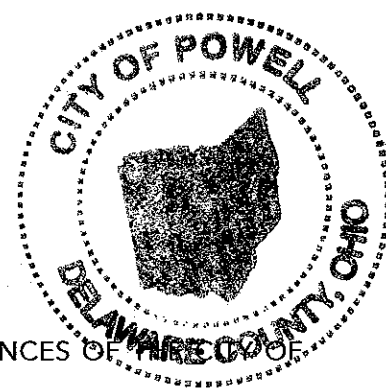


ORDINANCE NO. 2004-49
Passed August 3, 2004



AN ORDINANCE ENACTING CHAPTER 522 OF THE CODIFIED ORDINANCES OF THE CITY OF POWELL ENTITLED "SMOKING PROHIBITIONS".

WHEREAS, Council has examined various reports and studies commencing with the Surgeon Generals' initial report that smoking is harmful to the individual and,

WHEREAS, apart from the dangers to the individual smoker, Council has determined that there are sufficient studies and reports from the United States Environmental Protection Agency and the United States Center for Disease Control indicating that secondhand smoke is in fact harmful to those in the vicinity of a smoker and,

WHEREAS, Council has determined that it is in the best interest of the residents of the City of Powell and their health, welfare and safety to prohibit smoking in public places and places of employment.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF POWELL DELAWARE COUNTY, OHIO IN ITS ENACTMENT OF CHAPTER 522 OF THE CODIFIED ORDINANCES OF THE CITY OF POWELL AS FOLLOWS:

Section 1:

522.01 Definitions:

(a) "Business" means any entity of any nature whatsoever including a partnership, sole proprietorship, association, joint venture, corporation, limited liability company, trust or any other entity formed for the purpose of making profit including retail establishments where goods or services are sold and including professional organizations and other entities furnishing services including legal, medical, dental, engineering, architectural, financial, counseling, or other professional or consumer related services.

(b) "Enclosed Areas" means any area closed in by a roof or overhead covering of any kind and walls or other side coverings of any kind on at least three (3) sides with appropriate openings for ingress and egress.

(c) "Family Owned" means any entity which is entirely owned and operated by descendants of a common ancestor or their spouses.

(d) "Lodging Facilities" means any facility, which rents rooms to guests.

(e) "Place of Employment" means that portion of any area under the control of a public or private employer which employees normally frequent during the course of their 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, mail rooms, employee medical facilities, rooms or areas containing photo copying or other office equipment used in common by employees, elevators, stairways, hallways, factories, warehouses, garages, laboratories, taxis, limousines, and company owned or leased vehicles used for a business purpose. "Place of Employment" only includes private residences whether single or multi-family, if used

This legislation has been posted in accordance with
the City Charter on this date 8/20/04

Shuman
Clerk of Council

as a childcare, adult daycare or healthcare 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 the 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 the public place or place of employment.

(g) "Public Place" means that portion of an enclosed area to which members of the general public are invited or to which general members of the public are permitted and includes service lines. A private residence is not a "Public Place" unless members of the public are invited for any reason including for business purposes or unless it is used as a childcare, adult daycare, or healthcare facility.

(h) "Retail Tobacco Store" means a retail store used primarily for the sale of smoking material and smoking accessories and in which the sale of other products is incidental. "Retail Tobacco Store" does not include the tobacco department of a larger commercial establishment such as a department store, discount store or bar.

(i) "Service Line" means any 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.

(j) "Smoker" means the individual smoking any substance such as a lighted cigar, cigarette, pipe, weed, plant or other substance whether or not actually inhaling or exhaling the smoke.

(k) "Smoking" means burning including the inhaling or exhaling thereof of any lighted cigar, cigarette, pipe, weed, plant, or other burning substance.

(l) "Smoking Materials" means any cigar, cigarette, pipe, weed, plant, or other smoking equipment in any form.

522.02 Prohibition:

(a) No proprietor of a public place or place of employment shall permit smoking in said public place or place of employment nor shall any smoker engage in smoking in a public place or place of employment within the City of Powell except as provided in Section 522.03

(b) All enclosed areas including buildings and vehicles owned or controlled by the City of Powell shall be subject to the provisions of this chapter.

