

ORDINANCE NO: 05-118
SPONSOR: MAYOR BOLLAS
INTRODUCED: DECEMBER 19, 2005

**AN ORDINANCE TO REGULATE INDOOR SMOKING IN PUBLIC PLACES
IN NEW FRANKLIN VILLAGE AND DECLARING AN EMERGENCY.**

WHEREAS, New Franklin Village does not currently have an Ordinance addressing indoor smoking in public places in the Municipality; and

WHEREAS, New Franklin Village Council deems it necessary to adopt rules and regulations for indoor smoking in public places in New Franklin Village to promote public health and safety.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE
VILLAGE OF NEW FRANKLIN, COUNTY OF SUMMIT, AND STATE OF
OHIO, THAT:**

SECTION ONE: 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 TWO: Restrictions on smoking in the Village of New Franklin buildings.

- A) Smoking or the possession of lighted smoking material in any building, or portion thereof owned, leased, or controlled by the Village of New Franklin or in any vehicle owned, leased, or controlled by the Village of New Franklin is hereby prohibited. This prohibition is applicable to the public at large and employees of the Village of New Franklin, except that a person may smoke in a city owned, leased or controlled vehicle if the smoker is the only person occupying the vehicle.

- 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 THREE: Restrictions on smoking in eating establishments.

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.

SECTION FOUR: Restrictions on smoking in public places.

- A) Except as provided in subsection (B) of this section, the possession and use of lighted smoking materials in any form is prohibited in any public place in the Village of New Franklin, 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) Health care facilities' patients' wards and rooms. Any private room in a health care facility, or any semi-private room in a health care 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;
- B) 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) Private residences, except those portions of a private residence used as a child care or health care facility or serving as a place of employment;

- 5) Bowling alleys and bingo halls;
- 6) Hotel and motel sleeping rooms; and
- 7) 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 FIVE: 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 SIX: 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 SEVEN: Relation to other laws.

This ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by law, nor to relieve any proprietor or employer from any liability to any person resulting from his or her exposure to tobacco smoke.

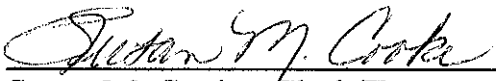
SECTION EIGHT: Open meetings.


The Village of New Franklin finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in open meetings of this Council and any deliberation of this Council and any other Committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION NINE: Emergency Clause


Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of New Franklin. Provided that this legislation receives the affirmative vote of three-fourths 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.

ADOPTED: January 18, 2006


Susan M. Cooke, Clerk/Treasurer


President Pro-Tem

APPROVED: January 18, 2006

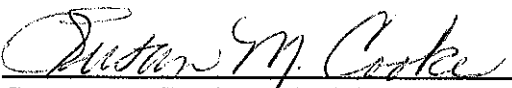

Al Bollas, Mayor

ENACTED EFFECTIVE: February 17, 2006

ROLL CALL:

Mr. Adamson, yes. Mr. Hess, yes. Mrs. Jones, no.
Mr. Lee, yes. Mr. Mobley, no. Mr. Stock, yes.

Akron Legal News publications on January 30, 2006 and February 6, 2006.


Susan M. Cooke, Clerk/Treasurer