CITY OF DAYTON

COUNCIL MEETING

September 6, 2022

Dayton City Council held a regular meeting on Tuesday, September 6, 2022, at 7:00 pm at the Dayton Community Center, 625 Second Avenue.

Roll Call:

Mayor Baker Present Member Kelly Present

Member Volter Present Member Lovins Present

Member Neary Present Member Beseler Absent

Member Nyman Present City Admin. Fossett Present

City Attn. Edmonson Present

Mayor Baker opened the meeting with a prayer and the pledge of allegiance.

**Mayor's Report:**

Mayor Baker announced that there would be a public hearing on September 20 on the tax rate.

Mayor Baker asked the audience to sign in if they would like to speak about the no-smoking ordinance. Motion by Member Neary, seconded by Member Nyman, to approve the minutes from August 2, 2022. Motion carried- so ordered.

**Audience:**

Julie Kirkpatrick, Meet NKY. She is the president of Meet NKY for Tourism, and she is in favor of this ordinance. She said that when people decide to visit places, up to 87% favor non-smoking places of business.

Michael Gieske MD, at St. Elizabeth. He is a specialist in lung cancer. This year he has screened more than 8,0000 patients for lung cancer. Out of the 8,000 screened, 75% were in stage 1 or 2 of lung cancer. So screening is important but not as much as prevention.

Don Biegler, Dayton business owner. He purchased the old Eagles building, and the renovations have been costly. While renovating, he has had to remove years of nicotine stains from the walls of his building, not to mention removing cigarette buts on his sidewalk. This healthy living initiative will help promote a more centralized area for smoking.

Jacoba Wells, a Dayton resident. She feels the ordinance is broad and does not cater to people living in Dayton. She would like to amend the ordinance and maybe have a grandfather clause. She doesn't want to see someone lose their job over this ordinance.

Nathan Kroeger, a Dayton resident. Nathan submitted an email a few weeks ago with four main concerns, but he has a fifth concern. He feels the ordinance presented is not for Dayton, and the city should start from scratch and cater to Dayton's citizens, and not a blanket ordinance made from outside the city. He would like to see a grandfather clause. City Admin. Fossett stated that when grandfathering an ordinance, it would apply to zoning ordinances only and not regulatory ordinances such as this.

Michael McSwain, a Dayton Citizen. He understands both sides. Louisville has a no-smoking ordinance, and it has helped businesses. He is for this ordinance.

Patricia Flynn, Dayton Business owner: She owns the Rose Room, which has been operating for over 85 years. This ordinance will put her out of business. She feels this should be a personal choice left to the business owners.

Brent Cooper, NKY Chamber. This ordinance has already been modified to allow smoking outside of the place of business. He also mentioned that secondhand smoke causes lung cancer; in KY, lung cancer rates are above the national average. Good health is good for business, and he wants to see this approved. Member Nyman wanted to know why in Dayton. Mr. Cooper stated Dayton is a leader and has led the way on other hard-hitting issues. If Dayton passed this ordinance, other cities would follow. Data shows that more people visit businesses when places go smoke-free. He feels that it's not too much to ask people to smoke outside and not inside.

Tammy Cornett, a Dayton resident. She stated the ordinance as written is very confusing and does not pertain to our city. We need to start over and write the ordinance in-house. She feels even though people are smoking outside, you will be walking through it to get to your destination, and you're not going to stop parents from smoking when picking up their kids.

Lisa Niell, an employee at the Rose Room. She said this ordinance would not stop anything. People can sneak vapes into bathrooms. Member Neary noted the ordinance does say no vaping. Ms. Niell said people would sneak it.

Tim Hall, a Dayton resident. He stated this is a personal choice and understands both sides. However, this ordinance will only affect three businesses that you have to be 21 years of age to enter. He feels that should be handled at the State or County level.

Darrell Wood, a Dayton resident. He does not support this ordinance because he does not want to see people lose their jobs and feels that this is a personal choice.

Abby Maddock, a Dayton resident. She and her husband moved here last year. If she knows businesses are non-smoking, she will go there before going somewhere that allows smoking.

Richard Hunt, a Dayton Business owner. He owns Roebling Books. His store in Covington is surrounded by bars and restaurants that are non-smoking on the inside. So there does not seem to be an issue with people going outside to smoke.

Todd Hembrook, a Dayton resident. He has been a bartender for 20 years and has worked in all kinds of bars. He has seen smoking ordinances passed, and many businesses felt they would need to close their doors, but it turned out to be okay.

Comments:

Tammy Cornett, a Dayton resident, would like to know how this would be enforced. City Admin Fossett said this would be complaint-driven. The NKY Health Department will implement this when doing their inspections, and the police will enforce it. Nathan Kroeger, a Dayton resident, stated there is data that shows that smoking bans will punish businesses.

**Second Reading:**

CITY OF DAYTON, KENTUCKY ORDINANCE NO. 2022#20

**AN ORDINANCE CREATING A NEW SUBCHAPTER OF CHAPTER 150 OF THE DAYTON CODE OF ORDINANCES, TITLED “RESIDENTIAL RENTAL LICENSE AND SAFETY INSPECTION PROGRAM,”** **TO ESTABLISH A RENTAL PROPERTY INSPECTION PROGRAM IN THE CITY OF DAYTON, INCLUDING OBLIGATIONS OF OWNERS OF RESIDENTIAL RENTAL PROPERTY IN THE CITY, HOW INSPECTIONS WILL BE CONDUCTED AND ENFORCED BY THE CITY, IMPOSING A RENTAL LICENSE FEE OF $40 PER RENTAL UNIT, AND ESTABLISHING PENALTIES FOR VIOLATION OF THE ORDINANCE OF NOT LESS THAN $50 PER DAY, PER VIOLATION BUT NOT MORE THAN $250 PER DAY, PER VIOLATION, UP TO A MAXIMUM OF $5,000 PER CITATION AND A PROPERTY LIEN IN THE AMOUNT OF $250 PER RENTAL UNIT.**

**WHEREAS,** for the reasons set for in Section 158.81, titled “Findings” below, the Dayton City Council believes that this ordinance is needed to protect the public health and welfare by addressing substandard conditions in residential rental dwellings and to ensure that the City’s rental housing stock is properly maintained and residents of rental properties live in safe and healthy conditions.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF DAYTON, KENTUCKY:**

Sections § 150.80  through § 150.99of theDayton Code of Ordinances (“Code”) are hereby repealed in full and replaced with a new subchapter of Chapter 150 of the Code, titled as “Residential Rental License and Safety Inspection Program,” as follows:

**§ 150.80  GENERAL PROVISIONS.**

(A)   Scope. The provisions of this subchapter apply uniformly to the construction, maintenance, use, and occupancy of all buildings, mobile homes, structures, and premises, where applicable, and shall apply uniformly to the alteration, repair, equipment, use, occupancy and maintenance of all existing buildings, mobile homes, structures, and premises within the jurisdiction of the City, irrespective of when or under what codes such buildings or structures were originally constructed or rehabilitated. No person shall lease any residential rental property unit without complying with the terms of this subchapter and acquiring both an occupational license and a rental inspection license from the City of Dayton, Kentucky (“City”), as required herein.

(B)   Title. This subchapter shall be known and may be cited as the “Residential Rental License and Safety Inspection Ordinance.”

**§ 150.81 FINDINGS.**

(A)   A substantial number of Dayton citizens reside in rental dwellings that are substandard and/or are detrimental to health, safety, and welfare of these residents as well as to neighboring properties.

(B) Substandard conditions in residential rental dwellings are responsible for a wide array of significant health problems, such as childhood lead poisoning, asthma, and respiratory conditions that result from exposure to mold, pests, and other household allergens as well as increased rates of injury and mortality among the elderly.

