

ORDINANCE NO. O-065-2017

AN ORDINANCE OF THE LAFAYETTE CITY-PARISH COUNCIL AMENDING CHAPTER 42, "HEALTH AND SANITATION," ARTICLE I, "IN GENERAL," SECTION 42-2, "SMOKEFREE AIR," OF THE LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT CODE OF ORDINANCES RELATIVE TO SMOKING IN PUBLIC PLACES BY ADDING FURTHER OR ADDITIONAL DEFINITIONS AND PUBLIC PLACES WHERE SMOKING IS PROHIBITED

BE IT ORDAINED by the Lafayette City-Parish Council, that:

WHEREAS, on June 21, 2005, the Lafayette City-Parish Council approved Ordinance No. O-179-2005, which enacted Section 42-2 of the Lafayette City-Parish Consolidated Government Code of Ordinances, entitled "Smokefree Air"; and

WHEREAS, after citing numerous authorities that emphasized the dangers of smoking and of secondhand smoke inhalation, the Lafayette City-Parish Council declared that the purpose of Ordinance No. O-179-2005 was (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; (2) to guarantee the right of nonsmokers to breathe smokefree air; and (3) to recognize that the need to breathe smokefree air shall have priority over the desire to smoke; and

WHEREAS, Section 42-2 of the Lafayette City-Parish Consolidated Government Code of Ordinances currently allows smoking in certain enclosed areas and public places, including gaming properties where gaming operations are conducted, and expanded service restaurants, bars and alcoholic beverage establishments or facilities; and

WHEREAS, Section 42-2 of the Lafayette City-Parish Consolidated Government Code of Ordinance also fails to prohibit smoking in and around playgrounds, athletic facilities and recreational areas; and

WHEREAS, in furtherance of the purposes of Ordinance No. O-179-2005 and of the public health, safety and welfare, the Lafayette City-Parish Council desires to amend the Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, "Health and Sanitation," Article I, "In General," Section 42-2, "Smokefree Air," relative to smoking in public places, by adding further or additional definitions, and by providing for additional public places where smoking is prohibited.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Lafayette City-Parish Council, that:

SECTION 1: All of the aforescribed "Whereas" clauses are hereby adopted as part of this ordinance.

SECTION 2: The Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, Article 1, Section 42-2(a), "*Definitions*," is hereby supplemented and amended by adding the following definitions, to-wit:

Electronic Smoking Device means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of 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 project name or descriptor.

Electronic Smoking Device Business or Shop means a business entity where fifty percent or more of its sales or purchases for the preceding twelve months were for electronic smoking devices, electronic smoking device products and accessories at wholesale or retail, or fifty percent or more of its activity is devoted to the manufacture, importation, promotion or sale of electronic smoking devices, electronic smoking device products and accessories at wholesale or retail, or any premises owned or leased by an electronic smoking device manufacturer, importer, distributor, retailer or dealer and where fifty percent or more of its activity is devoted to the manufacture, importation or sale of electronic smoking devices.

Hookah means a 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, shisha, or other plant matter.

Hookah Business, Shop or Establishment means a business entity where fifty percent or more of its sales or purchases for the preceding twelve months were for hookah smoked products and accessories at wholesale or retail, or fifty percent or more of its activity is for the manufacture, importation, promotion or sale of hookah smoked products and accessories at wholesale or retail or any premises owned or leased by a person where fifty percent or more of its business activity is devoted to the manufacture, importation or sale of hookah smoked products and accessories or an establishment whose primary activity is to cater to patrons who smoke hookah pipes.

SECTION 3: The Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, Article I, Section 42-2(a), "*Definitions*," is hereby amended by replacing the definition of "*Smoking*" with the following definition:

Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, hookah, electronic smoking device, weed, plant, or other combustible substance in any manner or in any form, for personal inhalation or consumption.

SECTION 4: The Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, Article I, Section 42-2(a), "*Definitions*," is hereby amended by replacing the definition of "*Tobacco business or shop*" with the following definition:

Tobacco business or shop means a business entity where fifty percent or more of its sales or purchases for the preceding twelve months were for the sale, manufacture or promotion of tobacco, tobacco products and accessories at wholesale or retail, or any premises owned or leased by a tobacco product manufacturer, importer, distributor, or leaf dealer where fifty percent or more of its activity is devoted to the manufacture, importation or sale of tobacco products, or an establishment whose primary activity is to cater to persons who smoke tobacco products, such as a cigar bar.

