

DEFEATED

ORDINANCE NO. 91-33 AC CMS

AN ORDINANCE ENACTING A CLEAN INDOOR AIR ACT
FOR THE CITY OF OBERLIN, OHIO, REGULATING SMOKING
IN CERTAIN PUBLIC PLACES AND PLACES OF EMPLOYMENT
WITHIN THE MUNICIPALITY

WHEREAS, studies by the Surgeon General of the United States, the National Academy of Sciences, and other health organizations have linked passive exposure to tobacco smoke (second-hand smoke) to a variety of negative health conditions in nonsmokers; and,

WHEREAS, the Council of the City of Oberlin seeks to strike a reasonable balance between the rights of smokers and nonsmokers by regulating smoking in certain public places and places of employment;

NOW, THEREFORE, be it enacted by the Council of the City of Oberlin, Lorain County, State of Ohio, majority of all members elected thereto concurring:

Section 1. Definitions.

(a) "Bar" or "cocktail lounge". Any establishment, or place within an establishment, primarily engaged in the business of selling or dispensing alcoholic or other beverages.

(b) "Enclosed area". Any area covered by a roof and surrounded by walls with appropriate openings of ingress and egress.

(c) "Grocery store". Any supermarket, convenience store, and any other retail food production and marketing establishment.

(d) "Health care facility". Any office or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions.

(e) "Person". Any individual, firm, partnership, association, corporation, company, or organization of any kind.

(f) "Physical Barrier". A floor to ceiling partition or barrier of material sufficient to prevent smoke from penetrating. Physical barrier does not include curtains or blinds.

(g) "Place of employment". Any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. A private residence is not a place of employment.

(h) "Public conveyance". Any mass transit vehicle or school bus.

(i) "Public meeting". Any meeting or assembly held in any room or chamber wherein public, civic, or governmental business is conducted and which is open to the public either as participants or spectators.

(j) "Public place". Any enclosed area to which the public is invited or in which the public is permitted, not including the offices or work areas not entered by the public in the normal course of business or use of the premises. A private residence is not a public place.

(k) "Restaurant". Any establishment or place within an establishment, open to the public that offers food and beverages consumption on the premises.

(l) "Retail store". Any establishment whose primary purpose is to sell or offer for sale to consumers, not for resale, any goods, wares, merchandise, articles, or food for consumption off the premises.

(m) "Smoking". The lighting, holding, or carrying of, or emitting or exhaling the smoke of, a pipe, cigar, or cigarette of any kind.

(n) "Sports arena". Any indoor facility primarily used for sports, cultural, or similar events.

(o) "Theater". Any indoor facility primarily used for the exhibition of any motion picture, stage drama, musical recital, dance, lecture, or other similar performance.

Section 2. Prohibition.

(a) Smoking is unlawful in the following public places during the hours in which they are open to the public:

(1) Art galleries, libraries, museums, and similar cultural facilities;

(2) Classrooms and lecture halls;

(3) Designated no-smoking areas of restaurants, as set forth in Section 4;

(4) Elevators;

(5) Health care facilities, except for designated smoking areas;

(6) Public conveyances;

(7) Public meetings;

(8) Public places, including hallways and lobbies;

(9) Retail stores, other than retail tobacco stores whose primary activity is the sale or promotion of tobacco and tobacco products and accessories.

(10) Theaters and sports arenas, except when smoking is part of a theatrical production.

(b) Smoking is unlawful in designated no-smoking areas of places of employment, as set forth in Section 5.

Section 3. Cigarette vending machines.

Cigarette vending machines must be supervised so that only individuals over the age of 18 are able to purchase cigarettes.

Section 4. Restaurants.

(a) Every restaurant, whether currently in existence or to be established in the future, with an indoor seating capacity of 30 or more seats shall designate a no-smoking area consisting of at least 50% of the indoor seating capacity of the restaurant.

(b) In areas where smoking is permitted, there must be adequate ventilation systems to minimize the smoke in adjacent no-smoking areas.

(c) In construction of new restaurants where smoking is permitted, there must be physical barriers and ventilation systems to minimize the smoke in adjacent no-smoking areas.

(d) This section shall not apply to:

(1) Bars and cocktail lounges; nor shall the seating capacity of any bar or lounge located within a restaurant be included in the calculation of the total seating capacity of the restaurant;

(2) Rooms used for private functions and banquets.

Section 5. Places of employment.