(C) Requested and systematic inspections of rental dwellings can help to ensure that the City’s rental housing stock is properly maintained and residents live in safe and healthy conditions.

(D)   The continuation of substandard conditions in rental dwellings reduces property values in the City, causing economic hardships for all its citizens.

(E)   The City desires to promote the health, safety, and welfare of its citizens and adopts this subchapter to ensure that all rental dwelling are safe, sanitary, and suitable in accordance with applicable ordinances and regulations enacted by the City.

**§ 150.82   DEFINITIONS.**

(A)   Meaning of certain terms. Whenever the words “BUILDING,” “BUILDING UNIT,” “DWELLING,” “DWELLING UNIT,” “MOBILE HOME,” “PREMISES” and “STRUCTURE” are used in this subchapter, they shall be construed as though they are followed by the words “or any part thereof or any premises accessory thereto.” Words used in the singular include the plural and the plural the singular.

(B)   Undefined words. Words not specifically defined in this subchapter shall have the common definition set forth in a standard dictionary, or the City’s Code of Ordinances, the most current version of the International Property Maintenance Code, or the statewide Building Code or Fire Safety Code.

(C)   For the purposes of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

“ADMINISTRATIVE SEARCH WARRANT.” A written order of a judge or other officer authorized by statute to issue search warrants that commands the inspection of rental dwellings under this subchapter, which shall be obtained pursuant to Section 10.50 of the Dayton Code of Ordinances.

“BUILDING.” A fixed construction with walls, foundation, and roof, such as a house, factory, or garage.

“BUSINESS REG

“CITY.” The City of Dayton, Kentucky

“CITY CODE OF ORDINANCES” or “CODE.” The codification of the ordinances adopted by the City of Dayton, Kentucky, and published by American Legal Publishing Corporations, including supplements thereto.

“DILAPIDATED.” No longer adequate for the purpose or use for which it was originally intended, or the City has deemed it blighted.

“DWELLING UNIT.” Any enclosed space used or intended to be used -- wholly or in part -- for living and sleeping purposes, whether or not cooking and eating facilities are provided, including such space provided to third parties by the owner, including family members and friends, free of charge. Temporary housing, as defined hereinafter, shall not be classified as a “DWELLING UNIT.” Industrialized housing and/or modular construction used or intended for use of living and sleeping purposes shall be classified as DWELLING UNIT. DWELLING UNIT shall not include hotels or motels that primarily rent rooms on a daily or weekly basis, but it does include short-term rentals.

“FIRE SAFETY CODE.” The current NFPA Code (including NFPA 101, Life Safety Code), or any other code (such as electrical code or fire alarm code) adopted by the City and/or the Bellevue-Dayton Fire Department.

“HABITABLE ROOM.” A room or enclosed floor area used or intended to be used for living or sleeping purposes, excluding bathrooms, basement laundries, furnace rooms, utility rooms of less than 50 square feet of floor space, corridors, stairways, closets, storage spaces, unheated areas, and workshops and hobby areas below ground level.

“HOUSEHOLD.” One or more individuals living together in a single dwelling unit and sharing common living, sleeping, cooking, and eating facilities.

“HOUSING CODE.” The current property maintenance code enforced by the the City, including the International Property Maintenance Code and nuisance ordinances adopted by the City.

“KENTUCKY BUILDING CODE.” The statewide Building Code adopted pursuant to KRS 198B.010 *et seq*., or other versions of the Building Code applicable to the particular structure or building.

“MOBILE HOME.” A structure, transportable in one (1) or more sections, which is eight (8) feet or more in width and forty (40) body feet or more in length when in the traveling mode, has three hundred twenty (320) or more square feet when erected on site, is built on a permanent chassis, is designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, includes plumbing, heating, air-conditioning, and electrical systems and may be used as a place of residence, business, profession, or trade by the owner, lessee or their assigns, and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure.

“OCCUPANT.” Any individual having possession of a premises or any individual over one year of age, living, sleeping, cooking or eating in or having possession of a dwelling unit or a rooming unit, including family members and others who are living in the premises, whether or not they are paying rent to the owner or operator of the premises.

“OPERATOR.” Any person who has ownership, charge, care, control, or management of a building, or part thereof, in which building units are leased.

“OWNER.” Any person who alone, jointly, or severally with others, as of January 1 of each calendar year, beginning on January 1, 2022:

a)   Has legal title to any premises, building, or dwelling unit, with or without accompanying actual possession thereof, including property for which the owner has granted or has attempted to grant equitable interest to an occupant, whether by land contract or other legal document; or

(b)   Shall have charge, care, or control of any premises, building, or dwelling unit, as owner, as an agent of the owner, or as executor, administrator, trustee, or guardian of the estate of the owner. Any such person thus representing the owner shall be bound to comply with the provisions of this subchapter and of rules and regulations adopted pursuant to it to the same extent as if he or she were the owner.

“PERSON.” Any individual, firm, corporation, limited liability company, association, partnership, cooperative, trust, or governmental agency.

“PREMISES.” A platted lot or part thereof or unplatted lot or parcel of land or plat of land, either occupied with a dwelling or other structure or unoccupied, and includes any such building or part thereof, accessory structure, or other structure thereon.

“SHORT-TERM RENTAL.” (a) Any residential dwelling unit or part thereof; (b) Offered or held out to the public or rented on a hosting website, web, or mobile application, or other online platform through which short-term rentals are listed, advertised, solicited, or otherwise held out for rent; and (c) For a duration of occupancy of less than thirty consecutive days, or longer if the short-term rental otherwise meets the definition herein.

“RENTAL DWELLING.” Any residential structure or residential or commercial building containing one or more units, which the owner and/or operator either actually rents or leases or intends to rent or lease to the public for residential purposes, excluding those buildings not covered by this subchapter.

“RENTAL INSPECTION LICENSE” or “INSPECTION LICENSE.” The rental dwelling license established and required by this subchapter.

“RENTAL DWELLING UNIT.” Any residential unit within a rental dwelling that is actually rented, leased, or otherwise made available to the public or is intended to be rented, leased, or otherwise made available to the public for residential purposes, excluding those units not covered by this subchapter. With regard to mixed-use properties, only those units within the parcel that are rented, leased, or made available to the public for residential purposes shall require a rental dwelling license.

“OCCUPATIONAL LICENSE.” The occupational license for every person engaged in the business of leasing or renting real property as required by Section 110.03(A)(2) of the City Code or Ordinances.

“RENTAL UNIT INSPECTOR” or “INSPECTOR.” Any authorized City employee or contractor, including, but not limited to, a License Inspector, Code Enforcement Officer, City Administrator, Assistant City Administrator, inspectors with the Campbell County Planning, Zoning, and Building Department, and inspectors with the Bellevue-Dayton Fire Department.

“RESIDENT.” Any adult or child residing within the City.

“SAFETY.” The condition of being reasonably free from danger and hazards that may cause accidents or disease.

“SUPPLIED.” Paid for, furnished by, provided by, or under the control of the owner, operator, or its agent.

“TEMPORARY HOUSING.” Any tent, trailer, transient mobile home, or any other structure used for human shelter that is designed to be transportable and that is not attached to the ground, to another structure, or to any utility system and remains on the same premises for more than 30 consecutive days.

“UNIT.” A room or group of rooms located within a building forming a single habitable unit.

**§ 150.83   RESPONSIBILITIES OF OWNERS.**

(A) Every owner and/or operator of a rental dwelling in the City must register every rental dwelling unit it owns or operates in the City every year and pay an annual rental license fee for each rental dwelling unit. The owner and/or operator must *also* acquire an occupational license to do business in the City and pay annual business license taxes pursuant to subchapter 110 of the Dayton Code of Ordinances.