SECTION 5: The Lafayette City-Parish Consolidated Government Code of

Ordinances, Chapter 42, Article I, Section 42-2(b), "*Application of section to LCG-owned facilities*," is hereby amended and reenacted to read as follows:

- (b) *Application of section to LCG-owned facilities.* All enclosed areas and vehicles which are owned, leased or operated by LCG within the city or unincorporated areas of the parish, as well as outdoor property adjacent to such buildings, shall be subject to the provisions of this section.

SECTION 6: The Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, Article I, Section 42-2(c), "*Prohibition of smoking in public places*," is hereby amended to add (i) gaming property where gaming operations are conducted, and (ii) expanded service restaurants, bars or alcoholic beverage establishments or facilities to the list of public places where smoking is prohibited, and to delete references to certain state statutes that have been repealed since the enactment of Section 42-2, and, accordingly, subsection 42-2(c) shall henceforth read as follows:

- (c) *Prohibition of smoking in public places.* Except as provided in subsection 42-2(f), smoking shall be prohibited in all public places within the city and the unincorporated areas of the parish, including, but not limited to, the following places:
- (1) Any gaming property where gaming operations are conducted.
 - (2) Aquariums, galleries, libraries, and museums.
 - (3) Areas available to and customarily used by the public in businesses patronized by the public.
 - (4) Convention facilities.
 - (5) Elevators.
 - (6) Expanded service restaurants, bars and alcoholic beverage establishments or facilities.
 - (7) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
 - (8) Health care facilities, subject to the provisions of La. R.S. 40:2115.
 - (9) Licensed child care and adult day care facilities.
 - (10) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
 - (11) Polling places.
 - (12) Public transportation facilities, including busses and taxicabs, under the authority of LCG, and ticket, boarding, and waiting areas of public transit depots.
 - (13) Restaurants.
 - (14) Restrooms, lobbies, reception areas, hallways, and other common areas.
 - (15) Retail stores.

- (16) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of LCG or a political subdivision of the State, to the extent the place is subject to the jurisdiction of LCG, subject to the provisions of La. R.S. 17:240.
- (17) Shopping malls.
- (18) Sports arenas, including enclosed areas in outdoor arenas.

SECTION 7: The Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, Article I, Section 42-2(e), "*Reasonable distance*," is hereby amended by (i) changing the title of the said section to "*Prohibition of smoking in outdoor places*"; (ii) providing that expanded service restaurants, bars, or alcoholic beverage establishments and facilities shall not permit smoking within five (5') feet of any entrance to an enclosed area where smoking is prohibited; and (iii) prohibiting smoking in certain outdoor places, and, accordingly, subsection 42-2(e) shall henceforth read as follows:

(e) *Prohibition of smoking in outdoor places.*

- (1) Smoking by an employee, invitee or other person present at or associated with a business is prohibited within a reasonable distance of 25 feet outside of any entrance to an enclosed area where smoking is prohibited, which entrance is available to the general public (or such lesser distance if considerations of safety do not permit a greater distance), so as to ensure that fumes, smoke, vapor and/or aerosol does not enter or migrate into the enclosed area through doors, entrances, windows, ventilation systems or other means. The foregoing shall apply to expanded service restaurants, bars and alcoholic beverage establishments or facilities, provided, however, that the applicable distance for which smoking shall be prohibited in outdoor places relative to such establishments or facilities is five (5') feet from any entrance to an enclosed area where smoking is prohibited. The prohibitions set forth in this subsection (1) shall not apply to any person who merely traverses near a place where smoking is prohibited if that person is not an employee, invitee or other person present at or associated with such business.
- (2) Smoking shall be prohibited in and within 25 feet of all outdoor playgrounds.
- (3) Smoking shall be prohibited in and within 25 feet of bleachers and grandstands for use by spectators at sporting and other public events.
- (4) Smoking shall be prohibited in and within 25 feet of any dugout, football, softball, baseball, or soccer field. Smoking shall also be prohibited in and within 25 feet of any concession stand of a sporting facility or recreational area/facility.

SECTION 8: The Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, Article I, Section 42-2(f), "*Where smoking not regulated*," is hereby amended by deleting (i) gaming property where gaming operations are conducted, and (ii) expanded service restaurants, bars or alcoholic beverage facilities from the list of public places

where smoking is not regulated, and adding (a) electronic smoking device business or shop, and (b) hookah business, shop or establishment to the list of public places where smoking is not regulated, and, accordingly, subsection 42-2(f) shall henceforth read as follows:

- (f) *Where smoking not regulated.* Notwithstanding any other provision of this Section to the contrary, the following areas shall be exempt from the provisions of Sections 42-2(c), (d) and (e):
- (1) Electronic smoking device business or shop.
 - (2) Hookah business, shop or establishment.
 - (3) Hotel guest rooms.
 - (4) Tobacco business or shop.
 - (5) Private residences, except when used as a licensed child care, adult day care, or health care facility.
 - (6) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted.
 - (7) Outdoor areas of places of employment, except as provided in subsection (e) of this Section.

