

ORDINANCE NO. **BG2011 - 5**

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE AMENDING CHAPTER 13 (HEALTH)
OF THE CITY OF BOWLING GREEN CODE OF
ORDINANCES REGULATING SMOKING IN
PUBLIC PLACES AND WORK PLACES,
ESTABLISHING CIVIL FINES FOR THE
VIOLATION OF THIS ORDINANCE AND
ESTABLISHING ENFORCEMENT PROCEDURES

WHEREAS, numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution; and,

WHEREAS, reliable scientific studies, including studies by the Surgeon General of the United States and studies commissioned and assessed by the U.S. Environmental Protection Agency (EPA), have shown that breathing secondhand smoke is a significant health hazard to nonsmokers, particularly children, older persons, individuals with cardiovascular disease and those with obstructive airway disease; and,

WHEREAS, health hazards induced by exposure to tobacco smoke include lung and other forms of cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction and broncho-spasm and that the most common cause of premature death from tobacco smoke is heart disease; and,

WHEREAS, reliable scientific studies have found that secondhand tobacco smoke is a leading cause of premature death and disability among nonsmokers; and,

WHEREAS, air pollution caused by smoking is an offensive annoyance and irritant resulting in serious and significant physical discomfort of nonsmokers in public places and work places; and,

WHEREAS, a number of states and cities in Kentucky have acted to protect the health of nonsmokers by enacting smoking regulations in public places and work places; and,

WHEREAS, several studies have shown that smoke-free policies do not negatively impact

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tourism revenues; and,

WHEREAS, a 2005 University of Kentucky Study determined that Lexington's smoke-free law, passed in 2004, has had no negative impact on the city's economy; and,

WHEREAS, it is in the best interests of the City of Bowling Green to enact smoking regulations to protect the health of its citizens in public places and work places as well.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 13 (Health) is hereby amended to add the following:

13-2 REGULATING SMOKING ON PUBLIC PROPERTY.

13-2.01 Findings.

a. Secondhand smoke, also known as environmental tobacco smoke (ETS), is a mixture of the smoke given off by the burning end of a cigarette, pipe or cigar and the smoke exhaled from the lungs of smokers. It is involuntarily inhaled by nonsmokers, lingers in the air hours after cigarettes have been extinguished and can cause or exacerbate a wide range of adverse health affects, including cancer, respiratory infections and asthma. (California Environmental Protection Agency, Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant, Executive Summary, June 2005.) The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (Health Effects of Exposure to Environmental Tobacco Smoke: the Report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10, Bethesda, Maryland, National Institutes of Health, National Cancer Institute, August 1991.)

b. Secondhand smoke has been classified by the Environmental Protection Agency (EPA) as a known cause of cancer in humans (Group A carcinogen) (California Environmental Protection Agency, Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant, Executive Summary, June 2005.)

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c. Secondhand smoke exposure causes disease and premature death in children and adults who do not smoke. Secondhand smoke contains hundreds of chemicals known to be toxic or carcinogenic, including formaldehyde, benzene, vinyl chloride, arsenic, ammonia and hydrogen cyanide. (The Health Consequences of Involuntary Exposure to Tobacco Smoke: 6 Major Conclusions of the Surgeon General Report. A Report of the Surgeon General, U.S. Department of Health and Human Services, 2006.)

d. Secondhand smoke causes approximately 3,400 lung cancer deaths and 46,000 heart disease deaths in adult nonsmokers in the United States each year. (California Environmental Protection Agency, Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant, Executive Summary, June 2005.)

e. Nonsmokers exposed to secondhand smoke at work are at increased risk for adverse health effects. Levels of ETS in restaurants and bars were found to be two (2) to five (5) times higher than in residences with smokers and two (2) to six (6) times higher than in office work places. (U.S. Department of Health and Human Services, Report on Carcinogens, Tenth Edition 2002. National Toxicology Program.)

f. The work place is a major source of secondhand smoke exposure for adults. Since 1999, seventy (70%) percent of the U.S. workforce worked under a smoke-free policy. Blue collar and service employees are less likely than white collar indoor workers to be covered by smoke-free policies. Restaurant employees are far less likely than other workers to be protected by smoke-free workplace policies, more likely than other workers to have these policies violated where they do exist and are more likely to be exposed to high levels of secondhand smoke on the job. Only forty-three (43%) percent of this population work under one-hundred (100%) percent smoke-free workplace policies. Only twenty-nine (29%) percent of wait staff and thirteen (13%) percent of bartenders work under such policies. As of 2002, over 6.6 million Americans worked in food preparation and service