(B) No person shall let a rental dwelling unit in the City for occupancy unless it is clean, sanitary, and complies with all applicable laws and the City Code of Ordinances, including the International Property Maintenance Code, the Kentucky Building Code, the Kentucky Fire Safety Code, and applicable Dayton city ordinances.

(C)   Every owner of a building containing two or more rental dwelling units shall maintain in a clean and sanitary condition any shared entrances or shared stairways or public areas.

(D)   Every owner of a building containing one or more rental dwelling units shall maintain the private sidewalks, curbs, and grassy areas contiguous to the rental property in a safe condition free of patent defects, trash and debris, and dangerous conditions.

(E)   Every owner of a building containing one or more units shall comply with the provisions of the City of Dayton Code of Ordinances, including the removal from the premises of all brush, weeds, stumps, dead trees, obnoxious growth, filth, garbage, trash, and debris.

(F)   Every owner of a building containing one or more rental dwelling units shall comply with all provisions of the City Code of Ordinances, including ordinances prohibiting nuisances as set forth in Chapter 99 of the Code. In addition, every owner of a building containing one or more units shall screen the area where garbage cans and receptacles are kept on the premises so that the garbage area is not easily visible to those persons using the public sidewalks and streets. Screening may be accomplished by the erection of a fence, planting shrubs and foliage, or by using a fence or foliage already in existence so long as such screening applies to applicable zoning and building codes.

**§ 150.84  RENTAL INSPECTION LICENSE; FEES.**

(A)   No person or entity shall rent or offer for rent a dwelling unit in the City unless the building is covered by a current, unrevoked Dayton occupational license, as required by subchapter 110 of the Dayton Code of Ordinances, *and* a Dayton rental inspection license, as required by this subchapter.

(B)   The City of Dayton hereby creates a Rental License and Safety Inspection Program (“program”), which shall become effective on January 1, 2023. Any individual or entity that owns or operates a rental dwelling in the City of Dayton shall obtain an annual rental inspection license from the City for each rental dwelling unit(s) within that dwelling. Payment for each inspection license shall be due on April 15 of each year and will expire each April 15 thereafter. The City shall not issue a license to any individual or entity if it owes any taxes, fines, fees, or other obligations to the City.

(C) The annual rental license fee shall be forty dollars ($40.00) for each rental unit, which shall be used to support and pay for the program operated through the City’s Code Enforcement Department. Under the program, the City will endeavor to inspect all rental dwelling units in the city on a biennial basis, i.e., once every two years.

(D)   The City Clerk shall issue initial licenses and renewals in the names of the owners of residential rental property. No license shall be issued by the City unless the rental dwelling unit for which the license is issued meets all requirements of this subchapter and applicable rules and regulations pursuant thereto.

(E)   No rental inspection license shall be issued or renewed unless the owner or its designee has applied to the City on an application form provided by the City and signed this form. The owner of the rental dwelling shall provide convenient times for inspectors to enter the building to inspect the building under the program.

(F)   The City will not issue or renew a rental inspection license for a rental dwelling unless the owner of the dwelling pays the annual fee for each rental unit in the dwelling. The City will not issue an occupational license for a property owner providing rental dwelling units in the City unless the owner first submits an application and pays an annual rental inspection license fee for each rental dwelling unit it owns or operates in the City.

(G)   The City will not issue or renew the rental inspection license to an individual or entity not residing in the Commonwealth of Kentucky unless such applicant designates, in writing, with the City Clerk, the name and address of an agent within the Commonwealth of Kentucky.

(H)   The owner of rental dwelling unit(s) in City must produce, if requested by the inspector or other City official, a copy of the rental inspection license for these dwelling unit(s). The rental inspection license is not transferable to another person or entity. Every person holding a rental inspection license shall give notice, in writing, to the inspector within 24 hours after transferring the property or otherwise disposing of ownership or legal control of it. Such notice shall include the name and address of the person or entity that now owns or controls the rental dwelling.

(I)   Whenever, upon inspection of a rental dwelling unit, an inspector finds conditions or practices that violate provisions of this subchapter, he or she may serve upon the owner or its designee notice of such violation as provided herein. This notice shall be served by the City by either hand delivery to the owner or its agent or by first-class, U.S. Mail at its last known address. Such notice shall state that if the cited violations are not corrected within a reasonable time, the owner may be subject to civil fines and/or a suspension or revocation of owner’s occupational license and/or rental inspection license.

(J)   At the end of the time allowed for correction of any violations cited by the inspector, the inspector shall reinspect the rental dwelling unit, at a cost of $40 per each additional inspection. If the inspector determines that the violations still exist or have not been properly corrected, then he or she may issue an order assessing fines for noncompliance and/or take action to suspend the City’s rental inspection license and occupational licenses for the rental dwelling. The inspector shall notify the owner of this action in writing and the owner may request a hearing, in writing, before the Code Enforcement Board within seven days after receipt of the notice of violation.

(K)   Any person whose license to operate a rental dwelling has been suspended and who has been notified as provided herein shall be entitled to a hearing in the manner provided for in § 150.88 of this subchapter. The City will not revoke an rental inspection license while a hearing is pending. If, upon reinspection, the inspector finds that the rental dwelling cited with a notice of violation is now in compliance with this subchapter, then the inspector shall reinstate the license by written order, which will automatically cancel any pending hearing.

**§ 150.85  INSPECTION.**

(A)  The inspector shall enforce the provisions of this subchapter. The inspector is authorized and directed to inspect rental dwelling units within the City in response to a complaint that an alleged violation of this subchapter may exist, when the inspector has valid reason to believe a violation of this subchapter has been or is being committed, or as part of a proactive rental inspection (“PRI”) program that the City may implement. Complaints to the City may be submitted by any individual, including an occupant of a rental dwelling unit, a neighbor, contractor, Code Enforcement Officer, or Police or Fire Department officer.

(B)   The inspector is authorized to enter and inspect all premises subject to the provisions of this subchapter for the purpose of determining whether a rental dwelling or dwelling unit complies with the provisions of this subchapter. The inspector may enter any rental dwelling unit and the common areas used by the tenant in that rental dwelling at the tenant’s invitation, without the consent of the owner and/or operator of the rental dwelling.

(C)   The inspector and the owner, occupant, or other person in charge of the premises may agree to an inspection by appointment.

(D)   During inspections, the owner, occupant, or other person in charge of premises, upon presentation of proper identification by the inspector, shall allow the inspector to enter and have free access to every part of the premises. If access is refused, the inspector may apply for an administrative search warrant to gain access. The Dayton Police Department shall assist the inspector in preparing the administrative search warrant and presenting it to the Campbell District Court to secure issuance of the warrant.

(E)   No owner or landlord shall retaliate against a tenant for lodging a complaint about his or her rental dwelling unit with the City.

**§ 150.86   NOTICE OF VIOLATION.**

(A)   Whenever any inspector determines that any premises or rental dwelling unit in a rental dwelling fails to meet the requirements set forth in this subchapter, he or she shall issue a notice setting forth the alleged violations and advise the owner that such violation must be corrected (“notice”). This notice shall:

(1) Be in writing;

(2) Set forth the alleged violations of this subchapter;

(3) Describe the rental dwelling or rental dwelling unit where the violations are alleged to exist or to have been committed;

(4) Provide a reasonable time, generally not to exceed 30 days, to make corrections to the alleged violations;

(5) Notify the owner or operator of the rental dwelling or rental dwelling unit responsible for compliance with the alleged violation(s) by regular U.S. mail;

(6) State that the violation must be corrected within 30 days and describe the procedure and time limit to apply for a reconsideration or formal hearing. An extension of this deadline may be given upon good cause at the discretion of the inspector.

