



Legislation Text

File #: 050296, **Version:** 3

050296
SUBSTITUTE 3

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A substitute ordinance relating to the regulation of smoking inside buildings that are open to the public.

105-48 rc

105-49 rp

105-50-1 rc

This ordinance revises the current smoking regulations which apply only to city-owned buildings, theaters and buses, and expands them to prohibit smoking inside all enclosed public places and places of employment within the city.

However, the following areas are exempted from the prohibition:

1. Family-owned and operated places of employment in which all employees are related to the owners and the enclosed areas of employment are not open to the public.
2. Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms, provided not more than 20% of the rooms rented to guests are designated as such.
3. Outdoor patios.
4. Private clubs or lodges.
5. Private residences, except when used as licensed daycare centers, adult care facilities, health care facilities or home-based businesses of any kind open to the public.
6. Retail tobacco stores, where sale of tobacco products and smoking accessories are the primary sources of revenue.
7. The stage of any theater when used in connection with any theatrical performance and so noticed in the program.
8. Any public place or place of employment whose owner can demonstrate that the air in his or her establishment has been purified as to render the secondhand smoke in such area equivalent to such exposure to secondhand smoke in the ambient outdoor air surrounding the establishment.

This ordinance takes effect 3 months after passage and publication, except for class "B" taverns that derive at least 75% of their gross proceeds from the sale of alcohol beverages. For these facilities, the ordinance is effective 2 years and 3 months after passage and publication.

It is the responsibility of the owner or operator of an establishment to post signs prohibiting smoking in such manner that the public has reasonable notice of the smoking prohibition, and upon either observing or being advised of a violation, request that smokers comply or refuse service to smokers.

The commissioner of health or his or her designee may issue a citation to any person violating the ordinance.

Any person who smokes in an area where smoking is prohibited; or who owns, manages, operates or

otherwise controls a public place or place of employment and who violates this section shall be subject to a forfeiture not less than \$75 nor more than \$125 for the first violation. The second or any subsequent failure to comply within a calendar year will result in a forfeiture not less than \$150 nor more than \$200.

Whereas, Cities across the country, including Appleton, Chicago, Kenosha, La Crosse, Los Angeles, Madison and New York City have passed ordinances that regulate smoking in public places and places of employment to protect the health of their citizens; and

Whereas, Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart, stroke, respiratory disease, and lung cancer; and

Whereas, Secondhand smoke is the third leading cause of preventable death in the United States, and the U.S. Environmental Protection Agency determined in 1992 that secondhand smoke is responsible for approximately 3,000 lung cancer deaths annually in American nonsmokers; and

Whereas, In 2000, as many as 7,300 people died from smoking-related illnesses in Wisconsin, and approximately 1,488 residents die annually of smoking-related illnesses in Milwaukee County; and

Whereas, The U.S. Surgeon General has determined that the separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke, and the federal Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation, and air cleaners, which are only capable of filtering out the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

Whereas, The American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smoke-free environments because it cannot determine a safe level of exposure to secondhand smoke, which contains cancer-causing chemicals, and ASHRAE acknowledges that the technology does not exist that can remove chemicals from the air that cause cancer, and that the only means of eliminating health risks associated with indoor exposure is to ban all smoking activity; and

Whereas, A significant amount of secondhand smoke exposure occurs in the workplace, and employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and a measurable decrease in lung function; and

Whereas, Numerous economic analyses examining restaurant and hotel receipts have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free, and creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety; now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 105-48 of the code is repealed and recreated to read:

105-48. Smoking in Public Places.

1. PURPOSE. It is in the best interests of public health that smoking of tobacco products be prohibited in public places and places of employment to protect the public from the negative effects of secondhand smoke.

