

CITY OF OBERLIN, OHIO

ORDINANCE No. 14-20 AC CMS

AN ORDINANCE REPEALING CHAPTER 506 OF THE OBERLIN CODIFIED ORDINANCES AND ENACTING NEW CHAPTER 506 OF THE OBERLIN CODIFIED ORDINANCES TO INCLUDE ELECTRONIC CIGARETTES IN THE DEFINITION OF SMOKING AND TO INCORPORATE CERTAIN PROVISIONS OF THE OHIO SMOKE-FREE WORKPLACE ACT AND DECLARING AN EMERGENCY.

WHEREAS, the smoking of tobacco or other plant material and the inhaling and exhaling of vapor from electronic cigarettes presents a potential health risk to the public; and,

WHEREAS, the City of Oberlin desires to protect the public health, safety and welfare of the public; and

WHEREAS, Chapter 506 of the Oberlin Codified Ordances has not been revised or updated since the enactment of Chapter 3794 of the Oho Revised Code, otherwise known as the "Ohio Smoke-Free Workplace Act" and

WHEREAS, many of the regulations contained in Chapter 506 of the Oberlin Codified Ordinances have been superseded by the Ohio Smoke-Free Workplace Act.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, a majority of all members elected thereto concurring:

SECTION 1. That Chapter 506 of the Oberlin Codified Ordinances entitled "Clean Indoor Air" is hereby repealed.

SECTION 2. That new Chapter 506 of the Oberlin Codified Ordinances entitled "Clean Indoor Air" is hereby enacted in the form attached hereto as **Exhibit A**.

SECTION 3. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were made 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, including Section 121.22 of the Ohio Revised Code.

SECTION 4. That this ordinance shall be effective from and after the earliest date allowed by law.

PASSED: 1st Reading: May 5, 2014

2nd Reading: May 19, 2014 (A)

3rd Reading: June 2, 2014 (A) (Effective in 30 days)

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL




H. SCOTT BROADWELL
PRESIDENT OF COUNCIL

POSTED: 06/03/2014

EFFECTIVE DATE: 07/01/2014

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 14-20 AC CMS as passed by the Oberlin City Council.

Seal



Belinda B. Anderson, MMC
Clerk of Council, City of Oberlin, Ohio

EXHIBIT A

506.01 DEFINITIONS.

- (1) **Electronic Cigarette or e-cigarette:** means any electronic product or device that simulates smoking by producing a vapor that delivers nicotine or any other substance to the person inhaling from the device and that is or is likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe.
 - a. Electronic Cigarette or “e-cigarette” does not include the following:
 - i. Any product that is a “drug” as that term is defined in 21 U.S.C. 321(g)(1);
 - ii. Any product that is a “device” as that term as defined in 21 U.S.C. 321(h);
 - iii. Any product that is a “combination product” as described in 21 U.S.C. 353(g).
- (2) **"Employee"** means a person who is employed by an employer, or who contracts with an employer or third person to perform services for an employer, or who otherwise performs services for an employer for compensation or for no compensation.
- (3) **"Employer"** means the state or any individual, business, association, political subdivision, or other public or private entity, including a nonprofit entity, that employs or contracts for or accepts the provision of services from one or more employees.
- (4) **"Enclosed area"** means an area with a roof or other overhead covering of any kind and walls or side coverings of any kind, regardless of the presence of openings for ingress and egress, on all sides or on all sides but one.
- (5) **"Outdoor patio"** means an area that is either: enclosed by a roof or other overhead covering and walls or side coverings on not more than two sides; or has no roof or other overhead covering regardless of the number of walls or other side coverings.
- (f) **"Proprietor"** means an employer, owner, manager, operator, liquor permit holder, or person in charge or control of a public place or place of employment.
- (g) **"Person"** means any individual, firm, partnership, association, corporation, company or organization of any kind.
- (h) **"Place of employment"** means an enclosed area under the direct or indirect control of an employer that the employer's employees use for work or any other purpose, including but not limited to, offices, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages, and vehicles. An enclosed area as described

herein is a place of employment without regard to the time of day or the presence of employees.

- (i) **"Public place"** "Public place" means an enclosed area to which the public is invited or in which the public is permitted and that is not a private residence.
- (j) **"Smoke or Smoking"** means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted smoking device for burning tobacco or any other plant, or the lighting, activating, emitting or exhaling the smoke or vapor of a pipe, cigar, or electronic cigarette.