SECTION 9: The Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, Article I, Section 42-2, "*Posting of signs*," subsection (h)(1) is hereby amended to include reference to electronic cigarettes, and, accordingly, subsection 42-2(h)(1) shall henceforth read as follows, with the remainder of subsection 42-2(h) remaining unchanged:

- (h) *Posting of signs.*
- (1) "No Smoking including Electronic Cigarettes" signs or the international "No Smoking including Electronic Cigarettes" symbol (consisting of a pictorial representation of a burning cigarette and electronic cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place, place of employment, and place where smoking is prohibited by this section, by the owner, operator, manager or other person in control of that place.

SECTION 10: The Lafayette City Parish Consolidated Government Code of Ordinances, Chapter 42, Article I, Section 42-2(k), "*Violations and penalties*," subsection (3) is hereby amended to delete certain excess and inappropriate verbiage, and, accordingly subsection 42-2(k)(3) shall henceforth read as follows, with the remainder of subsection 42-2(k) remaining unchanged:

- (k) *Violations and penalties.*

* * * * *

- (3) The failure or refusal of a person who owns, manages, operates, or otherwise controls a public place or place of employment to comply with the requirements of Section 42-2(h)(4) may result in the suspension or revocation of any permit or license issued to

the person for the premises on which the violation occurred.

Upon the third conviction of any person or persons for a violation of this Section at a particular Business or Place of Employment, the owner, operator, manager, or other person in control of such Business or Place of Employment at which such violations occurred, may be given written notice by the Enforcement Officer of the right to adopt and implement a written policy to address the violations within 30 days of receipt of such notice. In the event that such owner, operator, manager, or other person in control should submit a written policy to the Enforcement Officer and such policy is approved by the Enforcement Officer, and the owner, operator, manager, or other person in control thereafter implements the policy in good faith and to the reasonable satisfaction of the Enforcement Officer, the permit or license of the Business or Place of Employment may not be suspended or revoked. If such person should fail to submit a written policy to the Enforcement Officer within such period of time, or if a submitted policy is not approved or, upon approval, is not implemented in good faith, the permit or license of the Business or Place of Employment may be suspended or revoked by the Enforcement Officer in the manner and under the circumstances provided in La. R.S. 33:4786-8.

SECTION 11: The Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, Article I, Section 42-2(m), "*Governmental agency cooperation*," is hereby amended to update the title of the chief executive of the Lafayette City-Parish Consolidated Government from Lafayette City-Parish President to Lafayette Mayor-President, and, accordingly, is amended and reenacted to read as follows:

- (m) *Governmental agency cooperation.* The Lafayette Mayor-President shall annually request other governmental and educational agencies having facilities within the city and the unincorporated areas of the parish to establish local operating procedures in cooperation and compliance with this section. This includes urging all federal, state, city and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

SECTION 12: The Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, Article I, Section 42-2(p), "*Effective date of enforcement*," is hereby deleted in its entirety.

SECTION 13: The Lafayette City-Parish Consolidated Government Code of Ordinances, Chapter 42, Article I, Section 42-2(q), "*Encouraged compliance*," is hereby deleted in its entirety.