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occupations. One (1) in five (5) workers in these occupations is a teen, fifty-six (56%) percent are women, almost twenty (20%) percent are Hispanic and just under twelve (12%) percent are African American. (The Health Consequences of Involuntary Exposure to Tobacco Smoke: 6 Major Conclusions of the Surgeon General Report. A Report of the Surgeon General, U.S. Department of Health and Human Services, 2006.)

g. Secondhand smoke is especially harmful to young children. Secondhand smoke is responsible for between 150,000 and 300,000 lower respiratory tract infections in infants and children under eighteen (18) months of age, resulting in between 7,500 and 15,000 hospitalizations each year and causes 430 sudden infant death syndrome deaths in the United States annually. (California Environmental Protection Agency, Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant, Executive Summary, June 2005.) Children who are exposed to secondhand smoke inhale the same cancer-causing substances and because their bodies are developing, infants and children are especially vulnerable to the toxins in secondhand smoke. Both babies whose mothers smoke while pregnant or who are exposed to secondhand smoke after birth have weaker lungs than unexposed babies, which increases the risk for many health problems. Mothers who are exposed to secondhand smoke while pregnant are more likely to have lower birth weight babies, which makes babies weaker and increases the risk for many health problems. (The Health Consequences of Involuntary Exposure to Tobacco Smoke: 6 Major Conclusions of the Surgeon General Report. A Report of the Surgeon General, U.S. Department of Health and Human Services, 2006.)

h. Secondhand smoke exposure may cause buildup of fluid in the middle ear resulting in 790,000 physician office visits per year. Secondhand smoke can also aggravate symptoms in 400,000 to 1,000,000 children with asthma. (California Environmental Protection Agency, Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant, Executive Summary, June 2005.)

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i. The current Surgeon General's Report concluded that scientific evidence indicates that there is no risk-free level of exposure to secondhand smoke. Short exposures to secondhand smoke can cause blood platelets to become stickier, damage the lining of blood vessels, decrease coronary flow velocity reserves and reduce heart rate variability, potentially increasing the risk of heart attack. (The Health Consequences of Involuntary Exposure to Tobacco Smoke: 6 Major Conclusions of the Surgeon General Report. A Report of the Surgeon General, U.S. Department of Health and Human Services, 2006.)

j. The current Surgeon General's Report also concluded that eliminating smoking in indoor spaces fully protects nonsmokers from exposure to secondhand smoke. Separating smokers from nonsmokers, cleaning the air and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke. Conventional air cleaning systems can remove large particles, but not the smaller particles or the gases found in secondhand smoke. Routine operating of a heating, ventilating and air conditioning system can distribute secondhand smoke throughout a building. The American Society of Heating, Refrigerating and Air-Conditioning Engineers, the preeminent U.S. body on ventilation issues has concluded that ventilation technology cannot be relied on to control health risks from secondhand smoke exposure. (The Health Consequences of Involuntary Exposure to Tobacco Smoke: 6 Major Conclusions of the Surgeon General Report. A Report of the Surgeon General, U.S. Department of Health and Human Services, 2006.)

13-2.02 Declaration of Public Policy.

The Board of Commissioners declares, as a matter of public policy, that in order to eliminate the exposure of the public and workers in the work place to secondhand smoke and to reduce the harmful health effects of such exposure to secondhand smoke, the regulation of smoking in public places and work places is required in the interests of public health, safety and welfare of the citizens and workers of the City.

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13-2.03 Definitions.

As used in this Subchapter, unless the context clearly indicates or requires a different meaning:

“Building” shall mean 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.

“Dwelling” shall mean any place 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.

“Enclosed Area” shall mean an area that is closed-in overhead by a roof or other covering of any material, whether permanent or temporary, and has forty (40%) percent or more of its perimeter closed-in by wall or other coverings of any material, whether permanent or temporary.

