

ORDINANCE NO. 52 -04

By: Jed Morison

An Ordinance to repeal Section 660.16 of the General Offenses Code and to amend the General Offenses Code by the addition of a new Chapter 662 prohibiting smoking in public places and places of employment.

WHEREAS, the United States Centers for Disease Control states that between 38,000 and 62,000 non-smoking Americans die every year from exposure to secondhand smoke;

WHEREAS, secondhand smoke contains over 4000 chemical compounds, 200 of which are known poisons including carbon monoxide, arsenic, cyanide, benzene and formaldehyde;

WHEREAS, secondhand smoke is classified as a "Class A Carcinogen" by the US Environmental Protection agency and, by definition, there is no safe level of exposure to a class A carcinogen;

WHEREAS, secondhand smoke has been shown to substantially increase the risk of lung cancer, nasopharyngeal cancer, breast cancer, heart disease in adults and sudden infant death syndrome, asthma and airway disease in children;

WHEREAS, nonsmoking workers chronically exposed to secondhand smoke are on average 1/3 more likely to get lung cancer than those who are not exposed;

WHEREAS, the City currently recognizes the risks presented by secondhand smoke and prohibits smoking in all City facilities;

WHEREAS, the Council of the City of Columbus has enacted similar legislation as Chapter 715 of the Columbus City Codes and the legislative authorities of other central Ohio municipalities are considering the enactment of similar legislation; and

WHEREAS, this Council believes that it is in the public interest to address the issue of secondhand smoke on a consistent, communitywide basis;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That Section 660.16 of the General Offenses Code is hereby repealed.

Section 2. That the General Offenses Code is hereby amended by the addition of Chapter 662 as follows:

CHAPTER 662
Smoking Prohibitions

662.01 Definitions.

As used in this Chapter:

- (a) "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or any limited liability form of any of the foregoing, or any other entity formed for 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, financial, counseling, or other professional or consumer services are provided.
- (b) "Employee" means a person who is employed by an employer, or who contracts with an employer or who contracts with a third person to perform services for an employer, or who otherwise performs services for an employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services to such employer for no monetary compensation.
- (c) "Employer" means an individual person, business, partnership, association, corporation, including a municipal corporation, trust, or any non-profit entity that accepts the provision of services from one or more employees.
- (d) "Enclosed Area" means all space closed in by a roof or other overhead covering of any kind and walls or other side coverings of any kind on at least three sides with appropriate openings for ingress and egress.
- (e) "Place of Employment" means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to, private offices, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, employee gymnasiums, auditoriums, libraries, storage rooms, file rooms, mailrooms, employee medical facilities, rooms or areas containing photocopying or other office equipment used in common by employees, elevators, stairways, hallways, factories, warehouses, garages, laboratories, taxies, limousines, and company-owned vehicles used for a business purpose. An enclosed area as described herein is a "Place of Employment" without regard to time of day or actual presence of employees. "Place of Employment" only includes private residences, whether single or multifamily, if used as a child care, adult day care, or health care facility, or if a person uses a private residence in any way otherwise qualifying that person as an employer with respect to the use of that private residence; provided, however, that private residences are exempt from this chapter to the extent that the person providing the services is providing housecleaning, home maintenance or personal care services in the private residence.
- (f) "Proprietor" means the owner, manager, operator, liquor permit holder, or other person in charge or control of a public place or place of employment.

- (g) "Public Place" means an enclosed area to which the public is invited or in which the public is permitted and includes service lines. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- (h) "Service Line" means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- (i) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other smoking equipment in any manner or in any form. "Smoking" does not include the burning or carrying of incense in a religious ceremony.
- (j) "Smoking materials" means any cigar, cigarette, pipe, weed, plant or other smoking equipment in any form.
- (k) "Work area" means any room, desk, station or other area normally occupied by an employee while carrying out his or her primary work function.
- (l) "Retail tobacco store" means a retail store used primarily for the sale of smoking materials and smoking accessories and in which the sale of other products is incidental. "Retail tobacco store" does not include a tobacco department of a larger commercial establishment such as a department store, discount store, or bar.
- (m) "Outdoor patio" means an outdoor area, open to the air at all times, that is either:
 - (1) enclosed by a roof or other overhead covering and not more than two walls or other side coverings; or
 - (2) has no roof or other overhead covering at all regardless of the number of walls or other side coverings.
- (n) "Private Club" means a club as that term is defined in R.C. 4301.01 (B)(13) and that is organized as not for profit.

