

ORDINANCE NO. _____, SERIES 2017

**AN ORDINANCE AMENDING CHAPTER 90 OF THE
LMCO RELATING TO THE PROHIBITION OF SMOKING
IN DESIGNATED AREAS.**

**SPONSORED BY: COUNCILMEMBERS WELCH, SHANKLIN, HOLLANDER,
BUTLER, JOHNSON, COAN AND BLACKWELL**

WHEREAS, on May 10, 2016 the Food and Drug Administration (FDA) issued a final rule extending FDA's tobacco product authorities to include "Electronic Nicotine Delivery Systems," which include e-cigarettes and other tobacco products like e-cigarettes; and

WHEREAS, FDA based their findings on studies which show that e-liquid products contain chemicals that are dangerous to consumers when inhaled including but not limited to nicotine, propylene glycol, glycerin, tobacco specific nitrosamines, tobacco alkaloids, carbonyls, ethylene glycol, diacetyl, and acetyl, and that e-liquid aerosols contain chemicals such as nicotine, carbonyls, tobacco specific nitrosamines, heavy metals, and volatile organic compounds; and

WHEREAS, studies show that hookah usage presents significant health risks, whether users smoke tobacco-containing or tobacco-free products; and

WHEREAS, the Centers for Disease Control and Prevention (CDC) through studies have concluded that hookah and the corollary smoke therefrom contain carbon monoxide and other toxic agents known to increase the risks for smoking-related cancers, heart disease, and lung disease; and

WHEREAS, air quality studies in hookah lounges show dangerously high levels of respirable particulate matter, far exceeding the ambient air quality standards

established by the Environmental Protection Agency and directly comparable to those in establishments that allow cigarette smoking; and

WHEREAS, the CDC has found youth usage of e-cigarettes and hookah have surpassed youth usage of conventional cigarettes since 2011; and

WHEREAS, it is a long recognized high priority of government to promote and safeguard public health, it is the intent of Louisville Metro Government in proposing this revision to the existing Ordinance to prohibit smoking in public indoor places and places of employment; in doing so Louisville Metro Government recognizes the right to breathe clean indoor air, protect the public from exposure to secondhand smoke, and facilitate uniform and consistent enforcement of the Ordinance.

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: LMCO Chapter 90.02 is hereby amended as follows:

§ 90.02 DEFINITIONS.

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

BUILDING. Any structure enclosed from the weather, whether or not windows or doors are open, which is closed in overhead by a roof or other covering of any material, whether permanent or temporary, and has 80% or more of its perimeter closed in by walls or other non-porous coverings of any material, whether permanent or temporary. If an establishment leases or possesses only a portion of a building, the term “building” applies to the leasehold or possessory interest.

DWELLING. 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.

~~**E-CIGARETTE.** A product that is designed to, when heated, convert its contents into a vapor form that delivers nicotine or other substances to a user. Said product may be composed of a rechargeable, battery-operated heating element, a replaceable cartridge, and an atomizer that converts the contents of the cartridge into a vapor.~~

~~**E-CIGARETTE ACCESSORIES.** Any fitment, add-on, auxiliary or attachment type device that is designed to be utilized in conjunction with or during the usage of an e-cigarette.~~

ELECTRONIC SMOKING DEVICE. Any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner or in any form for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor. Electronic smoking device also includes any fitment, add-on, auxiliary or attachment type device that is designed to be utilized in conjunction with or during the usage of an electronic smoking device.

ESTABLISHMENT. An entity, endeavor or organization, including its owners, operators, directors, shareholders, partners, members, employees and possessions.

HERBAL SHISHA. A non-tobacco product, which its primary intended use by the producer, manufacturer or seller of such product, is to be smoked in a waterpipe, which may be commonly referred to or known as a hookah, narghile or shisha.

HOOKAH. Any water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, herbal shisha, or other plant matter.

MINOR. A natural person who is under 18 years of age.

RETAILER. Any person, firm, partnership or corporation engaged in the business of buying, selling or merchandising products and/or services for profit.

~~**SMOKE** or **SMOKING.** The act of inhaling, or exhaling, the smoke from any lighted cigarette, cigar, or pipe, or other combustible tobacco product.~~ burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or form. Smoking also includes the use of an electronic smoking device or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in the Article

~~**TOBACCO BUSINESS.** Facilities that are owned or leased by tobacco manufacturers or wholesalers for the promotion, testing, research and/or development of tobacco products. For 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.~~

SECTION II: LMCO Chapter § 90.10 is hereby amended as follows:

§ 90.10 PROHIBITING RETAILERS FROM SELLING OR DISTRIBUTING E-CIGARETTES ELECTRONIC SMOKING DEVICE TO MINORS.

(A) No minor shall use, consume, purchase or possess any electronic smoking device ~~E-cigarette~~ or ~~Herbal Shisha~~ hookah.

(B) No retailer shall sell, offer to sale or distribute to any minor within the boundaries of Louisville Metro, any ~~E-cigarette~~ electronic smoking device ~~E-cigarette accessories,~~ or ~~Herbal Shisha~~ hookah.

SECTION III: LMCO § 90.07 on VIOLATIONS AND PENALTIES is hereby renumbered to be LMCO § 90.99.

SECTION IV. This Ordinance shall take effect in 90 days upon its passage and approval.

H. Stephen Ott
Metro Council Clerk

David Yates
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____