2. DEFINITIONS. In this section:

- a. "Business" means any sole proprietorship, partnership, joint venture, corporation, limited liability corporation or other business entity formed for profit-making purposes, including without limitation retail establishments where goods or services are sold as well as other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- b. "Class "B" tavern" means an establishment holding a class "B" tavern license provided under ch. 90 and which derives at least 75% of its gross proceeds from the sale of alcohol beverages. Each class "B" tavern shall provide such documentation as may be requested by the health department to enable the department to determine whether the establishment meets the percentage requirement of this definition.
- c. "Employee" means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- d. "Employer" means the state or any individual, business, association, political subdivision or other public or private entity, including a non profit entity, that employs or contracts for or accepts the provision of services from one or more employees.
- e. "Enclosed area" means an area with a roof or other overhead covering of any kind and walls or side coverings of any kind regardless of the presence of openings for ingress and egress on all sides or on all sides but one.
- f. "Enclosed or semi-enclosed sports arena or recreational area" means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley and other similar places where members of the general public assemble together either to engage in physical exercise, or participate in athletic competition or recreational activity to witness sports, cultural, recreational or other events.
- g. "Health care facility" means any office or institution providing care or treatment of physical, mental, or emotional diseases, or other medical, physiological or psychological conditions, including without limitation hospitals, rehabilitation hospitals, clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition includes all waiting rooms, hallways, private rooms, semi-private rooms and wards within healthcare facilities.
- h. "Outdoor patio" means an area that is either enclosed by a roof or other overhead covering and walls or side coverings on not more than 2 sides, or has no roof or other overhead covering regardless of the number of walls or other side coverings.
- i. "Place of employment" means an enclosed area under the direct or indirect control of an employer that the employer's employees use for work or any other purposes, including but not limited to, offices, work areas, employe lounges, cafeterias, meeting rooms, sales, production and storage areas, restrooms, stairways, hallways, warehouses, garages and vehicles. An enclosed area as described herein is a place of employment without regard to the time of day or the presence of employees. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, health care facility or home-based business of any kind open to the public.
- j. "Private club or lodge" means an organization, whether incorporated or not, which is the owner, lessee or occupant of a building or portion thereof used exclusively for club purposes, and which is

operated solely for a recreational, fraternal, social, patriotic, political, benevolent or athletic purpose but not for pecuniary gain and which only sells alcohol beverages incidental to its operation. The private club or lodge has established bylaws and/or a constitution to govern its activities. The private club or lodge has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C.A., section 501.

k. "Public place" means an enclosed area to which the public is invited or in which the public is permitted and that is not a private residence. A private residence is not a "public place" unless it is used as a childcare, adult day care, health care facility or home-based business of any kind open to the public.

L. "Restaurant" means any retail food establishment that derives less than 75% of its gross proceeds from the sale of alcohol beverages, and shall include, if applicable, a restaurant bar area. Each restaurant shall provide such documentation as may be requested by the health department to enable the department to determine whether the establishment meets the percentage requirement of this definition.

m. "Restaurant bar area" means an area of a restaurant that is primarily devoted to the serving of alcohol beverages.

n. "Retail tobacco store" means a retail establishment that derives more than 80% of its gross revenue from the sale of cigars, cigarettes, pipes or other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or of any establishment with an alcohol beverage license or of any restaurant.

o. "Service line" means any indoor line at which one or more persons are waiting for or receiving services of any kind, whether or not the service involves the exchange of money.

p. "Shopping mall" means any enclosed walkway or hall area that serves to connect retail or professional establishments.

q. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, hookah or other lighted smoking device for burning tobacco or any other plant. "Smoking" does not include the burning of incense in a religious ceremony.

r. "Video game center" has the meaning specified in s. 84-50-10.

3. PROHIBITIONS. Smoking shall be prohibited in all enclosed public places and places of employment within the city of Milwaukee including without limitation the following places:

a. Aquariums, galleries, libraries and museums.

b. Class "B" tavern premises.

c. Convention facilities.

d. Day care centers, nursery schools, elementary schools, high schools, community colleges, technical training establishments, specialty schools, colleges and universities.

e. Facilities primarily used for exhibiting motion pictures, stage shows, dramas, lectures, musical recitals or other similar performances.

f. Grocery stores.

g. Gymnasiums.

h. Health care facilities, adult care facilities and nursing homes.

i. Lobbies, hallways and other common areas in apartment buildings, condominiums and enclosed common areas in mobile home parks.

j. Polling places.

k. Public elevators and all retail stores where merchandise is displayed and offered for sale.

L. Public meetings.

m. Public transportation facilities including without limitation buses, trains, taxicabs, limousines and

ticket, boarding and waiting areas of public transit stations.

- n. Restaurants.
- o. Restrooms, lobbies, reception areas, hallways and other enclosed common-use areas.
- p. Rooms, chambers, places of meeting or public assembly, including without limitation school buildings, under the control of an agency, board, commission, committee or council or the city or a political subdivision of the state, to the extent the place is subject to the jurisdiction of the city.
- q. Service lines.
- r. Shopping malls.
- s. Sports arenas or recreational areas, including without limitation enclosed places in outdoor arenas.
- t. City-owned or leased vehicles.
- u. Videogame centers.