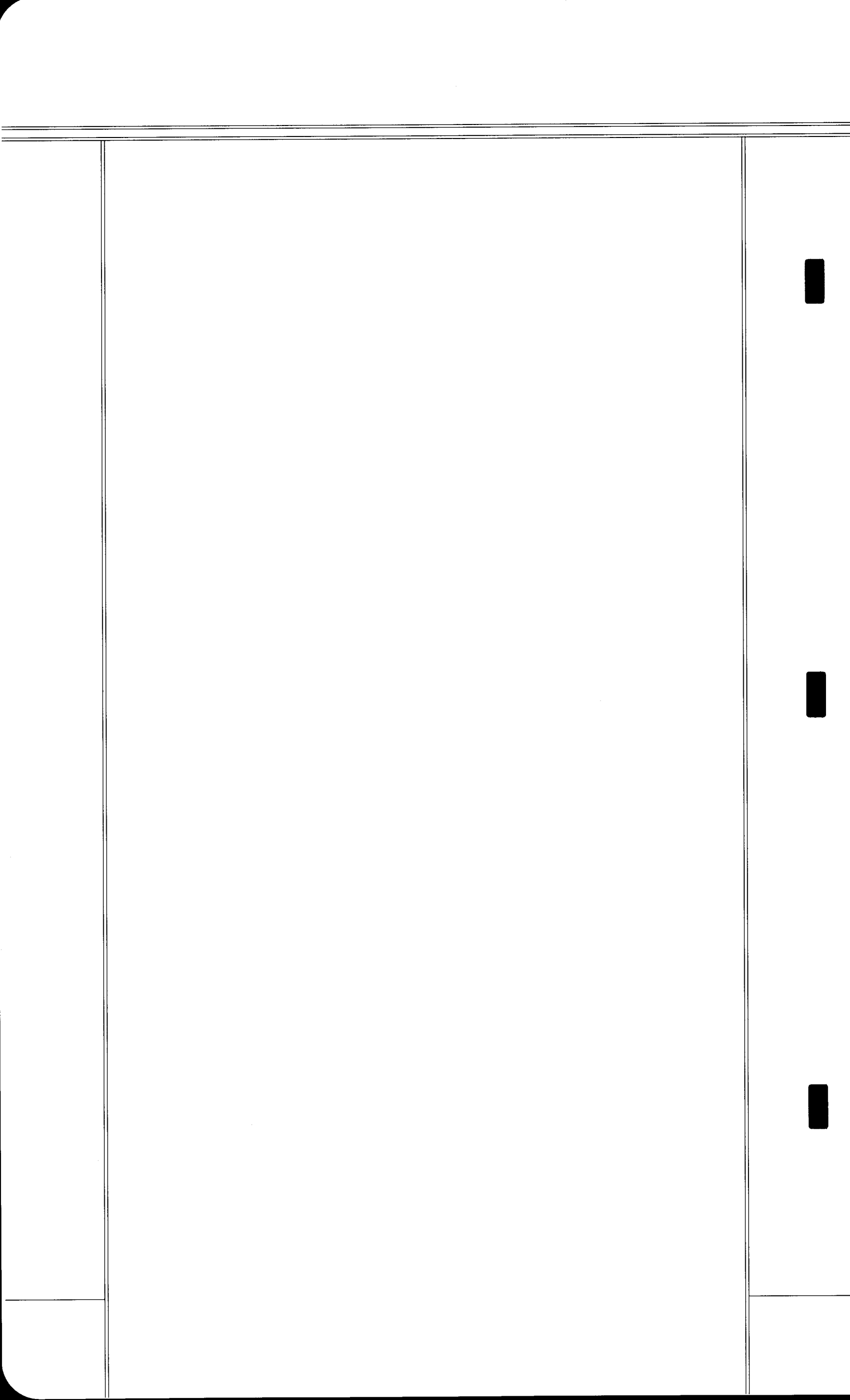
SECTION 14: If any provision, clause, sentence, or paragraph of Section 42-2, as amended, or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of Section 42-2, as amended, which can be given effect without the invalid provision or application, and to this end the provisions of Section 42-2, as amended, are declared to be severable.

SECTION 15: All ordinances and resolutions, or parts thereof, in conflict herewith are hereby repealed.

SECTION 16: No criminal offense for a violation of Section 42-2 that would not have been a criminal offense prior to the adoption of this ordinance shall be imposed or enforced prior to August 1, 2017.

SECTION 17: This ordinance shall become effective upon the signature of the Lafayette Mayor-President, the elapse of ten (10) days after receipt by the Lafayette Mayor-President without signature or veto, or upon an override of a veto, whichever occurs first.

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Sec. 42-2. Smokefree Air

(a) *Definitions.* The following words and phrases, whenever used in this section, shall be construed as defined in this section:

Business means any business entity formed for profit or non-profit making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, accounting or other professional services are delivered.

Business entity means a sole proprietorship, partnership, corporation, limited liability company or other enterprise, including a municipal corporation, trust, or non-profit entity.

Common area means an area or physical space within an enclosed area where Employees or the public at large may congregate or assemble, including reception areas, lobbies, waiting rooms, hallways, kitchens, copy or file rooms, conference rooms, auditoriums, classrooms, meeting rooms, elevators, health care facilities, cafeterias, employee lounges, stairs and stairwells, restrooms and all other enclosed facilities.

Electronic smoking device means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking through inhalation of 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 project name or descriptor.

Electronic smoking device business or shop means a business entity where fifty percent or more of its sales or purchases for the preceding twelve months were for electronic smoking devices, electronic smoking device products and accessories at wholesale or retail, or fifty percent or more of its activity is devoted to the manufacture, importation, promotion or sale of electronic smoking devices, electronic smoking device products and accessories at wholesale or retail, or any premises owned or leased by an electronic smoking device manufacturer, importer, distributor, retailer or dealer and where fifty percent or more of its activity is devoted to the manufacture, importation or sale of electronic smoking devices.