“Establishment” shall mean an entity or organization, including its owners, operators, directors, shareholders, partners, members, employees and possessions.

“Private Organization” shall mean an establishment, exempt from payment of federal income taxes, which maintains selective members, is operated by the membership, does not provide food, drink, entertainment or lodging for pay to anyone who is not a member or a member’s guest and is not profit oriented.

“Retail Tobacco Store” shall mean a retail store used primarily for the sale of tobacco products, including but not limited to cigarettes, cigars, pipe tobacco, 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 one-third of the total annual gross sales.

“Smoke or Smoking” shall mean the act of inhaling or exhaling the smoke from any lighted

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cigarette, cigar or pipe or other combustible tobacco product.

“Tobacco Warehouse” shall mean any warehouse building offering tobacco for purchase at auction and the definition established in KRS 248.010(4).

13-2.04 Public Prohibitions and Exceptions.

No person shall smoke within any building or enclosed area, including but not limited to all office buildings and work places occupied by City departments, except in one of the following locations:

a. In any dwelling, unless the dwelling is also used as a childcare facility or adult day care center. This exception does not extend to a lobby, common elevator, common hallway or any other common area of a building or enclosed area;

b. 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 facility or licensed long term care facility open to all residents as a smoking room and for no other purpose;

c. In a retail tobacco store;

d. Indoor smoking areas provided in county, state or federal governmental office buildings or work places;

e. Facilities operated by private organizations; and,

f. In a tobacco warehouse.

13-2.05 Removal of Ashtrays Required.

All ashtrays shall be removed from any area where smoking is prohibited by this Subchapter 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 astray.

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13-2.06 Duty To Ensure Compliance.

a. No owner, lessee, principal manager or person in control of a building or establishment in a building shall fail: (1) to ask smokers to refrain from smoking in any no-smoking area, and (2) to use any other legal means which may be appropriate to further the intent of this Subchapter.

b. No owner, principal manager, proprietor or any other person in control of a business shall fail to ensure compliance by subordinates, employees and agents with this Subchapter.

13-2.07 Smoking Near Building Entrances Prohibited.

Smoking shall be prohibited within a reasonable distance from the outside entrance to any building so as to ensure that tobacco smoke does not enter the building through entrances, windows, ventilation systems or other means.

13-2.08 Retaliation Prohibited.

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 Subchapter.

13-2.09 Private Prohibitions.

Nothing in this Subchapter shall prevent an owner, lessee, principal manager or person in control of any place including, without limitation, any motor vehicle, outdoor area or dwelling, from prohibiting smoking completely in such place and no person shall fail to abide by such a private prohibition.

13-2.10 Regulated Prohibitions.

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.

13-2.11 Posting of Signs.

The owner, lessee, principal manager or person in control of a building or an establishment

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subject to this Subchapter shall post signs, with letters of not less than one inch (1”) high or symbols no less than three inches (3”) 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.

13-2.12 Notice to Patrons.

The owner, operator, manager or designee or employee of every establishment in a building subject to this Subchapter shall inform persons violating this Subchapter of the applicable provisions of this Subchapter and require compliance.

13-3 ENFORCEMENT.

13-3.01 Designated Enforcement Officials.

This Chapter is enforceable by any police officer, code official duly designated by the City Manager and the Bowling Green-Warren County Health Department (subject to formal determination by the Health Department Board of Directors that the Health Department shall assume responsibilities for such enforcement).

13-3.02 Notice of Violation or Citation.

a. Except as otherwise provided below, any violation of this Chapter, including any person who smokes in an area where smoking is prohibited, shall be classified as a civil violation and shall be enforced through the Code Enforcement Board. Violations of this Chapter shall be initiated by the issuance of a notice of violation or a citation.

b. Except as provided below, if the code official believes based on his personal observation or investigation that a person has violated those provisions of this Chapter designated as civil violations, he is authorized to issue a citation to the violator.

c. The citation shall be delivered to the violator at his last known address. The citation

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shall be deemed to be properly served if given by certified mail, return receipt requested, by personal delivery or by leaving the notice at the person's usual place of residence with any individual residing therein who is eighteen (18) years of age or older and who is informed of the contents of the notice. Service by certified mail shall be presumed to have been served on the third day following mailing.

d. The citation shall contain the following information:

