COMMONWEALTH OF KENTUCKY
HOPKINS COUNTY FISCAL COURT
2009-01

AN ORDINANCE REGULATING SMOKING IN ENCLOSED PUBLIC PLACES THAT ALLOW PERSONS UNDER THE AGE OF 18 TO ENTER

WHEREAS, KRS Chapter 67 authorizes the Hopkins County Fiscal Court to enact ordinances to promote the public welfare; and

WHEREAS, the Kentucky Revised Statute 438.350 prohibits the sale or use of tobacco products to persons under the age of 18; and

WHEREAS, Kentucky ranks worst in the nation in teen tobacco use; and

WHEREAS, the Hopkins County Fiscal Court believes that further safeguards are needed to protect persons under the age of 18 from the effects of smoking and to discourage persons under the age of 18 from starting to smoke.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF HOPKINS, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

SECTION I. DECLARATION OF POLICY

In order to promote the general welfare, it is the declared purpose of this Ordinance to prohibit smoking in all enclosed public places that allow persons under the age of 18 to enter.

SECTION II. DEFINITION

The following definitions shall apply unless the context clearly indicates or requires a different meaning:

(A) **ENCLOSED AREA**. All space between floor and ceiling that is enclosed on all sides by solid walls, windows or doors, which extend from the floor to the ceiling.

(B) **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, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The organization has been granted an exemption from the payment of federal income tax as a club under 29 U.S.C. Section 501.

(C) **PUBLIC PLACE**. An enclosed area to which the public is invited or in which the public is permitted. 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.

(D) **INDEPENDENTLY VENTILATED**. The ventilation system of the smoking area in a building and the ventilation system of the non-smoking area in the remaining portions of the building must not have a connection which allows the mixing of air into the smoking and non-smoking areas of the building. Contaminated air from the smoking area shall be directly exhausted to the outside by an exhaust system and shall not be re-circulated.

SECTION III. PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES

A person is prohibited from smoking in all enclosed public places that allow persons under the age of 18 to enter.

SECTION IV. WHERE SMOKING NOT REGULATED

Notwithstanding any other provisions of this Ordinance to the contrary, the following areas shall be exempt from the provision of Section III.

(A) Private residence, except when used as a childcare, adult day care, or health care facility.

(B) Hotel and motel rooms that are rented to guests and are designated as smoking rooms.

(C) Private clubs; provided that when such clubs are being used for functions to which persons under the age of 18 are allowed to enter the prohibitions set out in Section III shall apply.

(D) Independently ventilated public areas where persons under the age of 18 are not allowed to enter.

SECTION V. POSTING OF SIGNS

(A) "No Smoking" signs or symbols shall be conspicuously posted at each entrance utilized by the public entering and exiting public places where smoking is prohibited by this Ordinance.

(B) Signs stating that persons under the age of 18 are not allowed to enter and that smoking is permitted shall be posted at each entrance utilized by the public entering and exiting public places where smoking is permitted by this Ordinance.

SECTION VI. ENFORCEMENT

(A) Enforcement of this ordinance shall be by citation issued by the Hopkins County Health Department. For this purpose, during times when employees are scheduled to work, may enter those portions of the building, establishment or workplace where employees perform their duties in addition to areas open to the general public.

(B) Notice of the provisions of this ordinance shall be given to all applicants for a business license or other license by all municipalities who issue such license.

(C) Owners, managers or operators of establishments regulated by this Ordinance shall inform persons seen violating this Ordinance of the requirements of this Ordinance. In the event an owner, manager or operator of an establishment regulated by this Ordinance observes a person violating this Ordinance, he or she shall direct the person in violation to extinguish the smoking material.

1. In the event the person violating this Ordinance complies with this directive, no violation shall exist for the owner, manager or operator. In the event an owner, manager or operator of an establishment regulated by this Ordinance observes a person violating this Ordinance and fails to immediately direct the person in violation to extinguish the item being smoked, the owner, manager or operator failing to take appropriate steps required by this Ordinance shall be in violation of this Ordinance.

2. In the event the person violating this Ordinance fails or refuses to comply with this directive, the owner, manager or operator directing the person violating this Ordinance shall take immediate and reasonable steps to obtain the removal of the person from the premises, including but not limited to, the making of a criminal complaint for trespass.

3. Notwithstanding any other provision of this Ordinance, any person aggrieved by a failure to comply with this Ordinance, including violations on the part of an owner, operator, or manager in control of a public place covered by this Ordinance may bring legal action to enforce this Ordinance, either by civil action or by criminal complaint in a court of competent jurisdiction.

SECTION VII. VIOLATIONS AND PENALTIES

(A) A person who smokes in an area where smoking is prohibited and does not comply with a request to cease smoking is guilty of a violation, punishable by a fine not exceeding fifty dollars ($50.00) per occurrence.

(B) A person who owns, manages, operates or otherwise controls a public place and who fails to comply with the provisions of this Ordinance is guilty of a violation, punishable by:

1. A fine not exceeding fifty dollars ($50.00) for a first violation; and

2. A fine not exceeding one hundred dollars ($100.00) for each additional violation within one (1) year.

(C) Violation of the Ordinance is declared to be a public nuisance, which may be abated by any municipality or its designated agent by restraining order, preliminary and permanent injunction, or other means provided for by law. The municipality or its agent, including the Hopkins County Health Department, may recover the reasonable costs of any court enforcement action seeking abatement of this nuisance, including the recovery of reasonable attorney's fees.

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

SECTION VIII. OTHER APPLICABLE LAWS

This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable law or prohibited by policy of the property owner.

SECTION IX. SEVERABILITY

If any provision, clause, sentence or paragraph of this Ordinance in its application to any person or factual context shall be held invalid, such invalidity shall not affect the remaining provisions of this Ordinance, which may be given effect independent of the provision or application declared invalid.

SECTION X. EFFECTIVE DATE:

This Ordinance shall be effective immediately upon passage.

Upon motion by Magistrate Riggs and seconded by Magistrate Duncan, FIRST reading was held on the 20th day of January, 2009.

_____
Donald E. Carroll
Hopkins County Judge Executive

Upon Motion by Magistrate _____, seconded by Magistrate _____, SECOND reading was held and the ordinance adopted on the 3rd day of February, 2009.

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Donald E. Carroll
Hopkins County Judge Executive

Attest:

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Devra Steckler, Hopkins County Clerk