



# City of Columbus Legislation Report

Office of City Clerk  
90 West Broad Street  
Columbus OH 43215-9015  
columbuscitycouncil.org

**File Number: 1095-2004**

---

**30-Day**

**File Number:** 1095-2004                      **File Type:** Ordinance                      **Status:** Passed

**Version:** 2                      **Controlling Body:** Rules and Reference Committee

**File Name:** The City of Columbus Smokefree Indoor Air Act of 2004                      **Introduced:** 6/9/2004

**Requester:** Council Drafter                      **Cost:**                      **Final Action:** 7/1/2004

**Auditor Cert #:**                      **Auditor:** When assigned an Auditor Certificate Number I , the City Auditor, hereby certify that there is in the treasury, or anticipate to come into the treasury, and not appropriated for any other purpose, the amount of money specified hereon, to pay the within Ordinance.

**Contact Name/No.:** Wyatt Kingseed

---

**Floor Action (Clerk's Office Only)**

---

**Mayor's Action**

**Council Action**

_____	_____	_____	_____
Mayor	Date	Date Passed/ Adopted	President of Council
_____	_____		_____
Veto	Date		City Clerk

---

**Title:**

To amend Title 7 of the Columbus City Codes, 1959, by enacting new Chapter 715, which prohibits smoking in public places and places of employment.

**Sponsors:** Charleta B. Tavares

**Indexes:**

**Attachments:**

---

## History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Council Drafter	6/9/04	Sent for Approval	COUNCIL PRESIDENT (approver)			
1	COUNCIL PRESIDENT (approver)	6/10/04	Reviewed and Approved	Council Drafter			
	<b>Action Note:</b>	for Melinda Swan - M. Reynolds					
1	Council Drafter	6/10/04	Sent for Approval	Atty Inbox			
1	CITY ATTORNEY	6/10/04	Reviewed and Approved	Council Drafter			
	<b>Action Note:</b>	JTC--approved as to form only					
1	Council Drafter	6/10/04	Sent to Clerk's Office for Council	City Clerk Inbox			
1	Columbus City Council	6/14/04	Read for the First Time				
1	Columbus City Council	6/14/04	Waived the 2nd Reading				Pass
1	Columbus City Council	6/14/04	Tabled to Certain Date				Pass
	<b>Action Note:</b>	TABLED PENDING PUBLIC HEARING (TWO WEEKS) TABLED UNTIL 06/28/04					
1	Columbus City Council	6/28/04	Taken from the Table				Pass
1	Columbus City Council	6/28/04	Amended as submitted to the Clerk				Pass
1	Columbus City Council	6/28/04	Approved as Amended				Pass
2	COUNCIL PRESIDENT	6/28/04	Signed				
2	MAYOR	7/1/04	Signed				
2	CITY CLERK	7/1/04	Attest				

**EBOCO:** Following review and approval, when required, the Equal Business Opportunity Commission Office certifies compliance with Title 39 as of date listed.

**City Attorney:** Following review and approval, when required, this ordinance has been reviewed by the City Attorney's Office as to its form and legality only.

### Explanation

Significant health concerns exist surrounding secondhand smoke. These include the recent finding by the United States Centers for Disease Control states that between 38,000 and 62,000 non-smoking Americans die every year from exposure to secondhand smoke; and the US Environmental Protection agency's classification of secondhand smoke as a "Class A Carcinogen." Such evidence has promoted health advocacy organizations to more aggressively promote public policy that restricts or prohibits smoking in public places.

In June, 2004 the Smoke-Free Columbus Coalition presented City Council its report and recommendations to pursue such policy in Columbus. Two public hearings by Council and electronic and phone options were made available to encourage the public and interested parties to submit testimony and thoughts on the matter.

This legislation, commonly known as the Smokefree Indoor Air Act of 2004, amends City Code Title 7 to enact a new Chapter to prohibit smoking in public places and places of employment.

**Title**

To amend Title 7 of the Columbus City Codes, 1959, by enacting new Chapter 715, which prohibits smoking in public places and places of employment.

**Body**

**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 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 US 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 1/3 more likely to get lung cancer than those who aren't 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 COLUMBUS:**

**SECTION 1.** That Columbus City Codes Chapter 715, entitled Smoking Prohibitions, be and hereby is enacted as follows:

**CHAPTER 715**

## Smoking Prohibitions

### 715.01 Definitions.

For purposes of this chapter:

(A) "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.

(B) "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.

(C) "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.

(D) "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 appropriate openings for ingress and egress.

(E) "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, 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) "Proprietor" means the owner, manager, operator, liquor permit holder, or other person in charge or control of a public place or place of employment.

(G) "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.

(H) "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.

(I) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other ~~combustible substance~~ **smoking equipment** in any manner or in any form. **"Smoking" does not include the burning or carrying of incense in a religious ceremony.**

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

(K) "Work area" means any room, desk, station or other area normally occupied by an employee while carrying out his or her primary work function.

(L) “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.

(M) “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.

(N) “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.