622.02 Prohibitions.

- (a) No proprietor of a public place or place of employment shall permit smoking in said public place or place of employment within the City except as provided in section 622.03 of this Chapter.
- (b) All enclosed areas, including buildings and vehicles owned, leased, or operated by the City, shall be subject to the provisions of this Chapter.
- (c) All areas immediately adjacent to the ingress and egress of any enclosed area shall be subject to the provisions of this Chapter so as to ensure that tobacco smoke does not enter the enclosed area through entrances, windows, ventilation systems, or other means.

622.03 Areas where smoking is not regulated by this Chapter.

Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the prohibitions in section 622.02:

(a) Private residences, except if used as a licensed child care, adult day care, or health care facility, or if a person uses a private residence in any way otherwise qualifying that private residence as a place of employment; provided, however, that private residences are exempt from this Chapter to the extent that the person providing services is providing housecleaning, home maintenance, cable or telephone repair, or personal care services in the private residence.

(b) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20% of rooms rented to guests in a hotel or motel may be so designated.

(c) Family-owned and operated businesses in which all employees are related to the owner, and offices of self-employed persons in which all employees are related to the self-employed person, but only if the enclosed areas these businesses and offices occupy are not open to the public, are not in the same building with other enclosed areas subject to this regulation, and smoke from these businesses and offices does not infiltrate into enclosed areas where smoking is prohibited under the provisions of this Chapter.

(d) Any home, defined in R.C. 3721.10(A), but only to the extent necessary to comply R.C. 3721.13(A)(18) and rules promulgated according to that section.

(e) Retail tobacco stores as defined in section 622.01(l) of this Chapter in operation prior to the effective date of this ordinance. Any new retail tobacco store or any existing retail tobacco store that relocates to another site may only qualify for this exemption if located in a freestanding structure.

(f) Outdoor patios as defined in section 622.01(m) of this Chapter. If the outdoor patio has a structure capable of being enclosed by walls, covers, solid surface fencing, or tents, regardless of the materials or the removable nature of the walls, covers, solid surface fencing, or tents, the space will be considered enclosed, when the walls, covers, fences, or tents are in place. All outdoor patios shall be physically separated from an enclosed area. If sliding or folding windows or doors or other windows or doors forms any part of the border to the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area. If sliding or folding windows or doors or other windows or doors does not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area and subject to the prohibitions of this Chapter.

(g) Private clubs as defined in section 622.01(n) of this Chapter provided that all of the following apply:

(1) That there are no nonmembers present; and

(2) That the private club is the holder of a valid D-4 liquor permit pursuant to R.C. 4303.17 if alcoholic beverages are to be served.

622.04 Construction; other applicable laws.

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

622.05 Declaration of establishment as nonsmoking.

Notwithstanding any other provision of this Chapter, the owner, manager, operator, liquor permit holder, or other person in charge or control of an establishment, facility, or outdoor area which does not otherwise qualify as a public place or place of employment may declare such 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 622.06 is posted.

622.06 Posting of signs; prohibition of ashtrays; responsibilities of proprietors.

In addition to the prohibitions contained in section 622.02 of this Chapter, the proprietor of a public place or place of employment shall comply with the following requirements:

(a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Chapter. A sign shall be of sufficient size to be clearly legible to one of normal vision throughout the area it is intended to mark. All signs shall contain a telephone number for reporting violations.

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

(c) All ashtrays and other receptacles used for disposing of smoking materials shall be removed from any area where smoking is prohibited by this Chapter unless such ashtrays or receptacles are for ornamental purposes only and are displayed in such a manner so as to preclude their use as receptacles for the disposal of smoking materials.

(d) This Section shall not be construed to permit smoking in any area in which smoking is prohibited pursuant to section 622.02.

622.07 Enforcement.

The Director of Public Safety, the Health Commissioner and the Director of Building Services and Code Enforcement and their respective designees shall have concurrent jurisdiction to enforce all provisions of this Chapter.

622.08 Severability.

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

622.99 Penalties.

(a) Upon the receipt of a first report that a proprietor of a public place or place of employment has violated any provision of this Chapter, the City shall issue a warning letter to that proprietor. Thereafter, the penalties contained in division (b) of this section shall apply.

(b) Whoever violates any provision of this Chapter is guilty of the offense of permitting smoking in public places or places of employment. Such offense is a minor misdemeanor, punishable by a maximum fine of \$150. Strict liability is intended for a violation of this Chapter.

Section 3. That this ordinance shall take effect and be ^{in force on January 2, 2005.} ~~in force ninety (90)~~ days from and after passage and approval by the Mayor.

Passed: 9, 14, 2004

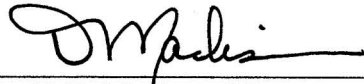


President of Council

Attest: 

Clerk of Council

Approved: 9/14/04, 2004



David H. Madison, Mayor

7.13.04 First Reading

7.27.04 Second Reading.

9.14.04 Third Reading Amended. Passed