(B)   At the end of the period of time allowed for compliance, the inspector shall reinspect the premises or dwelling unit described in the notice.

**§ 150.87   REPAIRS AND OTHER CORRECTIVE ACTION.**

Whenever an owner of any rental dwelling unit fails, neglects, or refuses to make repairs or other corrective action cited in a notice, the inspector may either apply to the court for appointment of a receiver, or take other appropriate action permitted by the Kentucky Revised Statutes, the Dayton Code of Ordinances, or orders issued by the Campbell County District and/or Circuit Courts to collect rents and make repairs, or proceed in accordance with City ordinances relating to demolishing dilapidated or dangerous buildings.

**§ 150.88   APPLICATIONS FOR HEARING; APPEALS.**

(A) (1)   Any person aggrieved by any notice or order of the inspector issued under this subchapter may file a petition setting forth his or her reasons for contesting the notice or order with the City of Dayton Code Enforcement Board (hereafter referred to as “Board”), within seven business days after receipt of such notice or order from the inspector.

(2)   Upon receipt of the petition, the Board shall set a hearing date and notify the petitioner of this date. At the hearing, the City shall prosecute the case before the Board and present sufficient evidence to allow the Board to find, by a preponderance of the evidence, that a violation has occurred.

(3)   At the hearing, the petitioner shall be given an opportunity to show cause why the notice or order should be modified or withdrawn or why the period of time permitted for compliance should be extended.

(4)   The Board may affirm, modify, or reverse the notice or order and may grant an extension of time for the performance of any act required where practical difficulty or undue hardship exists in connection with the performance of any act required by the notice or order and that such extension is in harmony with the general purpose of this subchapter to secure the public health, safety, and welfare, or the Board may fine the owner for noncompliance pursuant to the terms of this subchapter.

(B)   In addition to the other remedies outlined in this subchapter, any rental inspection license issued by the City, with notice to the holder thereof and after a hearing, may be revoked or suspended by the Board for the following:

(1)   If the owner continually and persistently allows a public nuisance on the premises or permits persons occupying any rental dwelling to make or cause any loud, unnecessary, or unusual noise or any noise which either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety, of others within the City limits;

(2)   If the owner continually and persistently allows a public nuisance on the premises or permits persons occupying a rental dwelling to cause inconvenience, annoyance, or alarm or wantonly create a risk by engaging in fighting or in violent, tumultuous, or threatening behavior, or to cause a hazardous or physically offensive condition by any act that serves no legitimate purpose;

(3)   If the owner continually and persistently allows a public nuisance on the premises or permits persons occupying any rental dwelling to emit or cause any foul, offensive, nauseous, noxious, or disagreeable odors that are extremely repulsive to the physical senses of reasonable persons, which annoy, cause discomfort, injury, or inconvenience to others within the City;

(4)   If the owner fails to make corrections or repairs mandated by the inspector, which include, but are not limited to, work required to ensure the rental dwelling is safe and sanitary; or

(5)   If the owner has failed to pay any city taxes, fees, or obligations.

(C)   Final decisions of the Dayton Code Enforcement Board may be appealed to Campbell District Court.

(D)   If an owner files an action for a writ of forcible detainer in the Campbell County District Court or for any action of ejectment in a court of competent jurisdiction for eviction of a tenant who is the cause of a nuisance, as described herein, then any proceeding before the Board shall be placed on hold pending a final determination by the court. If the court refuses to evict the offending tenant and the owner has made a good faith effort to abate the nuisance by eviction, then any pending proceeding before the Code Enforcement Board shall be dismissed. Dismissal shall not prevent the City, through the inspector, from implementing the provisions of this subchapter to abate future or continuing nuisances occurring in the rental dwelling.

(E)   The inspector shall cooperate with an owner who is attempting to evict a tenant charged with creating a nuisance by furnishing documentary and/or oral evidence, if applicable, to the court to support the owner’s efforts to prove the existence of a nuisance.

**§ 150.89   PENALTY.**

Violations of any provision in this subchapter shall be subject to the following schedule of civil fines:

(A)   If a notice of violation or citation issued under this subchapter is not contested by the person charged with the violation, the penalties set forth in this section and in accordance with the notice issued shall apply.

(B)   Any person or legal entity that violates a provision of this ordinance shall be subject to a civil fine of not less than $50 per day, per violation, but not more than $100 per day, per violation for the first 30 days the violation(s) remains uncorrected, and thereafter, a civil fine of not less than $100 per day, per violation, but not more than $250 per day per violation, until the violation(s) are corrected. The City may also recover any costs it incurs in abating the violation(s), including attorney fees, court costs, and interest. Each day a violation continues after due notice has been served shall be deemed a separate offense, up to a maximum of $5,000 per violation.

(C)   The City shall possess a lien on the property for all fines, penalties, charges, attorney’s fees, court costs, interest, and other reasonable costs associated with enforcing this subchapter and placing of a lien on a parcel of real property. The lien shall be superior to and have priority over all other liens filed, except state, county, school board, and city taxes.

(D)   Each section of this subchapter violated shall be considered a separate, finable offense. If two or more sections of this subchapter or other provisions of the City Code of Ordinances are violated, then the fines for these violations shall be cumulative.

(E)   The Dayton Code Enforcement Board is hereby authorized to determine within its by-laws and rules of procedure the civil fines to be imposed under this subchapter for cases that come before the Board.

(F)   Any person or legal entity that is delinquent in payment of the annual rental license fee of $40 per unit per year one month after its due date shall subject to a lien in the amount of $250 per rental unit.

CITY OF DAYTON, KENTUCKY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mayor Ben Baker

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tiffany Myers, Interim City Clerk

First Reading: Aug. 2, 2022

Second Reading:

Publication:

Motion by Member Nyman, seconded by Member Volter to approve Ordinance 2022#20 as read.

Roll Call:

Member Neary Aye Member Lovins Aye

Member Nyman Aye Member Besler Absent

Member Kelly Aye Member Volter Aye

Motion carried- so ordered.

**Second Reading:**

CITY OF DAYTON, KENTUCKY ORDINANCE NO. 2022#21

**AN ORDINANCE CREATING A NEW CHAPTER 117 OF THE DAYTON CODE OF ORDINANCES, UNDER TITLE XI, BUSINESS REGULATIONS, TITLED “CITY OF DAYTON SMOKE-FREE AIR ORDINANCE,” TO PROHIBIT SMOKING IN PLACES OF EMPLOYMENT AND PUBLIC PLACES IN THE CITY OF DAYTON, KENTUCKY.**

**WHEREAS,** for the reasons set for in Section 117.02, titled “Findings and Intent” below, the Dayton City Council believes that this ordinance is needed to protect the public health and welfare by prohibiting smoking in public places and places of employment, guarantee the right of all residents and visitors to breathe smoke-free air, and recognize that the need to breathe smoke-free air shall have priority and override the desire to smoke in all places of employment and public places in the City of Dayton.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF DAYTON, KENTUCKY:**

A new section of the Dayton Code of Ordinances (“Code”) is created as Chapter 117 of the Code, titled as “City of Dayton Smoke-Free Air Ordinance,” as follows:

Section I

**Section 117.01 Title**

This Ordinance shall be known as the City of Dayton Smoke-Free Air Ordinance of 2022.