(a) Within three (3) months after the effective date of this Ordinance, every employer in the City of Oberlin shall adopt, implement, and maintain a written smoking policy which shall contain, at a minimum, the following provisions:

(1) A statement providing that the employer shall attempt to reach a reasonable accommodation between the preferences of smoking and non-smoking employees;

(2) Smoking may be permitted in private, enclosed offices even though such offices may be visited in the normal course of business by non-smoking employees;

(3) Prohibition of smoking in auditoriums, classrooms, elevators, medical facilities, conference rooms and rooms containing photocopying or other office equipment used in common by employees;

(4) Designation of at least fifty percent (50%) of the seating capacity of cafeterias, lunchrooms, and employee lounges as no-smoking areas; provided, however, that if there are two or more lounges available for employee use, one entire lounge may be designated as a smoking area;

(5) A procedure to resolve employee disputes and objections arising under the smoking policy;

(6) A statement providing for protection from retaliatory adverse personnel action to employees exercising rights granted under the smoking policy.

(b) Employers shall supply a written copy of the smoking policy to all current employees within three weeks of the date of its adoption and to all future employees at the time of their entry into employment.

(c) Employers shall post the smoking policy conspicuously in the place of employment.

Section 6. Signs.

The owner or other person having the authority to manage and control any area designated as a no-smoking area pursuant to this article shall post or cause to be posted and prominently display, and shall maintain, "No Smoking" signs in conspicuous locations within such areas. Such signs shall clearly and conspicuously recite the phrase "no smoking" and/or use the international no-

smoking symbol and shall cite the Ordinance number of the Clean Indoor Act. Signs shall be of sufficient number and prominent location to convey the message clearly and legibly.

Section 7. Violation and Penalty.

(a) The following acts constitute violations of this article:

- (1) Smoking in a posted no-smoking area;
- (2) Failure to post a no-smoking sign as required by this article;
- (3) Knowing failure to inform any person who violates this article, when such duty to inform arises as set forth in Section 8;
- (4) Willful destruction or defacement of a sign posted as required by this Article;
- (5) Failure to adopt a smoking policy as set forth in Section 5.

(b) Anyone who violates any provision of this article shall be liable for a civil penalty not to exceed Twenty-Five Dollars (\$25.00). Each day such violation continues shall constitute a separate offense.

Section 8. Enforcement.

(a) The owner or other person having the authority to manage and control any public place or place of employment, or a designated agent of such owner or manager, shall inform persons smoking in restricted areas that they are in violation of the law.

(b) The City Manager or his/her designee shall enforce the provisions of this Clean Indoor Act by any of the following actions:

- (1) Serving notice requiring the correction of any violation of this act;
- (2) Calling upon the City Solicitor to maintain an action for injunction directing the correction of any such violation and for assessment and recovery of the civil penalty.
- (3) Issuing a citation ordering payment of the civil penalty or, in the alternative, appearance before the Court to contest assessment of the penalty.

(c) Any citizen may make a complaint to the City Manager who shall proceed to enforce this Ordinance as set forth hereinbefore.

Section 9. Variances.

The City Manager may grant variances from the requirements of this act upon a finding that compliance with such requirements has been and is technically infeasible, economically unreasonable, or impossible because of conditions beyond the control of the applicant. In granting a variance, the City Manager shall order such terms and conditions as may be technically feasible and economically reasonable in order to protect non-smokers from exposure to tobacco smoke. At any time after three years from granting such a variance, the City Manager may review such variance for the purpose of modification or revocation. The City Manager may modify or revoke a variance upon a finding that the conditions affecting the technical feasibility or economic reasonableness of compliance with this act have changed. An application for a variance shall be made in a form and manner prescribed by the City Manager and shall be accompanied by an application fee of Ten Dollars (\$10.00).

Section 10. General provisions.

(a) Nothing in this article shall be construed to permit smoking where it is otherwise prohibited by law or regulation.

(b) Nothing in this article shall be construed to preclude any owner or other person having the authority to manage and control any public place or place of employment, other than a building or facility owned or leased by the City, from prohibiting smoking to a greater extent than is provided by this article.

(c) If any provision of this article, or the application thereof to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are hereby declared to be severable.

Section 11. Effective date.

The provisions of this Clean Indoor Air Act shall become effective on January 1, 1992.

Section 12. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of

this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements.

Section 13. This Ordinance shall take effect at the earliest date allowed by law.

PASSED: 1st Reading - May 20, 1991 (Amended)
2nd Reading - June 3, 1991 (Amended)
3rd Reading - July 17, 1991 - DEFEATED

ATTEST:

Clerk of Council

Chairman of Council

POSTED: