter may bring legal action to enforce this chapter, either by civil action seeking injunctive relief or by criminal complaint in a court of competent jurisdiction.

§ 120.99 PENALTY.

(A) A person who smokes in an area where smoking is prohibited by the provisions of this chapter shall be guilty of a violation, punishable by a fine not exceeding \$50.

(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 chapter shall be guilty of a violation, punishable by:

- (1) A fine not exceeding \$50 for a first violation within a one-year period.
- (2) A fine not exceeding \$100 for a second violation within one year.
- (3) A fine not exceeding \$250 for each additional violation within one year.

(C) In addition to the fines established by this section, violations of this chapter 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 (including but not limited to alcoholic beverage licenses) issued to the person for the premises by the city on which the violation occurred.

(D) Violation of this chapter 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.

(E) Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.