

**ORDINANCE NO. 25-2006**

**TITLE: SMOKING IN PUBLIC PLACES**

**AN ORDINANCE REPEALING AND REPLACING §660.21, "SMOKING IN PLACES OF PUBLIC ASSEMBLY," OF PART 6 OF THE BARBERTON CODIFIED ORDINANCES, AND DECLARING AN EMERGENCY.**

**WHEREAS**, Council wishes to repeal and replace their clean air ordinance §660.21 so as to recognize the interests of smokers while at the same time recognizing the interests of individual owners of establishments open to and used by the public; and

**WHEREAS**, Council recognizes the dangers to the health of its citizens which smoking tobacco imposes upon smokers and non-smokers; and

**WHEREAS**, Council finds that the current Summit County Ordinance as enacted will inconsistently and unfairly economically prejudice establishments within the City of Barberton which border municipalities and/or counties where smoking is not regulated similarly; and

**WHEREAS**, Council finds that legislation by municipalities in this manner will serve to maximize the average autonomy and independence of the citizens of Ohio and Barberton; and

**WHEREAS**, Council finds that the current Summit County Ordinance is ineffective within the limits of the City of Barberton based, at least in part, upon §1.02 of the Summit County Charter and §3 Article X of the Constitution of the State of Ohio; and

**WHEREAS**, Council finds that the current regulation of smoking in the City of Barberton does not necessarily address all of the areas contemplated by the current Summit County regulation(s); and

**WHEREAS**, Council encourages proprietors and employers to establish completely smoke free establishments in an effort to provide more smoke free areas to citizens of the City of Barberton so as to provide more recreational and employment options for the city residents; and

**WHEREAS**, Council hereby enacts an ordinance which will attempt to minimize the health concerns of non-smokers as well as any negative economic impact upon business owners, employers, and other proprietors of establishments within the City of Barberton.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Barberton, State of Ohio:

**SECTION 1: Definitions.**

For the purpose of this Ordinance the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“Bar.” Any establishment licensed by the Ohio Department of Liquor Control to sell intoxicating beverages for consumption on the premises and in which the service of food is only incidental to the consumption of such beverages.

“Eating establishment.” Any restaurant, coffee shop, cafeteria, luncheonette, sandwich stand, soda fountain, and any other establishment (excluding bars) where cooked or otherwise prepared food is sold to members of the general public for consumption on the premises.

“Educational facilities.” Any public or private institution providing formal education, including day care centers.

“Employee.” Any person who is employed by any employer in consideration for direct or indirect monetary wages or profit or as a volunteer.

“Employer.” Any person who employs the services of an individual person or any person in charge of a place of employment.

“Establishment.” Any physical facility operated by a commercial enterprise, nonprofit entity, government agency or any other person.

“Health-care facility.” Any hospital, rest home, nursing home, doctors’ or dentists’ office, lab or other establishments involved in the provision of health care.

“Lobbies and waiting areas.” A hall, or waiting room at or near, but not limited to, the entrance to a building, such as hotels, apartment houses or theaters.

“No smoking sign.” 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) which shall be used for signs indicating that smoking is prohibited. The no smoking sign shall be of sufficient size to be clearly legible to one of normal vision throughout the area it is intended to mark.

“Person.” Any individual, firm, partnership, association, corporation, company, organization or legal entity of any kind.

“Place of employment.” That portion of any enclosed, indoor area under the control of a public or private employer which employees normally frequent during the course of employment but to which members of the general public are not normally invited, including, but not limited to, such areas in office workplaces, factories, warehouses, and laboratories.

“Proprietor.” The owner, manager, operator or other person in charge of a public place.

“Public.” Means that the general public is invited, permitted or has access to the site or event without regard to membership or association with a particular organization or group.

“Public place.” Means that portion of any enclosed indoor area to which members of the general public are invited or in which members of the general public are permitted.

“Retail tobacco store.” 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 retail store such as a department store, discount store, or supermarket.

“Smoking material.” Any cigar, cigarette, pipe, weed, plant or other smoking equipment in any form.

“Tobacco vending machines.” Electro/mechanical devices dispensing tobacco products to the general public.

**SECTION 2: Restrictions on smoking in City of Barberton buildings.**

- A) Smoking or the possession of lighted smoking material in any building, or portion thereof owned, leased, or controlled by the City of Barberton or in any vehicle owned, leased, or controlled by the City of Barberton is hereby prohibited. This prohibition is applicable to the public at large and employees of the City of Barberton;

B) Whoever violates this section shall be fined as follows:

- \$25.00 for the first offense;
- \$50.00 for the second offense;
- \$100.00 for each offense thereafter.

