

**ORDINANCE 23-2014**

**AN ORDINANCE REGULATING SMOKING IN PARKS, PUBLIC PLACES, AND AREAS IN WHICH THE CITY HAS GRANTED AN ENCROACHMENT PERMIT OR SPECIAL EVENTS PERMIT.**

**WHEREAS**, the Daviess County Fiscal Court adopted Ordinance KOC No. 450.1 in 2005 regulating smoking in enclosed places that allow persons under the age of 18 to enter; and

**WHEREAS**, the Board of Commissioners of the City of Owensboro wishes to affirm its support of the provisions of KOC No. 450.1 (2005); and

**WHEREAS**, in order to serve the public health, safety, and welfare, it is the declared purpose of this Ordinance to further restrict or prohibit smoking in certain areas of the City of Owensboro.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:**

**Section 1.** A new Article, that being Article XI, shall be created in Chapter 16 of the Owensboro Municipal Code which shall be titled: Smoke Free Law.

**Section 2.** A new Section shall be created in Chapter 16, Article XI, of the Owensboro Municipal Code to state as follows:

Policy. In order to serve the public health, safety, and welfare, it is the declared purpose of this section to prohibit smoking in public places such as city parks, restaurants, bars, areas in which an encroachment permit has been granted, areas in which a special events permit has been granted.

**Section 3.** A new Section shall be created in Chapter 16, Article XI, of the Owensboro Municipal Code to state as follows:

**Definitions.**

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

**Bar:** An establishment, opened and/or created after the effective date of this Ordinance, that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

**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 more individual persons.

**Enclosed Area:** All space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

**Encroachment Permit:** A permit granted by the City of Owensboro for use of any area or space that would otherwise be an unlawful encroachment under Section 24-121 of the Owensboro Municipal Code.

**Person:** Shall not include any Federal Agency, municipality or the Commonwealth of Kentucky and any derivative thereof.

**Public Park:** All public areas within locations designated as a park under Chapter 19, Article I, Section 19-2 of the Owensboro Municipal Code including, but not limited to all ballparks, stadiums, basketball courts, tennis courts, skate parks, bicycle trails, recreational facilities, and all public areas of parks and other similar places owned or operated by the City where members of the general public assemble to engage in physical exercise, participate in athletic competition or witness sports or other events.

**Public Place:** Any area, whether enclosed or not, 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/shelters, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, service lines and waiting rooms or within 25 feet of outside entrances, operable structural windows,

outdoor seating areas or any other place where Smoking is prohibited so as to prevent tobacco smoke from entering those smoke-free areas, however, for the purposes of prohibitions of this Section, a Public Place shall not include public streets, public sidewalks, restricted areas where the public is not invited or not permitted, or parking lots being used for vehicular parking unless such areas are identified as being within an authorized and active Encroachment Permit or Special Events permit. 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, food trucks, 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. The term "restaurant" shall include a bar area within the restaurant and/or an outdoor area at which food or drink is served, whether enclosed or not. All areas where food or beverages are served or consumed at a Restaurant are considered Public Places.

*Smoke or Smoking:* Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe or other lit tobacco product, in any manner or in any form.

*Special Events:* Special events shall mean any festival, carnival, parade, procession, walk, autocade, block party, fair, sport event, production, fund raiser, gala, celebration, ceremony, race, tournament, activity or other event to which the general public is invited to participate or attend, that is organized, promoted, conducted, or sponsored by the City, the County, or any other person, corporation (for-profit or nonprofit), partnership, company, association, organization, or other entity, and which involves the use of publicly owned, leased, or controlled property, including public right-of-way (streets and sidewalks) and/or city services and for which a permit is required under Section 19-54 of the Owensboro Municipal Code.

**Section 4.** A new Section shall be created in Chapter 16, Article XI, of the Owensboro Municipal Code to state as follows:

(a) No person shall Smoke in any Public Place, Public Park, Restaurant, Bar, area for which the City has granted an Encroachment Permit, area for which the City has granted a Special Events permit, area for which the City has granted a permit for use of a defined geographic space that would otherwise be considered trespassing or an Unlawful Encroachment under Section 24-121 of the Owensboro Municipal Code, or in any place prohibited by Daviess County Fiscal Court, Daviess County Kentucky, by and thru ordinance KOC No. 450.1 (2005) .

(b) No owner, manager, operator, or employee of any non-governmental entity who owns, manages, operates, or otherwise controls a Public Place or other area regulated under this Article shall permit Smoking in violation of this Article.

**Section 5.** A new Section shall be created in Chapter 16, Article XI, of the Owensboro Municipal Code to state as follows:

**Enforcement.**

(a) This Ordinance shall be enforced by applicable law enforcement agencies, the Owensboro Fire Department, Code Enforcement Officers of the City of Owensboro, the City Manager or an authorized designee.

(b) Notice of the provisions of this Article shall be given to all applicants for a business license in the City.

(c) Those authorized to enforce this Article shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

(d) An owner, manager, operator, or employee of any private establishment regulated by this Article shall direct a person who is Smoking in violation of this Article to extinguish the item being smoked. If the person does not stop Smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.

**Section 6.** A new Section shall be created in Chapter 16, Article XI, of the Owensboro Municipal Code to state as follows:

**Penalties.**

(a) Any person who violates the provisions of this Article shall be subject to the following penalties or any person who owns, manages, operates, or otherwise controls an area regulated by this Article and who fails to comply with the provisions of this Article shall be guilty of a violation, punishable by:

(1) A fine not exceeding one hundred dollars (\$100.00) for a first violation;

(2) A fine not exceeding two hundred and fifty dollars (\$250.00) for each additional violation within one (1) year;

(b) Persons who smoke in an area where Smoking is prohibited and who refuse to extinguish their Smoking material when directed may be required to leave the premises or area in which Smoking is prohibited, and shall be subject to prosecution for trespass if they do not leave when asked.

(c) In addition to the fines established by this section, violations of this chapter by a person who owns, manages, operates, or otherwise controls an area regulated by this Article may result in the suspension or revocation of any permit or license issued by the City to the person for the premises on which the violation occurred.

(d) Violation of this Ordinance is declared to be a public nuisance, which may be abated by and through the City or its designated agents 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, including all attorneys' fees.

(e) Each day on which a violation of this Ordinance occurs is considered separate and distinct violation.

**Section 7.** A new Section shall be created in Chapter 16, Article XI, of the

Owensboro Municipal Code to state as follows:

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 areas in which Smoking is prohibited under Section 3 of this Ordinance.

(b) All ashtrays shall be removed from any area in which Smoking is prohibited under Section 4 of this Ordinance.

**Section 8.** A new Section shall be created in Chapter 16, Article XI, of the

Owensboro Municipal Code to state as follows:

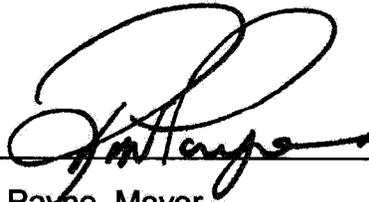
This Article shall not be interpreted or construed to permit Smoking where it is otherwise restricted by other applicable laws and shall be liberally construed so as to further its purposes.

**Section 9.** This Ordinance shall become effective upon its adoption and publication according to law, but not before October 15, 2014.

**Section 10.** If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

**INTRODUCED AND PUBLICLY READ ON FIRST READING,** this the 19<sup>th</sup> day of August, 2014.

**PUBLICLY READ AND FINALLY APPROVED ON SECOND READING,** this the 3<sup>rd</sup> day of September, 2014.

  
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Ron Payne, Mayor

ATTEST:

  
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Beth Cecil, City Clerk