(c) All areas immediately adjacent to the *main* 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.

522.03 Areas Where Smoking Is Not Regulated:

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the prohibitions of *Section 522.02*.

(a) Private residences except if a place of employment or if used as a licensed childcare, adult daycare or healthcare facility 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) Lodging facilities that are rented to guests and are designated as smoking rooms provided, however, that not more than thirty five percent (35%) of the rooms in such lodging facility rented to guests may be so designated and, such rooms must be contiguous to one another.

(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 area is occupied by these businesses and offices are not open to the public and not in the same building with other enclosed areas subject to this regulation and smoke in 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 *Ohio Revised Code Section 3721.10 (A)* of the *Ohio Revised Code* but only to the extent that it is necessary to comply with the provisions of *Ohio Revised Code Section 3721.13 (A) (18)* and rules promulgated according to that section.

(e) Retail tobacco stores defined in this chapter in operation prior to the effective date of *this Ordinance*. Any new retail tobacco store or any existing tobacco store that relocates to another site may only qualify for this exemption if it is located in a free-standing structure more than twenty feet (20') from another enclosed area.

522.04 Interpretation:

This chapter shall be liberally construed to further its legislative purpose, namely, the prohibition of secondhand smoke within the City.

522.05

Notwithstanding any other provisions of this chapter, the owner, manager, operator, liquor permit holder, or other person in charge or control of an establishment or facility which does not otherwise qualify as a public place or place of employment may declare such establishment or facility as a non-smoking place. Smoking shall be prohibited in any place in which a sign conforming to Section 522.06 is posted.

522.06 Signs:

In addition to the prohibitions contained in Section 521.122, the proprietor of a public place or place of employment shall comply with the following requirements:

(a) Every public place and place of employment where smoking is prohibited shall post a conspicuous sign at every entrance to such public place or place of employment clearly stating that smoking is prohibited. The sign shall be of sufficient size to be clearly legible to one of normal vision. The sign may consist of 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. All signs shall contain a method and manner for reporting violations

(b) All receptacles including ashtrays used for disposing of smoking materials shall be removed from every public place and place of employment.

522.07 Enforcement:

This chapter shall be enforced by the City Department of Police and any other entity designated by Council.

522.08 Severability:

If any portion of this chapter is held to be invalid for any reason whatsoever, the invalidity shall not affect the main provisions of the chapter, which can be given effect in light of such invalidity.

522.99 Penalties:

(a) Whoever violates any provision of this chapter is guilty of permitting smoking in public places or places of employment. Such offense is a minor misdemeanor punishable by a fine not to exceed one hundred fifty dollars (\$150.00).

(b) Strict liability is intended for a violation of this chapter.

Section 2: Public education: The City Manager, or his designee shall engage in a continuing program to explain and clarify the purposes and requirements of this Chapter to persons affected by it, and to guide proprietors in their compliance with it. The program may include publication of a brochure for affected businesses and persons explaining the provisions of this ordinance.

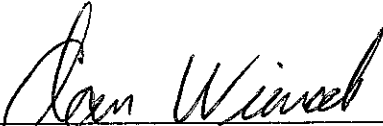
Section 3 That in the event that the federal government establishes quality indoor air standards that are acceptable to the Center for disease Control for elimination of all known carcinogens and technology has been tested and shown to ensure compliance with such standards, this Council will consider adopting additional exemptions or variances to these prohibitions.

Section 4: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this *Ordinance* were adopted in an open meeting of the Council and that all deliberations of the Council and any of the decision making bodies of the City of Powell which resulted in such formal actions were in meetings so open to the public in compliance with all legal requirements of the City of Powell, Delaware County, Ohio.

Section 5: That this *Ordinance* shall take effect upon the earliest possible date permitted by law.

VOTE ON ORDINANCE NO.: 2004-49

Y__5__ N__2__ (Grubbs, Schultz)



Dan Wiencek, Mayor Date



Dawn Nauman, Clerk of Council