

AN ORDINANCE AMENDING SECTION 14-97(1) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO AMEND THE DEFINITION OF BUILDING INCLUDE STRUCTURES WITH FORTY PERCENT (40%) OR MORE OF ITS PERIMETER ENCLOSED; AMENDING SECTION 14-97(2) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO AMEND THE DEFINITION OF DWELLING TO INCLUDE BUILDING; AMENDING SECTION 14-97(3) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO DELETE THE DEFINITION FOR ENCLOSED AREA AND REPLACE IT WITH A DEFINITION FOR ESTABLISHMENT; AMENDING SECTION 14-97(4) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO AMEND THE DEFINITION OF PRIVATE ORGANIZATION TO DELETE ESTABLISHMENT; AMENDING SECTION 14-97(5) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO AMEND THE DEFINITION OF RETAIL TOBACCO STORE CHANGING FIFTY PERCENT (50%) TO TWENTY-FIVE PERCENT (25%); AMENDING SECTION 14-97(6) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO AMEND THE DEFINITION OF SMOKE OR SMOKING TO INCLUDE BURNING OR CARRYING OF A TOBACCO PRODUCT; AMENDING SECTION 14-97(7) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO DELETE THE DEFINITION FOR TOBACCO WAREHOUSE AND REPLACE IT WITH A DEFINITION FOR WORKPLACE IN BUILDINGS OR A PORTION THEREOF; AMENDING SECTION 14-98(1) OF THE CODE OF ORDINANCE RELATING TO SMOKING INDOORS TO PROHIBIT SMOKING IN AN ESTABLISHMENT OR WORK PLACE; AMENDING SECTION 14-98(1)(a) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO DELETE THE WORD "IN"; AMENDING SECTION 14-98(1)(b) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO DELETE THE WORD "IN" AND MOVE THE REMAINDER OF SECTION (b) TO SECTION (c); AMENDING SECTION 14-98(1)(c) RELATING TO SMOKING INDOORS TO ALLOW FOR EXCEPTIONS FOR PRIVATE GATHERINGS, TREATMENT OF NICOTINE ADDICTION BY LICENSED HEALTHCARE PROFESSIONALS INDEPENDENTLY VENTILATED ROOMS IN HOSPITAL, HOSPICE OR NURSING HOMES; AMENDING SECTION 14-98(1)(d) OF THE CODE OF ORDINANCES TO ALLOW AN EXCEPTION FOR A RETAIL TOBACCO STORE; AMENDING SECTION 14-98(1)(e) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO ALLOW AN EXCEPTION FOR PERFORMERS IN A THEATRICAL PRODUCTION AND TO DELETE THE EXISTING SECTION; AMENDING SECTION 14-98(1)(f) OF THE CODE OF ORDINANCES TO ALLOW AN EXCEPTION USED BY A PRIVATE ORGANIZATION NOT OPENED TO THE PUBLIC; DELETING SECTION 14-98(1)(g) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS IN A TOBACCO WAREHOUSE; AMENDING SECTION 14-98(2) OF THE CODE OF ORDINANCE RELATED TO SMOKING INDOORS TO INCLUDE BUILDING OR ESTABLISHMENT; CREATING SECTION 14-98(4) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS MAKING BUILDINGS OWNED, LEASED OR OPERATED BY THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT SUBJECT TO THE PROVISIONS OF SECTIONS 14-97 TO 14-104; AMENDING SECTION 14-99(1) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO INCLUDE WORKPLACE; AMENDING SECTION 14-99(2) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO APPLY TO ANY BUILDING OR WORKPLACE; AMENDING SECTION 14-99(3) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO INCLUDE ASHTRAYS IN ESTABLISHMENTS; AMENDING SECTION 14-99(4) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO REPLACE THE WORD "DWELLING" WITH "BUILDING"; AMENDING SECTION 14-100(1) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO INCLUDE WORKPLACE; AMENDING SECTION 14-100(1)(a) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO ADD SMOKING MATERIALS; AMENDING SECTION 14-100(1)(b) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO INCLUDE ALL PERSONS IN CONTROL OF A BUILDING OR WORKPLACE TO DEMAND PERSONS WHO REFUSE TO STOP SMOKING TO LEAVE THE PREMISES; CREATING SECTION 14-100(1)(c) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO ALLOW REFUSAL OF SERVICE TO PERSONS

