

ORDINANCE NO. 30-2004
(As Amended)

Enacting Chapter 527, Codified Ordinances of the City
of Worthington To Prohibit Smoking in Public Places
and Places of Employment.

WHEREAS, in the past twenty-five years more than 1,000 papers and studies have been published about secondhand smoke demonstrating severe and pervasive injury to those exposed; and,

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

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

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

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; and,

WHEREAS, nonsmoking workers chronically exposed to secondhand smoke are on average one-third more likely to get lung cancer than those who are not exposed; and,

WHEREAS, everyone has the right to breathe clean indoor air in public places and workplaces; and,

WHEREAS, no one should be required to risk disease and disability from secondhand smoke to earn a living; and,

WHEREAS, no one should suffer the risk or discomfort of exposure to secondhand smoke while indoors engaging in business, dining or entertainment; and,

WHEREAS, everyone, even those made vulnerable because they are young or old or ill should be able to enter a public building without fear of harm from secondhand smoke; and,

WHEREAS, business owners will benefit from their ability to provide clean indoor air to their employees and customers on a level playing field; and,

WHEREAS, our children deserve to grow up free of the hazards of secondhand smoke and, as importantly, free of the deception that smoking will make them happier or more grown up;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Worthington, County of Franklin, State of Ohio:

ORDINANCE NO. 30-2004
(As Amended)

SECTION 1. That Chapter 527, Smoking Prohibitions of the Codified Ordinances of the City of Worthington, be and hereby is enacted as follows:

527.01 Definitions.

For purposes of this chapter:

(a) "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.

(b) "Employer" means the state, its instrumentalities, its political subdivisions and their instrumentalities, and any individual or type of organization including any partnership, limited liability company, association, trust, estate, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the successor thereof, or the legal representative of a deceased person that accepts the provision of services from one or more Employees.

(c) "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 openings for ingress and egress.

(d) "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.

(e) "Place of Employment" means any Enclosed Area under the control of an Employer. 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) "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.

(g) "Proprietor" means the person in charge or control of a Public Place or Place of Employment.

(h) "Public Place" means an Enclosed Area to which the public is invited or in which the public is permitted.

ORDINANCE NO. 30-2004
(As Amended)

(i) “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.

(j) “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.

(k) “Smoking materials” means any cigar, cigarette, pipe, weed, plant or other smoking equipment in any form.

527.02 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 of Worthington, except as provided in section 527.03 of this Chapter.

(b) All enclosed areas, including building and vehicles owned, leased or operated by the City of Worthington, except as provided in Section 527.03 of this Chapter.

(c) All areas immediately adjacent to the ingress and egress of any Enclosed Area are 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.

527.03 Areas where smoking is not regulated by this Chapter.

The following areas shall be exempt from the prohibitions in Section 527.02:

(a) Private residences, unless the Private residence is a Place of Employment as defined in this Chapter.

(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, as defined in Section 3721.10(A) of the Ohio Revised Code, but only to the extent necessary to comply with R.C. 3721.13(A)(18) and rules promulgated according to that section.

(e) Retail tobacco stores as defined in Section 527.01(l) of this Chapter in operation prior to the effective date of this ordinance. Any new retail tobacco store or any existing retail tobacco

ORDINANCE NO. 30-2004
(As Amended)

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 527.01(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 will 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 527.01(n) of this Chapter provided that both 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.

527.04 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.

527.05 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 527.06 is posted.

527.06 Posting of signs; prohibition of ashtrays; responsibilities of Proprietors.

In addition to the prohibitions contained in Section 527.02 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 not be larger than 8 1/2" x 11". All signs shall contain the 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.

ORDINANCE NO. 30-2004
(As Amended)

(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) By March 31, 2005, every Employer subject to the provisions of this Chapter shall adopt, implement, make known, maintain and update to reflect any changes, a written smoking policy, which shall contain at a minimum the following requirements.

- (1) The prohibition of smoking except in accordance with the provisions of this Chapter, and a description of the smoking restrictions adopted or implemented.
- (2) That (i) no person or Employer shall discharge, refuse to hire, or in any manner retaliate against an Employee, applicant for employment, or customer because that Employee, applicant, or customer exercises any rights afforded by this Chapter or reports or attempts to prosecute a violation of this chapter; and (ii) the establishment of the procedure to provide for the adequate redress of any such adverse personnel action taken against an Employee in retaliation for that Employee's attempt to exercise his or her rights under this Chapter with respect to the Place of Employment.

(e) Employers shall prominently post the smoking policy in the workplace, and shall, within three weeks of its adoption and any modification, disseminate the policy to all Employees, and to new Employees when hired.

(f) Employers shall supply a written copy of the smoking policy upon request to any Employee or prospective Employee.

(g) A copy of the smoking policy shall be provided to the City of Worthington upon request.

(h) This Section shall not be construed to permit smoking in any area in which smoking is prohibited pursuant to Section 527.02.

527.07 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 will 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.

527.99 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 of Worthington shall issue a warning letter to that Proprietor and to the Employer. Thereafter, the penalties contained in division (b) of this Section shall apply.

ORDINANCE NO. 30-2004
(As Amended)

(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 \$150.00.

SECTION 2. That notice of passage of this Ordinance shall be by publication of a notice, one time, in a newspaper of general circulation in the City of Worthington setting forth the title and effective date of the Ordinance and a statement that the Ordinance is on file in the office of the Clerk of Council, and that this Ordinance shall take effect and be in force from and after the earliest period allowed by law and by the Charter of the City of Worthington, Ohio.

Passed _____

President of Council

Attest:

Clerk of Council