1. A description of the real estate sufficient for identification;
2. The name and address of the person to whom the citation is issued;
3. The date and time the violation was observed, and the date and time of issuance of the citation;
4. The facts constituting the violation;
5. The section of the ordinance or other code violated;
6. The name of the code official;
7. The procedure for the person to follow in order to pay the civil fine or to contest the citation;
8. The civil fine that may be imposed per day for the violation if the person does not contest the citation;
9. The maximum civil fine that may be imposed per day for the violation if the person elects to contest the citation; and,
10. A statement that if the person fails to pay the civil fine set forth in the citation or to contest the citation within the time allowed, the person shall be deemed as having waived the right to a hearing before the Code Enforcement Board, and the determination that a violation was committed shall be final.

e. After issuing a citation, the code official shall deliver a copy of the citation to the person designated by the Code Enforcement Board. Upon receipt of a citation, the violator shall

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respond to the citation within seven (7) days by either paying the civil fine, or requesting in writing a hearing before the Code Enforcement Board to contest the citation.

13-3.03 Lien, Fines, Charges and Fees.

a. The City shall possess a lien on property owned by the person found by a final, non-appealable order of the Board, or by a final judgment of the court to have committed a violation of this Chapter for all fines assessed for the violation and for all charges and fees incurred by the City in connection with the enforcement of this Chapter.

b. The lien shall be recorded in the office of the County Clerk, and shall be notice to all persons from the time of its recording, and shall bear interest at twelve (12%) percent per annum thereafter until paid.

c. The lien shall take precedence over all other subsequent liens except state, county, school boards and city taxes, and may be enforced by judicial proceedings.

d. In addition to the remedy prescribed above, the person found to have committed the violation shall be personally responsible for the amount of all fines assessed for the violation and for all charges and fees incurred by the City in connection with the enforcement of this Chapter. The City may bring a civil action against the person and shall have the same remedies as provided for the recovery of a debt.

13-4 PENALTIES.

13-4.01 Civil Penalties, Fine Schedule.

Any person violating any of the provisions of this Chapter, with the exception of the section specifically listed below as a criminal offense, shall be subject to civil fines as set out below.

a. If a citation for a violation of this Chapter is not contested by the person charged with the violation, the maximum penalties below shall apply; however, the Code Enforcement Board may waive any or all of a penalty for an uncontested violation, if in its discretion, the Board determines that

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such waiver will promote compliance with this Chapter. A second offense is an offense that occurs within one (1) year of the determination by the Code Enforcement Board of a prior offense. All others are those that occur within one (1) year of the determination by the Code Enforcement Board of two (2) or more prior offenses.

| <u>Violation</u> | <u>1st Offense</u> | <u>2nd Offense</u> | <u>3rd Offense</u> |
|----------------------------|-------------------------------|-------------------------------|-------------------------------|
| Smoking in Prohibited Area | \$25.00 | \$50.00 | \$100.00 |

b. If the citation is contested and a hearing before the Code Enforcement Board is required, the following maximum penalties may be imposed at the discretion of the Board:

| <u>Violation</u> | <u>1st Offense</u> | <u>2nd Offense</u> | <u>3rd Offense</u> |
|----------------------------|-------------------------------|-------------------------------|-------------------------------|
| Smoking in Prohibited Area | \$50.00 | \$100.00 | \$200.00 |

13-4.02 May Be Subject to Prosecution.

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 criminal trespass if they do not leave when asked.

13-4.03 Violations Declared to be Public Nuisance.

Violations of this Chapter are declared to be a public nuisance which may be abated by the City by restraining order, preliminary and permanent injunction or other means provided by law. The City may recover the reasonable costs of any court enforcement action seeking abatement of this nuisance.

2. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

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4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on January 18, 2011, and given final reading on January 24, 2011, and said Ordinance shall be in full force and effect 90 days following (April 28, 2011) signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: January 24, 2011

APPROVED: Elaine M. Walker
Mayor, Chairman of Board of Commissioners

ATTEST: Kate Staller
City Clerk

SPONSORED BY: Brian "Slim" Nash, Commissioner, 01/13/2011, 4:00 p.m.
Ordinance No. BG2011-5 was amended on the floor at the January 18, 2011 Board of Commissioners meeting.