Employee means 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 means a person or business entity that employs the services of one or more individual persons.

Enclosed area means 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.

Enforcement officer means the Chief of the Lafayette Fire Department or his designee.

Expanded service restaurant, bar or alcoholic beverage establishment or facility means any establishment holding a permit, license, or certificate issued pursuant to the provisions of La. R.S. 26:71(A)(3)(a), 71.1, 72, 73, 271(A)(2), 271.1, 271.2, and 272.

Health care facility means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of health care providers as defined in La. R.S. 40:1299.41A(1). This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

Hookah means a 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, shisha, or other plant matter.

Hookah business, shop or establishment means a business entity where fifty percent or more of its sales or purchases for the preceding twelve months were for hookah smoked products and accessories at wholesale or retail, or fifty percent or

more of its activity is for the manufacture, importation, promotion or sale of hookah smoked products and accessories at wholesale or retail or any premises owned or leased by a person where fifty percent or more of its business activity is devoted to the manufacture, importation or sale of hookah smoked products and accessories or an establishment whose primary activity is to cater to patrons who smoke hookah pipes.

Gaming operations means the conducting or assisting in the conducting of gaming activities or operations upon a riverboat, at the official gaming establishment, by operating an electronic video draw poker device, by a charitable gaming licensee, or at a pari-mutuel wagering facility or off-track wagering facility which is licensed for operation and regulated under the provisions of Chapter 4 of Title 4, Chapters 4, 5, 6 and 7 of Title 17, or Chapter 11 of Title 4 of the Louisiana Revised Statutes of 1950, or any other gaming operation authorized by law.

Gaming property means the designated gaming space and facilities owned, or leased or operated by a licensee or the casino operator that are part of the same facility or complex at which the gaming operations are located including, without limitation, any hotel, Restaurant, bar, lounge, tavern, retail facility, showroom, ballroom or entertainment center.

LCG means the Lafayette City-Parish Consolidated Government.

Place of employment means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, common areas. A private residence is not a "place of employment" unless it is used as a licensed child care, adult day care, or health care facility.

Public place means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a licensed child care, adult day care, or health care facility.

Restaurant means an eating establishment, including but not limited to, coffee shops, cafeterias, 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. "Restaurant" does not include an establishment which is encompassed within the definition of an expanded service restaurant, bar or alcoholic beverage establishment or facility.

Service line means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

Shopping mall means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

~~*Smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form, for personal inhalation or consumption.~~

Smoking means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, hookah, electronic smoking device, weed, plant, or other combustible substance in any manner or in any form, for personal inhalation or consumption.

Sports arena means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

~~*Tobacco Business or Shop* means a Business Entity in which the primary activity is the sale, manufacture or promotion of tobacco, tobacco products and accessories at wholesale or retail or any premises owned or leased by a tobacco product manufacturer, importer, distributor, or leaf dealer and principally devoted to the manufacture, importation or sale of tobacco products.~~

Tobacco business or shop means a business entity where fifty percent or more of its sales or purchases for the preceding twelve months were for tobacco, tobacco products and accessories at wholesale or retail, or fifty percent or more of its activity is for the manufacture or promotion of tobacco, tobacco products and accessories at wholesale or retail, or any premises owned or leased by a tobacco product manufacturer, importer, distributor, retailer or leaf dealer and where fifty percent or more of its activity is devoted to the manufacture, importation or sale of tobacco products or an establishment whose primary activity is to cater to persons who smoke tobacco products such as, a cigar bar.

(b) *Application of section to LCG-owned facilities.* All enclosed areas, including ~~buildings and vehicles~~, which are owned, leased, or operated by the LCG within the city or the unincorporated areas of the parish, as well as outdoor property adjacent to such buildings, shall be subject to the provisions of this section.

(c) *Prohibition of smoking in public places.* Except as provided in ~~Section~~ subsection 42-2(f), smoking shall be prohibited in all ~~enclosed~~ public places within the city or the unincorporated areas of the parish, including but not limited to, the following places:

- (1) Any gaming property where gaming operations are conducted.
- (2) ~~(1)~~ Aquariums, galleries, libraries, and museums.
- (3) ~~(2)~~ Areas available to and customarily used by the general public in businesses patronized by the public, ~~except as provided in La. R.S. 40:1300.24 and La. R.S. 40:1300.25.~~
- (4) ~~(3)~~ Convention facilities.
- (5) ~~(4)~~ Elevators.
- (6) Expanded service restaurants, bars or alcoholic beverage establishments or facilities.
- (7) ~~(5)~~ Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
- (8) ~~(6)~~ Health care facilities, subject to the provisions of La. R.S. 40:2115.
- (9) ~~(7)~~ Licensed child care and adult day care facilities.
- (10) ~~(8)~~ Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- (11) ~~(9)~~ Polling places.
- (12) ~~(10)~~ Public transportation facilities, including buses and taxicabs, under the authority of the LCG, and ticket, boarding, and waiting areas of public transit depots.
- (13) ~~(11)~~ Restaurants.
- (14) ~~(12)~~ Restrooms, lobbies, reception areas, hallways, and other common areas.
- (15) ~~(13)~~ Retail stores.
- (16) ~~(14)~~ Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of the LCG or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the LCG, subject to the provisions of La. R.S. 17:240.
- (17) ~~(15)~~ Shopping malls.
- (18) ~~(16)~~ Sports arenas, including enclosed areas in outdoor arenas.

(d) *Prohibition of smoking in places of employment.*

- (1) Smoking shall be prohibited in all enclosed areas within places of employment without exception. This includes common areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, health care facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.
- (2) This prohibition on smoking shall be communicated to all existing employees by the effective date of this section and to all prospective employees upon their application for employment.

(e) ~~Reasonable distance.~~ *Prohibition of smoking in outdoor places.*

- (1) ~~Reasonable Distance.~~ Smoking by an employee, invitee or other person present at or associated with a business is prohibited within a reasonable distance of twenty-five (25') feet outside of any entrance to an enclosed area where smoking is prohibited, which entrance is available to the general public (or such lesser distance if considerations of safety do not permit a greater distance), so as to ensure that ~~tobacco smoke~~ fumes, smoke, vapor and/or aerosol from smoking do not enter or migrate into the enclosed area through doors, entrances, windows, ventilation systems or other means. The foregoing shall apply to expanded service restaurants, bars and alcoholic beverage establishments or facilities, provided, however, that the applicable distance for which smoking shall be prohibited in outdoor places relative to such establishments or facilities is five (5') feet from any entrance to an enclosed area where smoking is prohibited. ~~This prohibition.~~ The prohibitions set forth in this subsection (1) shall not apply to any person who merely traverses near a place where smoking is prohibited if that person is not an employee, invitee or other person present at or associated with such business.
- (2) Smoking shall be prohibited in and within twenty-five (25') feet of all outdoor playgrounds.
- (3) Smoking shall be prohibited in and within twenty-five (25') feet of bleachers and grandstands for use by spectators at sporting and other public events.
- (4) Smoking shall be prohibited in and within twenty-five (25') feet of any dugout, football, softball, baseball, or soccer field. Smoking shall also be prohibited in and within twenty-five (25') feet of any concession stand of a sporting facility or recreational area/facility.

(f) *Where smoking not regulated.* Notwithstanding any other provision of this section to the contrary, the following areas shall be exempt from the provisions of sections 42-2(c), (d) and (e):

- ~~(1) Any gaming property where gaming operations are conducted.~~
- ~~(2)~~ (1) Electronic smoking device business or shop.
 - (2) Hookah business, shop or establishment.
 - (3) Hotel guest rooms.
- ~~(3) Expanded Service Restaurants, Bars or Alcoholic Beverage Establishments or Facilities.~~
- ~~(4)~~ (4) Tobacco business or shop.
- ~~(5)~~ (5) Private residences, except when used as a licensed child care, adult day care, or health care facility.
- ~~(6)~~ (6) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are

smokers and have requested in writing to be placed in a room where smoking is permitted.

(7) (7) Outdoor areas of places of employment, except as provided in subsection (e) of this section.

(g) *Declaration of establishment as non-smoking.* Notwithstanding any other provision of this section, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may voluntarily declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 42-2(h)(1) is posted.

(h) *Posting of signs.*

(1) "No Smoking including Electronic Cigarettes" signs or the international "No Smoking including Electronic Cigarettes" symbol (consisting of a pictorial representation of a burning cigarette and electronic cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place, place of employment and place where smoking is prohibited by this section, by the owner, operator, manager or other person in control of that place.

(2) Every public place and place of employment where smoking is prohibited by this section shall have posted at every public entrance a conspicuous sign clearly stating that smoking is prohibited.

(3) All ashtrays and receptacles used or provided for the deposit of tobacco refuse shall be removed from any area where smoking is prohibited by this section by the owner, operator, manager, or other person having control of the area.

(4) Each employer, owner or manager of a business where smoking is prohibited shall, within thirty (30) days of the effective date of this section or of the opening of a business subsequent to the effective date of this section, post a sign approved by the enforcement officer which clearly and conspicuously summarizes the provisions of this section.