**Section 117.02 Findings and Intent**

The Dayton City Council does hereby find that:

Exposure to exhaled cigarette smoke, e-cigarette aerosol, and other tobacco-related emissions is harmful to health:

* The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, concluded that (1) secondhand-smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; and (4) there is no risk-free level of exposure to secondhand smoke.[[1]](#endnote-1)
* The 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, states that even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke can lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.[[2]](#endnote-2)
* According to the 2014 U.S. Surgeon General's Report, *The Health Consequences of Smoking—50 Years of Progress*, secondhand smoke exposure causes stroke in nonsmokers, and that exposure to secondhand smoke causes an estimated 41,000 deaths each year among adults in the United States.[[3]](#endnote-3)
* Emissions from electronic smoking devices (ESDs), commonly referred to as electronic cigarettes, or “e-cigarettes,” are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.[[4]](#endnote-4) Human lung cells that are exposed to ESD aerosol and flavorings show increased oxidative stress and inflammatory responses.[[5]](#endnote-5) The World Health Organization (WHO), the National Institute for Occupational Safety and Health (NIOSH), and the American Industrial Hygiene Association (AIHA) recommend that ESDs not be used in smoke-free environments to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smoke-free laws.[[6]](#endnote-6)
* In a study of a Hookah lounge in Lexington, Ky., secondhand smoke from waterpipe smoking created high fine particulate concentrations, 3-6 times the National Ambient Air Quality Standard for outdoor air – a Clean Air Act limit on pollution. [[7]](#endnote-7)

Smoking and exposure to secondhand smoke pose significant costs for businesses and the economy:

* Secondhand smoke costs the U.S. economy $5.6 billion annually in lost productivity.[[8]](#endnote-8)

Comprehensive, 100% smoke-free laws do not harm business:

* The 2006 U.S. Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, has concluded that evidence from peer-reviewed studies shows that smoke-free policies and laws do not have an adverse economic impact on the hospitality industry.???

Comprehensive, 100% smoke-free laws are necessary:

* A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.[[9]](#endnote-9)
* The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that establishing smoke-free workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke.[[10]](#endnote-10)
* The American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smoke-free environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure and recommends that indoor environments be smoke-free in their entirety. In 2015, ASHRAE amended its ventilation Standard for Acceptable Indoor Air Quality (62.1) to include an environment that is completely free from marijuana smoke and emissions from electronic smoking devices.[[11]](#endnote-11)
* During periods of active smoking either outdoors or indoors, peak and average outdoor tobacco smoke levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor smoke concentrations.[[12]](#endnote-12)
* Secondhand smoke exposure may increase the risk of smoking, especially among never-smoking college students.[[13]](#endnote-13)

Accordingly, the Dayton City Council finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of all residents and visitors to breathe smoke-free air, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

**Section 117.03 Definitions**

The following words and phrases, whenever used in this Ordinance, shall be construed as defined in this Section:

“Bar” means an establishment that is devoted to serving 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.

“Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs. This definition does not include “home occupations,” as set forth in Chapter 154, Article IX, Section 9.11 of the Dayton Code of Ordinances.

“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 in any manner 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.

“Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, including a contract employee, or a person who volunteers his or her services for a non-profit entity.

“Employer” means 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” means all space between a floor and a ceiling that has forty percent or more of its perimeter closed in by walls or other coverings of any material, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

“Healthcare 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, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. 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 aerosol from the burning or heating of material including, but not limited to, tobacco, shisha, or other plant matter.

“Place of Employment” means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a “place of employment” unless it is used as a childcare, adult day care, or health care facility.

“Playground” means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public grounds.

“Private Club” means an organization, whether incorporated or not, which the owner, lessee, or occupant of a building or portion thereof uses exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

“Public Event” means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers’ markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

“Public Place” means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, 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 childcare, adult daycare, or healthcare facility.

“Reasonable distance,” for purposes of outdoor smoking under Section 117.08 and Section 117.09 of this ordinance, shall mean a reasonable distance between an individual who is smoking and a child or adult who is not smoking (“nonsmokers”), taking into consideration atmospheric conditions, such as wind and precipitation, and the confines of the outdoor space, but at no time shall the outdoor smoker be closer than 10 feet to nonsmokers.

“Recreational Area” means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.

“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. The term “restaurant” shall include any bar area(s) within the restaurant.

“Service Line” means an indoor or outdoor 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, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

“Shopping Mall” means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Ordinance.

**Section 117.04 Application of Ordinance to City of Dayton Facilities and Property**

All enclosed areas, including buildings and vehicles owned, leased, or operated by

City of Dayton or under the control of City of Dayton shall be subject to the provisions of this ordinance.

**Section 117.05 Prohibition of Smoking in Enclosed Public Places**

Smoking shall be prohibited in all enclosed areas of public places within City of Dayton.

**Section 117.06 Prohibition of Smoking in Enclosed Places of Employment**

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

**Section 117.07 Prohibition of Smoking in Enclosed Residential Facilities**

Smoking shall be prohibited in the following enclosed areas of residential facilities:

1. All private and semi-private rooms in long-term care facilities.
2. All hotel and motel guest rooms.

**Section 117.08 Prohibition of Smoking in Outdoor Places of Employment**

1. Smoking shall be prohibited within a reasonable distance of other persons in all outdoor places of employment where two or more employees are required to be present in the course of their employment. This includes, without limitation, work areas, construction sites, and associated indoor areas like temporary offices such as trailers, and restroom facilities.
2. This prohibition on smoking shall be communicated to all existing employees by the effective date of this ordinance and to all prospective employees upon their application for employment.

**Section 117.09 Where Smoking Not Regulated**

Notwithstanding any other provision of this ordinance to the contrary, smoking shall not be prohibited in all private clubs (as defined in Section 117.03) or private residences, unless used as a childcare, adult daycare, or healthcare facility.

**Section 117.10 Declaration of Establishment or Outdoor Area as Nonsmoking**

Notwithstanding any other provision of this ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may 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 this section is posted.

**Section 117.11 Posting of Signs and Removal of Ashtrays**

The owner, operator, manager, or other person in control of a place of employment or public place City of Dayton facilities or property, or residential facility where smoking is prohibited by this ordinance shall:

1. Clearly and conspicuously post “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) in that place.
2. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited or, in the case of outdoor places, clearly and conspicuously post “No Smoking” signs in a location visible to all employees, visitors, and patrons.
3. Remove all ashtrays from any area where smoking is prohibited by this ordinance, except for ashtrays displayed for sale and not for use on the premises.

**Section 117.12 Nonretaliation; Nonwaiver of Rights**

1. No person or employer shall discharge, refuse to hire, fail to promote, eject, or in any other manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this ordinance or reports or participates in the investigation or prosecution of a violation of this ordinance. Notwithstanding Section 117.16, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed $1,000 for each violation. Nothing in this subsection should be construed to waive or otherwise surrender any other legal right or remedy available to the employee, applicant for employment, customer, or resident.
2. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

**Section 117.13 Enforcement**

1. The City of Dayton requests the assistance of the Northern Kentucky Independent District Health Department (NKY Health) to enforce this ordinance, or an authorized designee. The City will enter into an Interlocal Agreement with the NKY Health that establishes enforcement parameters in the event NKY Health agrees to assist with enforcement of the ordinance. Nothing herein shall be construed to prevent any peace officer with jurisdiction from issuing a citation for violation of this subchapter committed in his or her presence.
2. Notice of the provisions of this ordinance shall be given by the City to all applicants for a business license in City of Dayton.
3. Any person who desires to register a complaint under this ordinance may do so by contacting NKY Health by telephone or other identified methods.
4. NKY Health or its designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.
5. An owner, manager, or operator, or an employee if an owner, manager, or operator is not available, of an area regulated by this ordinance shall direct a person who is smoking in violation of this ordinance to extinguish or turn off the product 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.
6. Notwithstanding any other provision of this ordinance, an employee or private party may bring legal action to enforce this ordinance.
7. In addition to the remedies provided by the provisions of this Section, NKY Health 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 ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
8. Any person or business aggrieved by enforcement action related to this ordinance may appeal that action to a court of competent jurisdiction.