WHO ARE SMOKING; CREATING SECTION 14-100(1)(d) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO ALLOW PERSONS IN CONTROL OF BUILDINGS AND WORKPLACES TO TAKE LEGAL MEANS TO STOP SMOKING IN THE PREMISES; AMENDING SECTION 14-100(2) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO INCLUDE BUILDING, ESTABLISHMENT OR WORKPLACE; CREATING SECTION 14-100(3) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS EXEMPTING BUILDINGS COVERED IN SECTION 14-98; AMENDING SECTION 14-101 OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO ALLOW ENFORCEMENT OF THIS SUBCHAPTER BY THE HEALTH DEPARTMENT; DELETING SECTION 14-102(2) OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS; AMENDING SECTION 14-104 OF THE CODE OF ORDINANCES RELATING TO SMOKING INDOORS TO ALLOW ANY PERSON AGGRIEVED BY A VIOLATION OF THIS SECTION TO APPLY FOR INJUNCTIVE OR OTHER LEGAL RELIEF.

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 the declared purpose of Sections 14-97 to 14-104 to prohibit smoking in all buildings open to the public: or used as workplaces;

Section 2 — That Sections 14-97 to 14-104 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby are amended to read as follows:

Section 3 — 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 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 enclosed from the weather, whether or not windows or doors are open. If a person leases or possesses only a portion of a building, the term "building" applies to the leasehold or possessory interest as well~~ area which 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 enclosed by walls, windows, doors, or other coverings of any material, whether permanent or temporary, or open or closed.
- (2) *Dwelling.* Any ~~place~~ building 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.~~

(3) Establishment. ~~Enclosed area. An area that:~~ Any business or other entity operating or otherwise located in a building or portion thereof.

(a) ~~Is closed in overhead by a roof or other covering of any material, whether permanent or temporary; and~~

(b) ~~Has forty (40) percent or more of its perimeter closed in by walls or other coverings of any material, whether permanent or temporary.~~

(4) Private organization. ~~An establishment~~ organization which is the owner, lessee, or occupant of a building used exclusively for the organization's purposes at all times, and which maintains selective members, is operated by the membership, does not 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, and has been granted an exemption from the payment of federal income tax as a non-profit organization under 26 U.S.C. § 501, is not profit-oriented.

(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 merely incidental. The sale of such other products shall be considered incidental if such sales generate less than fifty (50) percent~~ twenty-five (25) percent of the total annual gross sales.

- (6) ~~Smoke or smoking.~~ The act of inhaling or exhaling the smoke from, or the burning or carrying of, any lighted or heated cigarette, cigar, or pipe, or other combustible tobacco product.
- (7) ~~Tobacco warehouse.~~ Any warehouse building offering tobacco for purchase at auction and meeting the definition established in KRS 248.010(4). Workplace. Any building or portion thereof in which an establishment is located, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways.

(Ord. No. 171-2003, § 2, 7-1-03)

Section 4 – That Section 14-98 of the Code of Ordinance of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

- (1) No person shall smoke within any building to which the public is invited or permitted, any establishment therein or any workplace. ~~except in one (1) of the following locations:—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) ~~In any~~ Any dwelling. This exception does not extend to a lobby, common elevator, common hallway, or any other common area of a building containing attached dwelling units, hotel room or motel rooms, but if a hospital, hospice, or nursing home permits smoking in its dwelling rooms, smoking is not allowed in any room shared with a nonsmoker without that person's consent.
- (b) ~~A~~ In a room or hall being used by a person or group for a private social function that is not open to the public. ~~in 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.~~

- (c) ~~In a retail tobacco store. 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.~~

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

- (d) ~~A retail tobacco store. A performer as part of a theatrical production so long as adequate notice is provided patrons both before the performance and by specific signage at the theater.~~

- (e) ~~Indoor smoking areas provided in governmental office buildings or workplaces pursuant to KRS 61.165. 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) ~~Facilities operated by private organizations. A building operated or used by a private organization, provided that the building is not open to the public.~~

- (g) ~~In a tobacco warehouse.~~

- (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, ~~and no person shall fail to abide by such a private prohibition,~~

- (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 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) 1 or 2, in which event the written policy shall apply to the extent KRS 61.165(3) is controlling.