506.02 PROHIBITION.

- (a) No proprietor of a public place or place of employment, except as permitted in section 506.06 of this chapter, shall permit smoking in the public place or place of employment or in the areas directly or indirectly under the control of the proprietor immediately adjacent to locations of ingress or egress to the public place or place of employment.
- (b) A proprietor of a public place or place of employment shall ensure that tobacco smoke or e-cigarette vapor does not enter any area in which smoking is prohibited under this chapter through entrances, windows, ventilation systems, or other means.
- (c) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an individual for exercising any right, including reporting a violation, or performing any obligation under this chapter.
- (d) No person shall refuse to immediately discontinue smoking in a public place, place of employment, or establishment, facility or other area declared nonsmoking under Section 506.02 of this ordinance when requested to do so by the proprietor or any employee of an employer of the public place, place of employment or establishment, facility or outdoor area.
- (e) Lack of intent to violate a provision of this chapter shall not be a defense to a violation.

506.03 DECLARATION OF ESTABLISHMENT AS NONSMOKING

- (a) Notwithstanding any other provision of this chapter, the owner, manager, operator, 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 declared to be nonsmoking under this section where a sign conforming to the requirements of section 3794.06 of the Ohio Revised Code is posted. Such signage shall be applicable to the use of e-cigarettes where it clearly indicates that the use of e-cigarettes is prohibited.

506.04 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 this Ordinance.
- (b) The City Manager or his/her designee shall enforce the provisions of this Ordinance by any legal means including the following:
 - (1) issue a notice requiring the correction of the violation of this Ordinance;
 - (2) Cause the issuance of a complaint and summons to appear before the Oberlin Municipal Court. to
 - (3) Refer a violation of this Chapter as it relates to tobacco or other plant to the Ohio Department of Health or its authorized designee for enforcement under the Ohio Revised Code or the Ohio Administrative Code
- (c) Any resident may make a complaint to the City Manager.

506.06 AREAS WHERE SMOKING IS NOT REGULATED BY THIS CHAPTER

The following shall be exempt from the provisions of this chapter:

- (a) Private residences, except during the hours of operation as a child care or adult care facility for compensation, during the hours of operation as a business by a person other than a person residing in the private residence, or during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present.
- (b) Rooms for sleeping in hotels, motels and other lodging facilities designated as smoking rooms; provided, however, that not more than twenty percent of sleeping rooms may be so designated.
- (c) Family-owned and operated places of employment in which all employees are related to the owner, but only if the enclosed areas of the place of employment are not open to the public, are in a free standing structure occupied solely by the place of employment, and smoke from the place of employment does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter.
- (d) Any nursing home, as defined in section 3721.10(A) of the Revised Code, but only to the extent necessary to comply with section 3721.13(A)(18) of the Revised Code. If indoor smoking area is provided by a nursing home for residents of the nursing home, the designated indoor smoking area shall be separately enclosed and separately ventilated so that tobacco smoke does not enter, through entrances, windows, ventilation systems, or

other means, any areas where smoking is otherwise prohibited under this chapter. Only residents of the nursing home may utilize the designated indoor smoking area for smoking. A nursing home may designate specific times when the indoor smoking area may be used for such purpose. No employee of a nursing shall be required to accompany a resident into a designated indoor smoking area or perform services in such area when being used for smoking.

- (e) Retail tobacco stores as defined in section 3794.01(H) the Revised Code in operation prior to the effective date of this section. Any retail tobacco store that begins operation after the effective date of this section or any existing retail tobacco store that relocates to another location after the effective date of this section may only qualify for this exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter.
- (f) Outdoor patios as defined in Section 3794.01(I) of the Revised Code. All outdoor patios shall be physically separated from an enclosed area. If windows or doors form any part of the partition between an enclosed area and the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area. If windows or doors do 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.
- (6) Private clubs as defined in section 4301.01(B)(13) of the Revised Code, provided all of the following apply: the club has no employees; the club is organized as a not for profit entity; only members of the club are present in the club's building; no persons under the age of eighteen are present in the club's building; the club is located in a freestanding structure occupied solely by the club; smoke from the club does not migrate into an enclosed area where smoking is prohibited under the provisions of this chapter; and, if the club serves alcohol, it holds a valid D4 liquor permit.

506.07 GENERAL PROVISIONS.

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

506.99 PENALTY.

- (1) As is pertains to proprietors, a violation of Section 506.02 shall be a minor misdemeanor. A second violation within two years of a conviction of a violation of Section 506.02 shall be a misdemeanor of the second degree. A third violation of Section 506.02 within two years of a conviction of a violation of Section 506.02 shall be a misdemeanor of the First Degree.
- (2) As is pertains to individuals, a violation Section 506.02 shall be a minor misdemeanor.
- (3) Penalties for a violation of Section 506.02 shall be in accordance with Sections 2929.21 through 2929.36 of the Ohio Ohio Revised Code.