**Section 117.14 Violations and Penalties**

1. A person who smokes in an area where smoking is prohibited by the provisions of this ordinance shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars ($50).
2. Except as otherwise provided in Section 117.13, a person who owns, manages, operates, or otherwise controls a public place or place of employment and who knowingly fails to comply with the provisions of this ordinance shall be guilty of an infraction, punishable by:
   1. A warning that the person is not in compliance with the law, for an initial violation.
   2. A fine not exceeding one hundred dollars ($100), for a second violation within one

(1) year.

* 1. A fine not exceeding two hundred and fifty dollars ($250), for each additional violation within one (1) year.

1. All fines collected are payable to NKY Health for reimbursement of services provided for enforcement of the ordinance.
2. In addition to the fines established by this Section, violation of this ordinance by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued by the City of Dayton to the person for the premises on which the violation occurred.
3. Each day on which a violation of this ordinance occurs shall be considered a separate and distinct violation.

**Section 117.15 Public Education**

The City of Dayton will provide education and related materials on this ordinance to businesses and the public. NKY Health may assist in the education and guidance to individuals, owners, operators, and managers on the purposes and requirements of this ordinance and their compliance with it. The education may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

**Section 117.16 Other Applicable Laws**

This ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**Section 117.17 Liberal Construction**

This ordinance shall be liberally construed so as to further its purposes.

**Section 117.18 Severability**

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.

**Section 117.19 Effective Date**

This ordinance shall be effective sixty (60) days from and after the date of its second reading and adoption.

CITY OF DAYTON, KENTUCKY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mayor Ben Baker

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tiffany Myers, Interim City Clerk

First Reading: Aug. 2, 2022

Second Reading:

REFERENCES:

U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

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Lee K, Bucholtz C, Robertson H, Vogel S, Hahn E. Indoor air quality in a Hookah Lounge: Is waterpipe smoking (hookah) related to indoor air pollution? 2008:1-4.

Xu X, Bishop EE, Kennedy SM, Simpson SA, Pechacek TF. Annual Healthcare Spending Attributable to Cigarette Smoking: An Update. American Journal of Preventive Medicine 2014;48(3):326–33.

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U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

Motion by Member Volter, seconded by Member Lovins to approve ordinance 2022#21 as read.

A discussion ensued among council on the pros and cons of having this ordinance passed.

Roll Call:

Member Nyamn Aye Member Beseler Absent

Member Kelly Aye Member Volter Aye

Member Lovins Nay Member Neary Nay

Motion carried- so ordered.

**First Reading:**

**CITY OF DAYTON, KENTUCKY**

**ORDINANCE NO. 2022#22**

**AN ORDINANCE PROVIDING FOR THE IMPOSITION, LEVY, COLLECTION, AND APPORTIONMENT OF TAXES FOR THE CITY OF DAYTON, CAMPBELL COUNTY, KENTUCKY FOR THE FISCAL YEAR JULY 1, 2022, THROUGH JUNE 30, 2023.**

**WHEREAS,** KRS 83 A.130 to 83A.150 and KRS 92.280 and KRS 92.330 require that the legislative body of each city levy an ad valorem tax for city purposes, that this be done by ordinance to provide for sufficient revenue to operate city government, and

**WHEREAS,** KRS Chapter 132 requires that this be calculated in accordance with the provisions of that chapter, and KRS 134.800 and KRS 134.810 require that ad valorem taxes on motor vehicles and motorboats be collected by the City Clerk and that such taxes shall become due and delinquent as set forth in KRS 134.810 and that such taxes not paid when due shall be subject to the penalty and interest as specified therein,

**NOW, THEREFORE BE IT ORDAINED BY THE CITY OF DAYTON, CAMPBELL COUNTY, KENTUCKY, AS FOLLOWS:**

**SECTION 1. Real Property – General Tax.**

An ad valorem tax rate of .470 cents on each $100.00 (one hundred dollars) of assessed valuation of real property subject to taxation under the laws of the Commonwealth of Kentucky is hereby levied for city purposes.

**SECTION 2. Real Property – Park Tax.**

An ad valorem tax rate of .050 cents on each $100.00 (one hundred dollars) of assessed valuation of real property subject to taxation under the laws of the Commonwealth of Kentucky is hereby levied for city purposes.

**SECTION 3. Other Personal (Tangible) Property.**

An ad valorem tax rate of 0.750 cents on each $100.00 (one hundred dollars) of assessed valuation of personal property (other than motor vehicles and motorboats) subject to taxation under the laws of the Commonwealth of Kentucky is hereby levied for city purposes.

**SECTION 4. Motor Vehicles and Motorboats.**

An ad valorem tax rate of $.5009 cents on each $100.00 (one hundred dollars) of assessed valuation of motor vehicles and motorboats subject to taxation under the laws of the Commonwealth of Kentucky is hereby levied for city purposes.

**SECTION 5. Bank Deposits.**

There shall be imposed and collected for said City, as permitted under KRS Chapter 136, on the taxable fair cash value of bank deposits within the city as assessed, corrected, altered, certified and returned by the Revenue Cabinet or as assessed by the Mayor and Council, if for any reason said deposits have not been listed in any manner for taxation, a sum equal to twenty-five thousandths of one percent (.025%) of those deposits. The levy called for in this Section shall be imposed, levied, collected and apportioned for payment of incidental expenses of the City. Those banks upon which the above tax is imposed may pay the sum due less 2% if paid by December 31, 2022, or the full amount by January 31, 2023. Thereafter the penalty and interest herein shall be imposed.

**SECTION 6. Due Date, Payment, Discount and Penalty.**

The taxes mentioned in this Ordinance Sections 1, 2 and 3 shall be due and payable at the Office of the City Clerk by November 30, 2022 and shall become delinquent the day immediately following if not paid. Taxes paid during the first three days after they become delinquent will be assessed a 1% penalty. Any taxes not paid more than three days after they become delinquent shall be subject to a penalty of 10% and shall accrue interest at a rate of twelve percent (12%) per annum until paid. The delinquent taxpayer shall also pay all costs, attorney’s fees, and other expenses incidental to any action taken by the city for collection of the delinquent tax bill.

**SECTION 7. Effective Date and Use Thereof.**

This Ordinance shall be effective immediately upon publication and applies to the 2022 calendar year tax assessment and all receipts shall be used for city purposes and accounted for the 2022-2023 fiscal year and subsequent fiscal years in reference to delinquent collections.

**PASSED** by City Council of the City of Dayton, Campbell County, Kentucky, assembled in regular session.

First Reading: September 6, 2022

Second Reading: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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MAYOR BEN BAKER

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TIFFANY MYERS

INTERIM CITY CLERK

**First Reading:**

# CITY OF DAYTON, KENTUCKY

**ORDINANCE NO. 2022#23**

**AN ORDINANCE CREATING SECTION 150.04, A NEW SECTION OF CHAPTER 150 OF THE DAYTON CODE OF ORDINANCES, TO ADOPT THE NFPA 1 FIRE CODE, NFPA 101 LIFE-SAFETY CODE, AND NFPA 70 NATIONAL ELECTRIC CODE.**

**NOW, THEREFORE, THE CITY OF DAYTON, CAMPBELL COUNTY, KENTUCKY, HEREBY ORDAINS AS FOLLOWS:**

## Section I

## A new Section 150.04 of Chapter 150 of the City of Dayton Code of Ordinances is adopted as follows:

## **§150.04 Adoption of NFPA 1 Fire Code, NFPA 101 Life Safety Code, and NFPA 70 National Electric Code.**

Fire and life-safety regulations promulgated by National Fire Protection Association – specifically the 2018 edition of “NFPA 1 Fire Code,” the 2018 edition “NFPA 101 Life Safety Code,” and the 2017 edition “NFPA 70 National Electric Code,” and future amendments to these codes -- are hereby adopted for use in and application to all buildings and structures in the City of Dayton, Kentucky.

