

ORDINANCE NO. \_\_\_\_\_, SERIES 2017

**AN ORDINANCE AMENDING CHAPTER 90 OF THE  
LMCO RELATING TO THE PROHIBITION OF SMOKING  
IN DESIGNATED AREAS. (AMENDED BY  
SUBSTITUTION)**

**SPONSORED BY: COUNCILMEMBERS WELCH, SHANKLIN, HOLLANDER,  
BUTLER, JOHNSON, COAN, BLACKWELL, SEXTON SMITH, JAMES AND FLOOD**

**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 § 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 RETAIL STORE.** A business operation with at least eighty-five (85%) percent of sales dedicated to the sale of electronic smoking devices, accessories, and/or products. To meet the definition, the electronic smoking retail store shall not allow any minors in the building, sell alcoholic beverages (under LMCO Chapter 113), be licensed as a Food Service Establishment (under LMCO Chapter 118), or have an entrance that opens to a common area with other retail establishments.

**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.

**HOOKAH ESTABLISHMENT.** A business operation primarily dedicated to the allowance of on-site smoking through one or more hookah pipes (also commonly referred to as a hookah, waterpipe, shisha or narghile), including but not limited to establishments known as hookah bars, hookah lounges or hookah cafés. To meet the definition, the establishment shall not allow any minors in the building.

**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 chapter.

~~**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 § 90.03 is hereby amended as follows:

**§ 90.03 PROHIBITION OF SMOKING IN PUBLIC BUILDINGS AND EXCEPTIONS.**

(A) No person shall smoke within any building or establishment, which is open to the public, used to host or hold a public event, or employs one or more persons ~~which~~ who work on the premises, except in or with:

(1) 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 rooms 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 non-smoker without that person's consent. This exception does not extend to private residences when they are used as a licensed childcare, adult day care, or health care facility.

(2) ~~Tobacco businesses.~~ The consumption of any non-tobacco and non-nicotine related products from an electronic smoking device at an Electronic Smoking Retail Store.

(3) The consumption of any non-tobacco products through a hookah at a Hookah Establishment. This exception shall expire no later than June 1, 2019.

(B) Nothing in this chapter 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.

(C) 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.

**SECTION III:** LMCO Chapter § 90.08 is hereby amended as follows:

**§ 90.08 REASONABLE DISTANCE.**

Smoking is prohibited within a ~~reasonable distance from~~ (15) fifteen feet of 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. The fifteen feet distance restriction does not apply to hookah establishments.

**SECTION IV:** LMCO § 90.10 is hereby amended as follows:

**§ 90.10 PROHIBITING RETAILERS FROM SELLING OR DISTRIBUTING ~~E-CIGARETTES~~ ELECTRONIC SMOKING DEVICES 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 ~~sale~~ sell, offer to ~~sale~~ sell 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 V:** LMCO § 90.07 on VIOLATIONS AND PENALTIES is hereby renumbered to be LMCO § 90.99.

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

\_\_\_\_\_  
H. Stephen Ott  
Metro Council Clerk

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David Yates  
President of the Council

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Greg Fischer  
Mayor

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Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

BY: \_\_\_\_\_