(i) *Nonretaliation.* 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 section or reports or attempts to prosecute a violation of this section.

(j) *Enforcement.*

(1) This section shall be enforced by the enforcement officer within the city and the enforcement officer and any other law enforcement officer having jurisdiction or arrest authority in the unincorporated areas of the parish.

(2) Notice of the provisions of this section shall be given to all applicants for a business license in the city or the unincorporated areas of the parish.

(3) Any citizen who desires to register a complaint under this section may initiate enforcement with the enforcement officer.

(4) Notwithstanding any other provision of this section, an employee or private citizen may bring legal action to enforce this section.

(5) In addition to the remedies provided by the provisions of this section, the enforcement officer, or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this section may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

- (6) In the interest of public safety, the enforcement officer has discretion to take immediate action to enforce this section.
- (k) *Violations and Penalties.*
- (1) A person who smokes in a public place or place of employment and in violation of the provisions of this section shall be guilty of an infraction, punishable by:
- a. A fine not exceeding \$100.00 for a first violation.
 - b. A fine not exceeding \$200.00 for a second violation within one year of the first violation.
 - c. A fine not exceeding \$500.00 for each additional violation within one year of the prior violation.
- (2) Each day on which a violation of this section occurs shall be considered a separate and distinct violation.
- (3) The failure or refusal of a person who owns, manages, operates, or otherwise controls a public place or place of employment to comply with the requirements of Section 42-2(h)4 may, ~~upon compliance with the provisions of this Section,~~ result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

Upon the third conviction of any person or persons for a violation of this section at a particular business or place of employment, the owner, operator, manager, or other person in control of such business or place of employment at which such violations occurred, may be given written notice by the enforcement officer of the right to adopt and implement a written policy to address the violations within thirty (30) days of receipt of such notice. In the event that such owner, operator, manager, or other person in control should submit a written policy to the enforcement officer and such policy is approved by the enforcement officer, and the owner, operator, manager, or other person in control thereafter implements the policy in good faith and to the reasonable satisfaction of the enforcement officer, the permit or license of the business or place of employment may not be suspended or revoked. If such person should fail to submit a written policy to the enforcement officer within such period of time, or if a submitted policy is not approved or, upon approval, is not implemented in good faith, the permit or license of the business or place of employment may be suspended or revoked by the enforcement officer in the manner and under the circumstances provided in La. R.S. 33:4786-8.

- (l) *Public education.* The enforcement officer shall engage in a continuing program to explain and clarify the purposes and requirements of this section to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this section.
- (m) *Governmental agency cooperation.* The Lafayette ~~City Parish~~ Mayor-President shall annually request other governmental and educational agencies having facilities within the city and the unincorporated areas of the parish to establish local operating procedures in cooperation and compliance with this section. This includes urging all federal, state, city and school district agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.
- (n) *Other applicable laws.* This section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.
- (o) *Liberal construction.* This section shall be liberally construed so as to further its purposes.

~~(p) — *Effective Date of Enforcement.* No criminal offense for the violation of this Section shall be imposed or enforced prior to the 90 day after “signature of the signature of the city parish president, the elapse of ten (10) days after receipt by the city parish president without signature or veto, or upon override of a veto, whichever occurs first.”~~

~~(q) — *Encouraged Compliance.* All exempt Restaurants are encouraged to construct, establish and maintain a distinct, segregated physical area or space where smoking is permitted within an Enclosed Area, provided that the designated area or space is constructed and/or ventilated so as to preclude the entrance, migration or infiltration of smoke into a non-smoking area.~~



Internal Memorandum

TO: Veronica L. Williams, Clerk of Council

COPY: Joel Robideaux, City-Parish Mayor-President
Lowell Duhon, Chief Administrative Officer
Paul Escott, City-Parish Attorney
Patrick Lewis, District 3 Councilmember
Kenneth P. Boudreaux, District 4 Councilmember
Bruce M. Conque, District 6 Councilmember
Nannette Cook, District 7 Councilmember

FROM: Stuart R. Breaux, Assistant City-Parish Attorney

SUBJECT: Ordinance Amending Section 42-2 of the Lafayette City-Parish Code of Ordinance, "Smokefree Air," to prohibit smoking in gaming properties where gaming operations are conducted, and expanded service restaurants, bars and alcoholic beverage establishments or facilities, and to provide for related matters.