**SECTION 3: Restrictions on smoking in eating establishments.**

A) Within ninety days of the effective date of this Ordinance, each eating establishment with a total of more than thirty seats shall designate an appropriate area of the total seats, or portion thereof, as a no-smoking area. Signage that designates smoking or nonsmoking areas is required.

B) When a table in a smoking section is within 5 feet of a non-smoking table, or a non-smoking table actually abuts a smoking table, common courtesy will apply, and anyone asked to extinguish smoking material will politely do so upon request by a restaurant employee. The proprietor will exercise his/her own discretion in resolving and dispute while considering the health and comfort of any involved party.

C) Nothing in this section or any other section of the law shall prohibit a proprietor from voluntarily prohibiting smoking in all areas of an establishment. Proprietors are encouraged to establish completely smoke free establishments in an effort to provide more smoke free areas to citizens of the City of Barberton.

**SECTION 4: Restrictions on smoking in public places.**

A) Except as otherwise provided elsewhere in this legislation, the possession and use of lighted smoking materials in any form is prohibited in any public place in the City of Barberton including, but not limited to, the following:

- 1) Vehicles of public transportation such as trains, buses, limousines for hire, taxicabs and courtesy vehicles. Limousines for hire or taxicabs where the driver and all passengers affirmatively consent to smoking in such vehicles are exempt from this prohibition;
- 2) Enclosed theaters, auditoriums, concert halls, arenas and meeting rooms;
- 3) Healthcare facilities' patients' wards and rooms. Any private room in a healthcare facility, or any semi-private room in a healthcare facility, if both occupants have requested in writing to be placed in a room where smoking is permitted, are exempt from this prohibition;
- 4) Elevators, stairwells, escalators, and hallways;
- 5) Public restrooms;
- 6) Gymnasiums, exercise rooms and health spas;
- 7) Libraries and education facilities;
- 8) Places of exhibition including, but not limited to, museums, aquariums, and galleries;
- 9) Those portions of a private residence used as a child care or health care facility or serving as a place of employment and, for purposes of the within subsection, a private residence may qualify as a public place and/or an establishment open to the public;

- 10) Smoking shall be prohibited within 15 feet of the entrance and/or exit of any public building.
- 11) Smoking shall be prohibited outside the main entrance to City Hall on Park Avenue between the sidewalk and the door and all areas between the sidewalk and each side of the Building.

B) Places of Employment.

Within 90 days of the effective date of this section, each employer of twenty-five or more employees shall adopt, implement and maintain a written smoking policy pertaining to his/her place of employment which addresses the needs of the smoker and nonsmoker alike. The policy shall designate both smoking and non-smoking areas which shall be communicated to all present as well as new incoming employees. Private employers with fewer than twenty-five employees are strongly encouraged to adopt, implement and maintain a written smoking and non-smoking policy addressing the needs of both smoking and non-smoking employees.

C) The following public places are exempt from the restrictions set forth in Subsection (A):

- 1) An entire room or hall which is being used for a private social function, provided that the seating arrangements are under the control of the sponsor of the function and not of the proprietor.
- 2) Retail tobacco stores;
- 3) Bars;
- 4) Bowling alleys and bingo halls;
- 5) Hotel and motel sleeping rooms; and
- 6) An eating establishment that seats fewer than thirty people. (Provided that a sign is posted at the entrance clearly stating that a “No Smoking” section is not available.)

**SECTION 5: Responsibility of Proprietors.**

Proprietors of any eating establishments or public places governed by Sections Three or Four of this Ordinance shall take the following actions to insure that the provisions of this Ordinance are met with regard to such places:

- 1) Signs indicating whether or not smoking is permitted shall be clearly, sufficiently and conspicuously posted where smoking is regulated by this ordinance in such a manner as to give adequate notice to employees and members of the public. Each section where smoking is prohibited as well as permitted shall be clearly designated.
- 2) Smokers shall be affirmatively directed to designated smoking areas and persons smoking in violation of this ordinance shall be requested to stop.

**SECTION 6: Violations and penalties.**

- A) It shall be unlawful for any person to smoke or possess lighted smoking material in any area restricted by the provisions of this ordinance.
- B) Any person who violates any provision of this ordinance is guilty of a minor misdemeanor.

- C) Each day on which a violation of any provision of this ordinance occurs is a separate and distinct offense and shall be punishable as such.