## Section II

## This ordinance shall be in full force and effect from and after its adoption, approval and publication as is required by law.

**PASSED** by City Council of the City of Dayton, Campbell County, Kentucky assembled in regular session.

First Reading: Sept. 6, 2022

Second Reading: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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MAYOR BEN BAKER

ATTEST:

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TIFFANY MYERS

INTERIM CITY CLERK

**Resolution/Order**

CITY OF DAYTON, KENTUCKY

ORDER-RESOLUTION NO. 2022-27R

AN ORDER-RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MUNICIPAL AID CO-OP PROGRAM CONTRACT BETWEEN THE CITY OF DAYTON, KENTUCKY, AND THE COMMONWEALTH OF KENTUCKY, TRANSPORTATION CABINET, DEPARTMENT OF RURAL AND MUNICIPAL AID FOR THE FISCAL YEAR BEGINNING JULY 1, 2022, AS PROVIDED IN THE KENTUCKY REVISED STATUTES, AND ACCEPTING ALL STREETS REFERRED TO THEREIN AS BEING STREETS WHICH ARE A PART OF THE INCORPORATED CITY.

**NOW, THEREFORE,** **BE IT ORDERED BY THE CITY OF DAYTON, KENTUCKY, AS FOLLOWS:**

The Dayton City Council (“City Council”) does hereby accept all streets referred to in the attached Contract as being city streets, which are a part of the City of Dayton, Kentucky (“City”); and

The City Council does hereby ratify and adopt all statements, representations, warranties, covenants, and agreements contained in this Contract and does hereby accept the Contract, and by such acceptance, agrees to all the terms and conditions therein stated; and

The Mayor of Dayton is hereby authorized and directed to sign said Contract as set forth on behalf of City Council and the Dayton Clerk is hereby authorized and directed to certify thereto.

SO ORDERED and approved by the City Council of the City of Dayton, Kentucky, on this 6th day of September 2022.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

MAYOR BEN BAKER

ATTEST:

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TIFFANY MYERS

INTERIM CITY CLERK/TREASURER

City Admin. Fossett stated this ordinance is changing the way we receive Municipal Aid money. Instead of monthly payments, the city will receive a lump sum.

Motion by Member Neary, seconded by Member Kelly to approve Order/Resolution 2022-27R as read.

Roll Call:

Member Kelly Aye Member Volter Aye

Member Lovins Aye Member Neary Aye

Member Beseler Absent Member Nyman Aye

Motion carried- so ordered.

**Resolution/Order**

# CITY OF DAYTON, KENTUCKY

**ORDER-RESOLUTION NO. 2022#28R**

AN ORDER-RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE NORTHERN KENTUCKY INDEPENDENT DISTRICT BOARD OF HEALTH REGARDING ENFORCEMENT OF THE SMOKE-FREE ORDINANCE IN THE CITY OF DAYTON, KENTUCKY.

WHEREAS, the City of Dayton, Kentucky (“City”), has adopted a smoke-free air ordinance (“Ordinance”) for the purpose of protecting the public health and welfare of the general population in and about the city by prohibiting smoking in public places and places of employment; and,

WHEREAS,the City of Dayton desires to partner with the Northern Kentucky Independent District Health Department (“NKIDHD”) so that the NKIDHD can provide limited enforcement of the Ordinance’s requirements vis-a-vis public places, such as bars, restaurants, other venues that are normally subject to routine and regular inspections by the NKIDHD or as otherwise mandated by state and federal laws, and within places of employment;

**NOW, THEREFORE,** **BE IT ORDERED BY THE CITY OF DAYTON, KENTUCKY, AS FOLLOWS:**

The Board of Council authorizes the Mayor to enter into an Interlocal Agreement with the Northern Kentucky Independent District Health Department regarding enforcement of the Ordinance, the terms of which are outlined in more detail in the attached agreement between NKIDHD and the City, which is incorporated by reference herein.

SO ORDERED and approved by the City Council of the City of Dayton, Kentucky, on this 6th day of September, 2022.

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MAYOR BEN BAKER

ATTEST:

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TIFFANY MYERS

INTERIM CITY CLERK

Motion by Member Volter, seconded by Member Lovins to approve Order/Resolution 2022-28R as read.

Roll Call:

Member Lovins Aye Member Neary Nay

Member Beseler Absent Member Kelly Aye

Member Volter Aye Member Nyman Aye

Motion carried- so ordered.

**Resolution/Order**

# CITY OF DAYTON, KENTUCKY

**ORDER-RESOLUTION NO. 2022-29R**

AN ORDER-RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE CAMPBELL COUNTY FISCAL COURT TO PROVIDE ANIMAL-CONTROL SERVICES TO THE CITY OF DAYTON.

WHEREAS, the City of Dayton, Kentucky (“City”), along with other Campbell County cities, previously participated in an interlocal agreement that established the Northern Kentucky Animal Control Board to cooperatively provide animal-control services in those cities through the hiring of personnel or contracting for these services; and

WHEREAS, the City and these other cities desire to dissolve the Northern Kentucky Animal Control Board and enter into a new interlocal agreement with the Campbell County Fiscal Court whereby the cities will separately contract with the County to provide animal-control services in their jurisdictions.

**NOW, THEREFORE,** **BE IT ORDERED BY THE CITY OF DAYTON, KENTUCKY, AS FOLLOWS:**

The Board of Council authorizes the Mayor to enter into an Interlocal Agreement with the Campbell County Fiscal Court to provide animal-control services in the City of Dayton, the terms of which are outlined in more detail in the attached agreement between the Fiscal Court and the City, which is incorporated by reference herein.

SO ORDERED and approved by the City Council of the City of Dayton, Kentucky, on this 6th day of September 2022.

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MAYOR BEN BAKER

ATTEST:

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TIFFANY MYERS

INTERIM CITY CLERK

Motion by Member Neary, seconded by Member Volter to approve Order/Resolution 2022-29R as read.

Roll Call:

Member Beseler Absent Member Lovins Aye

Member Volter Aye Member Kelly Aye

Member Neary Aye Member Nyman Aye

Motion carried- so ordered.

**Resolution/Order**

City Admin. Fossett stated this order is for Brenden Sullivan, the developer. This will allow four parcels to separate and develop the two on the end.

**CITY OF DAYTON, KENTUCKY**

**ORDER/RESOLUTION NO. 2022-30R**

AN ORDER/RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, KENTUCKY, AUTHORIZING THE MAYOR TO EXECUTE AND DELIVER CERTAIN INSTRUMENTS AND AGREEMENTS TO FACILITATE A PARTIAL ASSIGNMENT OF THE MANHATTAN HARBOUR DEVELOPMENT AGREEMENT FROM MANHATTAN HARBOUR PROJECT, LLC TO S & S HIGH POINT, LLC, INCLUDING A QUITCLAIM DEED AND AN ACKNOWLEDGEMENT TO COLLATERAL ASSIGNMENT OF DEVELOPMENT AGREEMENT; AND FURTHER AUTHORIZING THE EXECUTION AND DELIVERY OF A MUTUAL RELEASE OF DEVELOPMENT AGREEMENT AND AUTHORIZING SUCH OTHER ACTIONS AS MAY BE REQUIRED IN FURTHERANCE OF THE FOREGOING.