4. REASONABLE DISTANCE. Smoking is prohibited within 15 feet of any entrance to an enclosed area in which smoking is prohibited.

5. EXCEPTIONS. The following areas shall be exempted from the provisions of this section:

- a. Family-owned and operated places of employment in which all employes are related to the owners but only if the enclosed areas of the places of employment are not open to the public and are in free standing structures occupied solely by the places of employment and the smoke from the places of employment does not migrate into enclosed areas where smoking is prohibited under this section.
- b. Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms provided, however, that not more than 20% of the rooms rented to guests in a hotel or motel may be so designated.
- c. Outdoor patios. All outdoor patios shall be physically separated from an enclosed area. If windows or doors form any part of the partition between an enclosed area and the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area.
- d. Private clubs or lodges.
- e. Private residences, except when used as licensed daycare centers, adult care facilities, health care facilities or home-based businesses of any kind open to the public.
- f. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited.
- g. The stage of any theater when used in connection with a theatrical performance and so noticed in the program.
- h. Any public place or place of employment otherwise subject to this section whose owner or operator can demonstrate, to the satisfaction of the health department, that such area has been equipped with air filtration or purification devices or similar technologies as to render the exposure to secondhand smoke in such area, notwithstanding the fact that smoking may be occurring in such area, equivalent to such exposure to secondhand smoke in the ambient outdoor air surrounding the establishment. The department of health is authorized to promulgate regulations specifying what types of technologies, when and if available, and taking into account any applicable federal, state or industry standards, satisfy the requirements of this paragraph.

6. DECLARATION OF ESTABLISHMENT AS NON-SMOKING. Notwithstanding any other provision of this section, an owner, operator, manager or other person in control of an establishment, facility or outdoor area may declare that entire establishment, facility or outdoor area as a non-smoking place.

7. OWNER OR OPERATOR RESPONSIBILITIES. The owner, manager, operator or other person in charge of each establishment regulated by this section shall:

- a. Post signs prohibiting smoking in such manner that the public has reasonable notice of the prohibition, and the signs shall be present at any time the establishment is open for business. Signs shall be posted conspicuously at every entrance used by members of the public, in prominent locations throughout the premises and throughout outdoor areas that are designated as nonsmoking by this section. The signs shall contain a reference that regulation is by ordinance, such as “No Smoking - City Ordinance, s. 105-48”, or equivalent, and shall be legible and clearly visible to members of the public.
- b. Upon either observing or being advised of a violation, make reasonable efforts to prevent smoking in prohibited areas by taking either of the following actions:
 - b-1. Approaching smokers who fail to voluntarily comply with this section and requesting that they extinguish their cigarettes or tobacco products and refrain from smoking.
 - b-2. Refusing service to anyone smoking in a prohibited area.

8. ENFORCEMENT. In addition to other applicable enforcement procedures and pursuant to s. 66.0113, Wis. Stats., and ch. 800, Wis. Stats., the commissioner of health and his or her designee may issue citations pursuant to the citation procedure in s. 50-25 to any person violating this section.

9. PENALTY. Any person who smokes in an area where smoking is prohibited; or who owns, manages, operates or otherwise controls a public place or a place of employment and who violates this section shall:

- a. Forfeit not less than \$75 nor more than \$125 for the first violation, and in default of payment thereof, be imprisoned in the county jail or house of correction not less than 3 days nor more than 5 days.
- b. Forfeit not less than \$150 nor more than \$200 for the second violation or any subsequent violation within a calendar year, and in default of payment thereof, be imprisoned in the county jail or house of correction for not less than 6 days nor more than 8 days.

Part 2. Section 105-49 of the code is repealed.

Part 3. Section 105-50-1 of the code is repealed and recreated to read:

105-50. Drinking and Music Playing on Buses. 1. UNLAWFUL. It shall be unlawful for any person in a public bus operated in the city to:

- a. Use portable music-playing devices, including but not limited to radios, tape players, CD players and MP3 players, except if a device such as an earphone is used by the listener.
- b. Drink any beverages. Operators shall be exempt from this provision.
- c. Dispose of any refuse.

Part 4. This ordinance takes effect 3 months after passage and publication [city clerk to insert date].

Part 5. The treatment of this ordinance with respect to sub. 3-b, Class “B” taverns, takes effect 2 years and 3 months after passage and publication [city clerk to insert date].

APPROVED AS TO FORM

Legislative Reference Bureau

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB: 05256-6

LCS

2/28/2006