**SECTION 7: Relation to other laws.**

This Ordinance is intended to be the exclusive set of public regulations governing smoking in public places and places of employment in the City of Barberton. However, this Ordinance shall not be interpreted or construed to encourage or permit smoking, except as otherwise provided herein, in any public place or place of employment. Nor shall this Ordinance be interpreted to relieve any proprietor, employer or other responsible party from any liability resulting from exposure to tobacco smoke.

**SECTION 8: Severability.**

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

**SECTION 9: Current Section 660.21 of the Barberton City Code.**

The current provisions of Section 660.21-Smoking in Places of Public Assembly of the Barberton Codified Ordinances are hereby repealed (the language being deleted being shown with a line through it) and replaced by the provisions of the within ordinance:

~~660.21 SMOKING IN PLACES OF PUBLIC ASSEMBLY.~~

~~\_\_\_\_\_ (a) As used in this section, "place of public assembly" means:~~

~~\_\_\_\_\_ (1) Enclosed theaters, except the lobby; opera houses; auditoriums; classrooms; elevators; rooms in which persons are confined as a matter of health care, including but not limited to a hospital room and a room in a residential care facility serving as the residence of a person living in such residential care facility.~~

~~\_\_\_\_\_ (2) All buildings and other enclosed structures owned by the State, its agencies, or political subdivisions, including but not limited to hospitals and State institutions for the mentally disabled and the mentally ill; university and college buildings, except rooms within those buildings used primarily as the residences of students or other persons affiliated with the university or college; office buildings; libraries; museums; and vehicles used in public transportation. That portion of a building or other enclosed structure that is owned by the State, a State agency, or a political subdivision, and that is used primarily as a food service establishment, is not a place of public assembly.~~

~~\_\_\_\_\_ (3) Each portion of a building or enclosed structure that is not included in division (a)(1) or (a)(2) of this section is a place of public assembly if it has a seating capacity of 50 or more persons and is available to the public. Restaurants, food service establishments, dining rooms, cafes, cafeterias, or other rooms used primarily for the service of food, as well as bowling alleys and places licensed by the Ohio Division of Liquor Control to sell intoxicating beverages for consumption on the premises, are not places of public assembly.~~

~~\_\_\_\_\_ (b) For the purpose of separating persons who smoke from persons who do not smoke for the comfort and health of persons not smoking, in every place of public assembly there shall be an area where smoking is not permitted, which shall be designated a no smoking area, provided that not more than one half of the rooms in any health care facility in which persons are confined as a matter of health care may be designated as smoking areas in their entirety. The designation shall be made before the place of public assembly is made available to the public. In places included in division (a)(1) of this section, the local fire authority having jurisdiction shall designate the no smoking area. In places included in division (a)(2) of this section that are owned by the State or its agencies, the Ohio Director of Administrative Services shall designate the area, and if the place is owned by a political subdivision, its legislative authority shall designate an officer who shall designate the area. In places included in division (a)(3) of this section, the person having control of the operations of the place of public assembly shall designate the no smoking area. In places included in division (a)(2) of this section which are also included in division (a)(1) of this section, the officer who has authority to~~

~~designate the area in places in division (a)(2) of this section shall designate the no smoking area. A no smoking area may include the entire place of public assembly. Designations shall be made by the placement of signs that are clearly visible and that state "no smoking." No person shall remove signs from areas designated as no smoking areas.~~

~~(c) This section does not affect or modify the prohibition contained in Ohio R.C. 3313.751(B).~~

~~(d) No person shall smoke in any area designated as a no smoking area in accordance with division (b) of this section.~~

~~(e) Whoever violates this section is guilty of a minor misdemeanor. (ORC 3791.031)~~

**SECTION 10: Sunset Provision.**

If the General Assembly of the State of Ohio enacts legislation providing for restrictions on smoking in the City of Barberton, this section of the Barberton Municipal Code shall continue in effect only if the Barberton City Council shall expressly determine within ninety (90) days of the enactment of the state law whether this Ordinance continues essential to the health and welfare of the City of Barberton and reenacts this section of the Code in whole or in part.

**SECTION 11: Emergency Clause.**

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, and welfare of the City of Barberton and the inhabitants thereof for the reason that the Summit County regulations are scheduled to go into effect on the 28th day of February, 2006, and it is necessary for the regulation being adopted herein to go into effect immediately to avoid enforcement of the County Regulations in the City of Barberton to the extent that said Summit County regulation is found to be valid and enforceable within the City of Barberton. Provided that this legislation receives six (6) affirmative votes of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

Passed \_\_\_\_\_ 2006

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Clerk of Council

\_\_\_\_\_  
President of Council

Approved \_\_\_\_\_ 2006

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Mayor