



Legislation Text

File #: 100242, Version: 3

100242
SUBSTITUTE 3

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A substitute ordinance implementing state law regulating indoor and outdoor smoking of tobacco and tobacco products.

100-59-9-e rp

100-59-9-f rn

105-48 rc

105-49 rc

105-50 rp

This ordinance adopts the provisions of state law prohibiting smoking in certain enclosed and unenclosed areas. The applicable law is 2009 Wisconsin Act 12 ("The Act") signed on May 18, 2009, by the governor, which takes effect on July 5, 2010. The law applies to enclosed spaces where persons are employed, retail establishments, enclosed places where members of the public may be permitted access, educational facilities and areas of certain multiple residences. Additionally, the new law prohibits smoking in unenclosed areas that include day care centers where children may be present, juvenile correctional facilities and within 25 feet of any University of Wisconsin residence hall or dormitory.

The Act also prohibits a municipality from regulating or prohibiting smoking on unenclosed spaces. A municipality may regulate smoking on unenclosed property owned or leased by the municipality upon passage of an ordinance. This ordinance provides that the commissioner of public works may designate those areas of unenclosed property owned or leased by the city upon which smoking will be prohibited. Signage for areas subject to the state prohibition or subject to city prohibition must conform to standards established by the Wisconsin department of commerce, if any.

Penalties provided in the ordinance for violation of the smoking prohibition and for violations by persons in charge of areas subject to the smoking prohibition have been set at the levels prescribed by state laws.

Part 1. Section 100-59-9-e of the code is repealed.

Part 2. Section 100-59-9-f of the code is renumbered 100-59-9-e.

Part 3. Section 105-48 of the code is repealed and recreated to read:

105- 48. Smoking Prohibited.

1. ADOPTION OF STATE LAW. The city adopts the provisions of s. 101.123, Wis. Stats., regulating smoking except as otherwise provided in city provisions not in conflict with s. 101.123, Wis. Stats., or other state statutes or administrative rules.

2. DEFINITIONS. In this section:

- a. "City building," as referenced in s. 101.123(2)(a)8r, Wis. Stats., means a building, or portion of any building, owned or leased by the city including any enclosed walkway connecting city buildings or structures.
- b. "Enclosed place" means all space between a floor and ceiling that is bounded by walls, doors, or windows, whether open or closed, covering more than 50 percent of the combined surface area of vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge screen with an 18 by 16 mesh count is not a wall.

3. EXCEPTIONS. Prohibitions against smoking shall not apply to any of the following:

- a. A private residence.
- b. A room used by only one person in an assisted living facility as his or her residence.
- c. A room in an assisted living facility in which 2 or more persons reside if every person who lives in that room smokes and each of those persons has made a written request to the person in charge of the assisted living facility to be placed in a room where smoking is allowed.
- d. A retail tobacco store that has been in existence since June 3, 2009, and in which the smoking of cigars and pipes has been allowed.
- e. A tobacco bar that has been in existence since June 3, 2009, and in which only the smoking of cigars and pipes has been allowed.

4. PENALTIES. a. Any person violating the state prohibition against smoking in enclosed places or upon those unenclosed spaces identified in s. 101.123(d) and (e), Wis. Stats., shall be subject to a forfeiture of not less than \$100 nor more than \$250, and upon failure to pay the forfeiture, may be subject to not less than 2 nor more than 5 days of confinement in the county jail or house of correction.

b. Any person in charge of property as defined in s. 101.123(1)(d) Wis. Stats., who violates the provisions of s. 101.123(2m)(b) to (d), Wis. Stats., shall be subject to a forfeiture of \$100 and, upon failure to pay the forfeiture, may be confined in the county jail or house of correction for a period of 2 days. No person may be held subject to more than \$100 total forfeiture for violations occurring on the same calendar day. For violations subject to the forfeiture provided in this paragraph, no citation shall be issued to a person in charge who has not received a prior written warning notice.

Part 4. Section 105-49 of the code is repealed and recreated to read:

105-49. Smoking Prohibited on City Property.

1. SMOKING PROHIBITED UPON UNENCLOSED CITY PROPERTY. The commissioner of public works may designate unenclosed properties owned or leased by the city as areas where smoking is

prohibited for the purpose of protecting and preserving the health and comfort of the public. However, the commissioner may not use this authority to place signs prohibiting smoking in unenclosed areas within any specific distance from the entrances to city-owned or leased buildings.

2. STATE SIGNAGE REQUIREMENTS. Signs setting forth the prohibition against smoking shall comply with requirements established by the state of Wisconsin department of commerce, if any, and shall include information reasonably sufficient to inform individuals of the physical area within which smoking shall not be permitted. It is a violation of this section for an individual, following warning by any city employe or by any member of the public, to continue smoking within the posted area.

3. DESIGNATION OF OUTSIDE SMOKING AREAS. Notwithstanding any other provision of this section, any person in charge of a restaurant, tavern, private club or retail establishment may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club or retail establishment where customers, employes, or persons associated with the restaurant, tavern, private club or retail establishment may smoke as provided in s. 101.123(4m), Wis. Stats., governing local authority to regulate smoking on public property. Any person in charge of a restaurant, tavern, private club or retail establishment that designates an area for smoking which is a reasonable distance from any entrance to a restaurant, tavern, private club or retail establishment shall assure that the designated area is kept free of litter including cigarette butts or other tobacco products.

Part 5. Section 105-50 of the code is repealed.

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB10286-5

JDO

7/27/2010