

ORDINANCE NO. 9-08  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Gresham ON THE 21st DAY  
OF July, 2008

AN ORDINANCE AMENDING SECTION 660.13 OF THE CENTERVILLE, OHIO MUNICIPAL ORDINANCES, SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT.

WHEREAS, the City adopted Ordinance No. 20-04 on December 12, 2004 to regulate smoking in public places of employment; and

WHEREAS, the State of Ohio adopted a statute entitled Smoking Ban on December 7, 2006; and

WHEREAS, the City's Smoking Ordinance contains exemptions that are inconsistent with the State of Ohio statute; and

WHEREAS, the Council seeks to make Section 660.13 consistent with the State of Ohio statute;

NOW, THEREFORE,

THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

Section 1. That the amendments to Centerville Municipal Code Chapter 660.13, are hereby enacted as follows with new language to be added in *italics* and text to be deleted in ~~strikeout~~ as provided in Section 5.02 of the Centerville Charter.

660.13 SMOKING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT.

(a) Definitions.

- (1) ~~"Bar" means any commercial establishment, whereby the owner submits to the City an affidavit, in the form set forth in Ord. 20-04 as exhibit "A", that~~  
*verifies that the establishment derives fifty-five percent (55%) or more of its annual gross sales from the sale of alcoholic beverages as defined by the Ohio Revised Code and has a valid on-premises consumption license issued by the State of Ohio. In order to be classified as a Bar, said affidavit is required to be filed with the City within 90 days of passage of this Ordinance and then every two years thereafter. Said affidavit is based upon*  
*the gross receipts from all sales for the twelve-month period occurring immediately prior to filing.*

- (2) ~~"Bowling Alley" means a building that contains at least five lanes for bowling. The size of the lanes must be in compliance with the rules of the United States Bowling Congress.~~
- (3)(1) "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.
- (4)(2) "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.
- (5)(3) "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.
- (6)(4) "Enclosed Area" means all space of a building and/or vehicle 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.
- (7)(5) "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, taxis, 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, during the hours of operation of such 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; provide, 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.
- ~~(8)~~(6) "Person" means any individual, employee, firm, partnership, association, corporation, company, organization or legal entity of any kind.
- ~~(9)~~(7) "Proprietor" means the owner, manager, operator, liquor permit holder, or other person in charge or control of a public place or place of employment.
- ~~(10)~~(8) "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, during the hours of operation of such child care, adult day care, or health care facility.
- ~~(11)~~(9) "Related" means a family relationship by affinity or consanguinity by no greater than the third degree.
- ~~(12)~~(10) "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.
- ~~(13)~~(11) "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.
- ~~(14)~~(12) "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.
- ~~(15)~~(13) "Smoking materials" means any cigar, cigarette, pipe, weed, plant or other smoking equipment in any form.
- ~~(16)~~(14) "Work area" means any room, desk, station or other area normally occupied by an employee while carrying out his or her primary work function.

(b) Prohibitions.

- (1) 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 subsection (c) of this Section.
- (2) No person shall smoke in a public place or place of employment within the City, except as provided in subsection (c) of this Section.
- (3) All enclosed areas, including buildings and vehicles, owned, leased, or operated by the City, shall be subject to the provisions of this Section.
- (4) All areas within ten feet immediately adjacent to the main ingress and egress of any enclosed area shall be subject to the provisions of this Section.
- (5) *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 Ordinance.*

(c) Areas where smoking is not regulated by this Section. Notwithstanding any

other provision of this Section to the contrary, the following areas shall be exempt from the prohibitions in subsection (b):

- (1) Private residences, except if used as a licensed child care, adult day care, or health care facility, during the hours of operation of such child care, adult day care, or health care facility; and except as outlined in subsection (a)(7) and (10).
- (2) 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 Section.
- (3) Any home, as defined in Ohio R.C. 3721.10 (A), but only to the extent necessary to comply with Ohio R.C. 3721.13(A) (18) and rules promulgated according to that section.
- (4) Retail tobacco stores as defined in subsection (a)(12) of this Section in operation prior to the effective date of this section. 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.
- ~~(5) Bars as defined in subsection (a)(1). No new Bars established after the effective date of this Ordinance shall qualify for this exemption.~~
- ~~(6) Bowling Alleys as defined in subsection (a)(2). No new bowling alleys established after the effective date of this Ordinance shall qualify for this exemption.~~

(d) Construction: other applicable laws. This Section 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.

(e) Declaration of establishment as nonsmoking. Notwithstanding any other provision of this Section, 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 nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Subsection (f) is posted.

(f) Posting of signs: prohibition of ashtrays: responsibilities of proprietors. In addition to the prohibitions contained in subsection (b) of this Section, the proprietor of a public place or place of employment shall comply with the following requirements:

- (1) "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, other than a vehicle, where smoking is prohibited by this Section. 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. The city will provide signs that fully comply with the requirements of this Section free of charge to businesses covered by this Section.

- (2) Every public place and place of employment, other than a vehicle, where smoking is prohibited by this Section shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- (3) All ashtrays and other receptacles used for disposing of smoking materials shall be removed from any area where smoking is prohibited by this Section, other than a vehicle, 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.
- (4) This Section shall not be construed to permit smoking in any area in which smoking is prohibited pursuant to Subsection (b).

(g) Enforcement. This Section shall be enforced by the Centerville Police Department.

(h) Penalties.

- (1) Whoever violates any provision of this Section is guilty of the offense of permitting smoking in public places or places of employment and shall be subject to the following penalties:
  - A. For a first offense, a minor misdemeanor.
  - B. For a second offense (occurring not later than two years after the first offense), the Court shall impose upon the offender a fine of not less than two hundred fifty dollars (\$250.00).
  - C. For a third offense and each subsequent offense (occurring not later than two years after the first offense), the Court shall impose upon the offender a fine of not less than five hundred dollars (\$500.00).
- (2) A person smoking in violation of this Section is guilty of the offense of smoking in public places or places of employment and shall be subject to the following penalties:
  - A. For a first offense, a minor misdemeanor.
  - B. For a second offense (occurring not later than two years after the first offense), the Court shall impose upon the offender a fine of not less than two hundred fifty dollars (\$250.00).
  - C. For a third offense and each subsequent offense (occurring not later than two years after the first offense), the Court shall impose upon the offender a fine of not less than five hundred dollars (\$500.00).
- (3) Strict liability is intended for a violation of this Ordinance.

~~(i) Effective date. This Section shall be effective from and after the earliest date allowed by law, but its provisions shall not be enforced until after April 4, 2005.~~

Section 3: This ordinance shall take effect at the earliest date allowed by law.

PASSED THIS 21<sup>st</sup> day of July, 2008.

C. Mark Kuykendall  
Mayor of the City of  
Centerville, Ohio

ATTEST:

Debra A. James  
Clerk of Council  
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 9-08, passed by the Council of the City of Centerville, Ohio on the 21<sup>st</sup> day of July, 2008.

Debra A. James  
Clerk of the Council

Approved as to form, consistency with the  
Charter and Constitutional Provisions.  
Department of Law  
Scott Liberman  
Municipal Attorney