WHEREAS, on November 15, 2005, the City of Dayton, Kentucky (the “City”) entered into a Development Agreement (the “Original Development Agreement”) with DCI Properties-DKY, LLC (“DCI”) providing for the development of certain land in the City located along the riverfront of the Ohio River known as the “Manhattan Harbour Project”; and

WHEREAS, the Original Development Agreement was subsequently amended and restated by an Amended and Restated Development Agreement, dated as of June 1, 2009, recorded at Miscellaneous Book 600, Page 852 of the Campbell County Clerk’s records in Newport, Kentucky, as amended by that certain First Amendment to the Amended and Restated Development Agreement dated as of December 1, 2012, recorded at Miscellaneous Book 600, page 837, aforesaid records, and as further amended by that certain Second Amendment to the Restated Development Agreement dated September 5, 2017 (the “Second Amendment”) and adopted by the City as part of Resolution No. 2017-13R dated September 5, 2017 (collectively, as amended, the “Development Agreement”); and

WHEREAS, pursuant to the Second Amendment, DCI assigned and transferred all of its rights, title, interests and obligations in and to the Development Agreement to Manhattan Harbour Project, LLC (“MHP”), and MHP accepted and agreed to assume and perform all of the same; and

WHEREAS, pursuant Section XXVIII of the Development Agreement, MHP in such capacity as “Developer,” has the right to assign its interest in all or portions of the “City Property” under the Development Agreement to one or more third-parties; and

WHEREAS,MHP and S & S High Point, LLC, a Kentucky limited liability company (“S&S”) presented the City with a Partial Assignment of Development Agreement (Section 8, Manhattan Harbour Parcels H, I and J) (the “Partial Assignment”) pursuant to which MHP will agree to assign to S&S all of MHP’s rights, title and interest under the Development Agreement to certain real property more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “Assigned Property”); and

WHEREAS, to facilitate the Partial Assignment and the sale and transfer of the interests in the Assigned Property from MHP to S&S, the City has agreed to execute and deliver a Quitclaim Deed with a springing executory interest in favor of S &S with respect to Parcels H and I of the Assigned Property together with an acknowledgment to Collateral Assignment of Development Agreement; and

WHEREAS, in furtherance of the Riverfront Commons trail development, the City and S & S have further agreed to execute a Mutual Release of Development Agreement (the “Mutual Release”) to release “Parcel J” of the Assigned Property from the terms and conditions of the Development Agreement to ensure the City’s compliance with certain provisions of the funding agreements pertaining to the trail project;

**NOW, THEREFORE,** **BE IT ORDERED BY THE CITY OF DAYTON, KENTUCKY, AS FOLLOWS:**

Section 1. Assignment Documents. That the Mayor is hereby authorized and empowered to execute and deliver a Quitclaim Deed and an acknowledgement to Collateral Assignment of Development Agreement (collectively, the “Assignment Documents”) and other related documents as may be reasonably required to facilitate the Partial Assignment, each in the form currently on file with the City Clerk with such changes as may be approved by special counsel to the City. Further provided that the release of the Assignment Documents from escrow shall be expressly contingent upon the delivery of a fully executed Partial Assignment by MHP and S&S.

Section 2. Mutual Release of Development Agreement. That in furtherance of the City’s Riverfront Commons trail project, the Mayor is hereby further authorized and empowered to execute and deliver the Mutual Release providing for the release of “Parcel J” from the terms and conditions of the Development Agreement, including the obligation of the City to convey fee simple title to S&S.

Section 3. Special Counsel. The customary and reasonable fees of the City’s special counsel in conjunction with the review of the Assignment Documents and the Mutual Release, together all other customary costs and expenses of the City in conjunction with the Assignment, shall be paid from the proceeds of the closing of the Partial Assignment or other funds available to S&S.

SO ORDERED and approved by the City Council of the City of Dayton, Kentucky, on this 6th day of September, 2022.

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MAYOR BEN BAKER

ATTEST:

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TIFFANY MYERS

INTERIM CITY CLERK

Roll Call:

Member Volter Aye Member Kelly Aye

Member Neary Aye Member Nyman Aye

Member Lovins Aye Member Beseler Absent

Motion carried- so ordered.

**Order/Resolution**

# CITY OF DAYTON, KENTUCKY

**ORDER/RESOLUTION NO. 2022#31R**

**AN ORDER/RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAYTON, KENTUCKY, APPOINTING TIFFANY MYERS AS CITY CLERK/TREASURER.**

WHEREAS, City Clerk Donna Leger retired from the City of Dayton, Kentucky (“City”) on July 29, 2022, and Tiffany Myers has served as Interim City Clerk since that time; and

WHEREAS, the City, through the Northern Kentucky Area Development District, conducted a search for Ms. Leger’s replacement, and determined that Ms. Myers was the most qualified candidate for the job; and

WHEREAS, Section 31.36 of the City Code of Ordinances requires the Mayor to appoint the City Clerk/Treasurer with approval of City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAYTON, KENTUCKY THAT:

The City appoints Tiffany Myers as Dayton City Clerk/Treasurer, effective September 5, 2022.

AND IT IS SO ORDERED AND RESOLVED. Passed and approved by the City Council of the City of Dayton, Kentucky, on this 6th day of September 2022.

This Resolution shall be maintained and indexed in the Official Resolution and Order Book by the City Clerk/Treasurer.

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MAYOR BENJAMIN BAKER

ATTEST:

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TIFFANY MYERS

CITY CLERK/TREASURER

Motion by Member Nyman, seconded by Member Volter to approve Order/Resolution 2022-31R as read.

Roll Call:

Member Neary Aye Member Nyman Aye

Member Lovins Aye Member Beseler Absent

Member Kelly Aye Member Volter Aye

Motion carried- so ordered.

**Department Head's Report:**

Police Chief Halfhill submitted his report. He congratulated Sergeant Wilke on graduating from the Sergeant Academy. He has a new officer that he will introduce to council next meeting. The police department is still looking for one more SRO officer.

Fire Chief Chris Adkins submitted a copy of his report. Chief stated his runs continue to go up. The fire ordinance read tonight will help Bellevue and Dayton follow the same fire code, and it will be an updated code.

Public Works Superintendent, Rick Lucas, stated he has been busy and has trained some of his guys on new equipment. Member Neary questioned the 600 block of Eight Avenue if it is railroad property and if the city getting paid for cleaning up their lots. City Admin. Fossett stated the city does bill the railroad for their lots.

**Audience:**

Brent Cooper, NKY Chamber, stated that since the smoking ban passed on September 20, there will be a meeting with three executive judges to discuss this further.

**Unfinished Business:**

Musicfest will be held this Saturday, September 10, at Monument Park. Also, Final Friday will be held on September 30.

**City Administrator's Report:**

The road at Manhattan Blvd is fixed and waiting on the coating to be done. The stormwater project on 4th and Kenton will begin soon, and Adleta will be doing this project. Also, the bump-outs and our fall street paving will begin. Member Volter asked if there was any news about the building on Sixth and Berry. City Admin. Fossett will reach out to the owner.

**Adjournment:**

Motion by Member Volter, seconded by Member Kelly to adjourn the meeting. Motion carried- so ordered.

Tiffany Myers

City Clerk/Treasurer

ATTEST:

Ben Baker

Mayor

1. [↑](#endnote-ref-1)
2. [↑](#endnote-ref-2)
3. [↑](#endnote-ref-3)
4. [↑](#endnote-ref-4)
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