DATE: March 24, 2017

Vee, with authorization from Councilmember Cook, I attach the following and request placement of same on the agenda for introduction at the April 4, 2016 Council meeting:

- (a) An ordinance of the Lafayette City-Parish Council amending Chapter 42, "Health and Sanitation," Article I, "In General," Section 42-2, "Smokefree Air," of the Lafayette City-Parish Consolidated Government Code of Ordinances relative to smoking in public places by adding further or additional definitions and public places where smoking is prohibited.
- (b) A redlined version of Section 42-2, "Smokefree Air," of the Lafayette City-Parish Consolidated Government Code of Ordinances showing the amendments to The said Section 42-2.

You have confirmed that Councilmembers Lewis, Boudreaux and Conque are also co-authors of this Ordinance. You have also advised that Liz Benoit of your office will prepare the

necessary submittal form.

Should you have any questions, please do not hesitate to contact our office.



Stuart R. Breaux
Assistant City-Parish Attorney

Enclosures

LAFAYETTE CITY-PARISH COUNCIL MEETING

AGENDA ITEM SUBMITTAL FORM

- 1) **JUSTIFICATION FOR REQUEST:** An ordinance of the Lafayette City-Parish Council amending Chapter 42, "Health and Sanitation," Article I, "In General," Section 42-2, "Smokefree Air," of the Lafayette City-Parish Consolidated Government Code of Ordinances relative to smoking in public places by adding further or additional definitions and public places where smoking is prohibited.
- 2) **ACTION REQUESTED:** Adoption of Ordinance
- 3) **REQUESTED ACTION OF COUNCIL:**
- A) INTRODUCTION: April 4, 2017
- B) FINAL ADOPTION: April 18, 2017
- 4) **DOCUMENTATION INCLUDED WITH THIS REQUEST:**
- A) Memo
- B) Ordinance
- 5) **FISCAL IMPACT:**
- _____ Fiscal Impact (Explain)
- X No Fiscal Impact

RECOMMENDED BY:

/s/ Kevin Naquin

/s/ Pat Lewis

/s/ Kenneth Boudreaux

/s/ Bruce Conque

/s/ Nanette Cook

KEVIN NAQUIN, PAT LEWIS, KENNETH BOUDREAUX, BRUCE CONQUE, NANETTE COOK

APPROVED FOR AGENDA:

/s/ Lowell Duhon

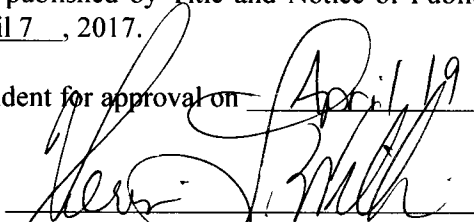
LOWELL DUHON
CHIEF ADMINISTRATIVE OFFICER

DISPOSITION OF ORDINANCE NO. O-065-2017

- | | |
|---|--|
| <p>1. This ordinance was introduced:
 <u>April 4</u>, 2017
 YEAS: Naquin, Castille, Lewis,
 Boudreaux, Bellard, Conque,
 Cook, Hebert, Theriot</p> <p>NAYS: None</p> <p>ABSENT: None</p> <p>ABSTAIN: None</p> | <p>Final disposition by Council:
 <u>April 18</u>, 2017
 YEAS: Naquin, Castille, Lewis,
 Boudreaux, Conque,
 Cook, Hebert</p> <p>NAYS: Bellard, Theriot</p> <p>ABSENT: None</p> <p>ABSTAIN: None</p> |
|---|--|

2. Notice of Public Hearing: This ordinance was published by Title and Notice of Public Hearing was published in the Advertiser on April 7, 2017.

3. This ordinance was presented to the Mayor-President for approval on April 19, 2017, at 11:00 o'clock 2 .m.



 CLERK OF THE COUNCIL

4. Disposition by Mayor-President:

I hereby:

- A. Approve this ordinance, the 27th day of April, 2017, at 11:30 o'clock 2 .m.
- B. Veto this ordinance, the _____ day of _____, 2017, at _____ o'clock ____ .m., veto message is attached.
- C. Line item veto certain items this _____ day of _____, 2017, at _____ o'clock ____ .m., veto message is attached.



 MAYOR-PRESIDENT

5. Returned to Council Office ~~with~~ without veto message on April 20, 2017, at 10:00 o'clock 2 .m.

6. Reconsideration by Council (if vetoed):

On _____, 2017, the Council did/refused to adopt this ordinance after the Mayor-President's veto.

7. Returned to the Council Office without signature of Mayor-President (*unsigned*) on _____, 2017, at _____ o'clock ____ .m.

If not signed or vetoed by the Mayor-President, and ten days have elapsed since this ordinance was presented to him for action, same has been automatically approved.



 CLERK OF THE COUNCIL

8. Full publication of this ordinance was made in the Advertiser on April 21, 2017.