#### 715.02 Prohibitions.

(A) Smoking shall be prohibited in all public places within the City of Columbus, except as provided in Section 715.03. **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 Columbus, except as provided in section 715.03 of this Chapter.**

(B) ~~Smoking shall be prohibited in all places of employment within the City of Columbus, except as provided in Section 715.03.~~ **All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Columbus, shall be subject to the provisions of this chapter.**

~~(C) All enclosed areas, including buildings and vehicles owned, leased, or operated by the City of Columbus, shall be subject to the provisions of this Chapter.~~

~~(D) Smoking is prohibited within a distance of 20 feet outside an enclosed area where smoking is prohibited, unless such distance is unreasonable under the circumstances, so as to ensure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means.~~

**(C) All areas immediately adjacent to the 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.**

#### 715.03 Areas where smoking is not regulated by this Chapter.

Notwithstanding any other provision of this Chapter to the contrary, the following areas shall be exempt from the prohibitions in Section 715.02:

(A) Private residences, except if used as a licensed child care, adult day care, or health care facility, or if a person uses a private residence in any way otherwise qualifying that private residence as a place of employment; 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) 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 ~~with only in which all employees are related employees to the owner~~, and offices of self-employed persons ~~with only in which all employees are related employees to the self-employed person~~, **but only if when the enclosed areas these places 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 places businesses and offices does not infiltrate into enclosed areas where smoking is prohibited under the provisions of this Chapter.**

(D) Any home, as ~~that term is defined in Ohio Revised Code Section 3721.10(A)~~ **Section 3721.10(A) of the Ohio**

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

**(E) Retail tobacco stores as defined in Section 715.01(L) of this Chapter in operation prior to the effective date of this ordinance. Any new retail tobacco store or any existing retail tobacco 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 715.01(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 does 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 715.01(N) of this Chapter provided that all 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.**

#### **715.04 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.

#### **715.05 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 715.06 is posted.

#### **715.06 Posting of signs; prohibition of ashtrays; responsibilities of proprietors.**

**In addition to the prohibitions contained in Section 715.02 of this Chapter, the proprietor of a public place or place of employment shall comply with the following requirements:**~~of this Section.~~

(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 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.

(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.

(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 December 31, 2004, 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 a 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 Columbus Board of Health upon request.

(H) This Section shall not be construed to permit smoking in any area in which smoking is prohibited pursuant to Section 715.02.

#### **715.07 Enforcement.**

~~(A) This Chapter shall be enforced by the Columbus Board of Health, which may allow one or more other City divisions to assist with enforcement under that City division's appropriate jurisdiction.~~

~~(B) The Columbus Board of Health shall establish a telephone number or other means through which all complaints by persons relating to violations of this Chapter may be directed or referred.~~

~~(C) Any person who desires to register a complaint under this Chapter may initiate enforcement with the Columbus Board of Health.~~

~~(D) The Columbus Board of Health or its designees shall, while a public place or place of employment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.~~

~~(E) A proprietor of a public place or place of employment regulated by this Chapter shall inform persons violating this Chapter of the appropriate provisions thereof.~~

~~(F) Notwithstanding any other provision of this chapter, an employee or other person may bring legal action to enforce this Chapter.~~

~~(G) In addition to the remedies provided by the provisions of this chapter, the Columbus Board of Health, or any person aggrieved by the failure of the proprietor of a public place or a place of employment to comply with the provisions of this chapter, may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.~~

**This chapter shall be enforced by the Columbus Board of Health and its designee(s). The Health Commissioner and his or her designee(s), the Director of Development and his or her designee(s), and the Director of Public Safety and his or her designee(s) shall have concurrent jurisdiction to enforce all provisions of this Chapter.**

#### **715.08 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 shall 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.

#### **715.99 Violations and Penalties.**

~~(A) A proprietor of a public place or place of employment who fails to comply with the provisions of this Chapter shall be guilty of a minor misdemeanor, punishable by a fine not exceeding one hundred fifty (\$150.00) dollars.~~

~~(B) In addition to the fine as set in division (A) of this Section, the following additional penalty applies:~~

~~(1) For a second offense, the additional penalty is a mandatory fine of four hundred dollars (\$400.00).~~

~~(2) For a third and all subsequent offenses, the additional penalty is a mandatory fine of six hundred dollars (\$600.00).~~

~~(C) All fines and additional penalties set forth in this Section which are collected as a result of enforcement of the provisions of this Chapter shall be paid directly to the Columbus Board of Health for purposes of enforcement of the provisions of this Chapter.~~

~~(D) Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.~~

**(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 Columbus Board of Health shall issue a warning letter to that proprietor. Thereafter, the penalties contained in division (B) of this Section shall apply.**

**(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.**

**(C) Strict liability is intended for a violation of this Chapter.**

**(D) All fines and costs collected as a result of enforcement of the provisions of this Chapter shall be paid directly to the Columbus Board of Health to fund future enforcement and education.**

## **SECTION 2. Public education.**

The Columbus Board of Health 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 this ordinance shall take effect and be in force from and after the earliest period allowed by law. 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 this ordinance shall take effect at the earliest possible date allowed by law but its provisions shall not be enforced until ninety days from final passage.**