(Ord. No. 171-2003, § 2, 7-1-03)

Section 5 – That Section 14-99 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

- (1) ~~No An~~ owner, lessee, principal manager, or person in control of a building ~~or,~~ an establishment ~~in any building open to the public therein or a workplace~~ shall fail to post signs, with letters of not less than one (1) inch high or symbols no less than three (3) inches high, using the words "No Smoking" 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 conspicuously either on all public entrances or in a position clearly visible on entry into the building or establishment therein.
- (2) The owner, ~~lessee~~ operator, manager, ~~or designee~~ person in control or employee of ~~every any building, establishment in a building open to the public therein or workplace~~ shall inform persons violating this chapter of the applicable provisions thereof and require compliance.

- (3) All ashtrays ~~and other~~ that are intended to be used on the premises of an establishment for the collection of ashes, butts, or other residue from smoking paraphernalia shall be removed from any area where smoking is prohibited by sections ~~Sections~~ 14-97 to 14-104 and shall not be permitted by the owner, operator, manager or other person having control of the establishment. Any permanent structure that functioned or was used as an ashtray shall be disabled or altered to prevent its use as an ashtray.
- (4) The requirements of this section do not apply to any exempt dwelling building as set forth in Section 14-98.

(Ord. No. 171-2003, § 2, 7-1-03)

Section 6 – That Section 14-100 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

- (1) ~~No~~ An owner, lessee, principal manager, or person in control of a building, ~~or any establishment therein or workplace~~ shall fail to:
 - (a) ~~Ask smokers~~ a person who is smoking to refrain from smoking ~~in any no-smoking area; and to extinguish any smoking materials.~~
 - (b) Demand that a person who is smoking leave the premises if the person refuses to refrain from smoking or refuses to extinguish any smoking materials after being asked to do so.
 - ~~(b) Use any other legal means which may be appropriate to further the intent of this chapter.~~
 - (c) Refuse service to a person who is smoking.
 - (d) Take necessary steps and use any other legal means which may be appropriate to stop a person from smoking and further the intent of Sections 14-97 to 14-104.

- (2) No owner, lessee, principal manager, proprietor, ~~an~~ employer, or any other person in control of a business building, establishment therein or workplace shall fail to ensure compliance by subordinates, employees, and agents with this chapter. Sections 14-97 to 14-104.
- (3) The requirements of this section do not apply to any exempt building or workplace as set forth in Section 14-98.

(Ord. No. 171-2003, § 2, 7-1-03)

Section 7 – That Section 14-101 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

Enforcement of ~~sections~~ Sections 14-97 to 14-104 shall be by citation issued by the Lexington-Fayette Urban County Health Department. Notice of the provisions of the chapter shall be given by the Lexington-Fayette Urban County Government to all applicants for a business or other license. The Lexington-Fayette Urban County Health Department shall enforce the provisions of this subchapter through the issuance of citations, and, for this purpose, during times when employees are scheduled to work, may enter that portion of the building, establishment or workplace 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 a citation officer of the Lexington-Fayette Urban County Health Department from issuing a citation for a violation of any provisions of Section 14-97 to 14-104 committed in his or her presence.

(Ord. No. 171-2003, § 2, 7-1-03)

Section 8 – That Section 14-102 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

- (1) Any person who violates any provision of ~~sections~~ Sections 14-97 to 14-104, including a person who smokes in an area where smoking is prohibited, shall be subject to the following penalties:
 - (a) A fine of one hundred dollars (\$100.00) for the first

offense; .

- (b) A fine of two hundred fifty dollars (\$250.00) for the second offense; .
- (c) A fine of five hundred dollars (\$500.00) for the third and each subsequent offense.
- (d) Persons who smoke in an area 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.

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

(Ord. No. 171-2003, § 2, 7-1-03)

Section 9 – That Section 14-104 of the Code of Ordinances of the Lexington-Fayette Urban County Government be and hereby is amended to read as follows:

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 ~~sections 14-97 to 14-104. Sections 14-97 to 14-104.~~ In addition to the penalties provided in Section 14-102, any person aggrieved by a violation of Section 14-104 may apply for injunctive or other legal relief in any court of competent jurisdiction.

(Ord, No. 171-2003, § 2, 71-03)

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