

SUB. 2 ORD. AMDT. 11, 08-09

**AMENDING CHAPTER 34 OF THE DANE COUNTY CODE OF ORDINANCES,
PROHIBITING SMOKING IN CERTAIN AREAS**

The County Board of Supervisors of the County of Dane does ordain as follows:

ARTICLE 1. Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.

ARTICLE 2. Section 34.07 is repealed and recreated to read as follows:

34.07 SMOKING PROHIBITED IN CERTAIN AREAS. (1) *Purpose and intent.* (a) The Dane County Board of Supervisors hereby finds that:

1. It is recognized that smoking of cigarettes and tobacco products is hazardous to an individual's health and may affect the health of non-smokers when they are involuntarily in the presence of smoking.

2. Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution.

3. Reliable scientific findings, including those by the Surgeon General of the United States, have shown that breathing sidestream or secondhand smoke is a significant health hazard to non-smokers; particularly to children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

4. Health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction and bronchospasm.

5. Reliable scientific studies assessed by the California Environmental Protection Agency have found that sidestream and secondhand tobacco smoke is a leading cause of premature death and disability among non-smokers.

6. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort to non-smokers.

(b) This ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of Dane County, especially recognizing the rights of non-smokers, who constitute a majority of the population; educating citizens affected by this ordinance; and assisting owners, operators and managers in maintaining compliance.

(2) *Authority.* This ordinance is enacted under the authority of sections 59.03, 59.51 and 101.123 of the Wisconsin Statutes.

(3) *Definitions.* As used in this section, the following words and phrases shall have the meanings indicated:

(a) *Bed and breakfast establishment* has the meaning set forth in sec. 254.61(3), Wis. Stats.

(b) *Childcare facility* means any state licensed or county certified child care facility including, but not limited to, licensed family day care or licensed group day care centers, licensed day camps, certified school-age programs and Head Start programs.

(c) *Cigarette* means any roll of tobacco wrapped in paper or any substance other than chewing tobacco or tobacco products.

(d) *County buildings* means all County-owned and operated buildings and those portions of buildings leased and operated by the County.

(e) *Common areas of buildings* means all areas not part of a tenant's leased premises including, but not limited to, lobbies, community rooms, hallways, laundry

rooms, stairwells, elevators, enclosed parking facilities, pool areas and restrooms contiguous thereto.

(f) *Common areas of malls* means those areas within a mall customarily accessible to patrons.

(g) *Educational facility* means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board.

(h) *Employee* means any person who is employed by any employer for direct or indirect monetary wages or profit including those full-time, part-time, temporary or contracted for from a third party. *Employee* also means any person who serves as a volunteer for a business or nonprofit entity.

(i) *Employer* means any person, partnership, limited liability company, corporation or other entity, including a public or non-profit entity who employs the services of one (1) or more individual persons.

(j) *Enclosed area* means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from floor to ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, 'other landscaping' or similar structures.

(k) *Entrance* means a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk or parking lot.

(L) *Food* means a raw, cooked or processed edible substance or ingredient used or intended for use or for sale in whole or in part for human consumption. It does not include ice, beverages or chewing gum.

(m) *Health care facility* has the meaning set forth in sec. 155.01(6), Wis. Stats.

(n) *Hotel and motel* has the meaning set forth in sec. 254.61(3), Wis. Stats.

(o) *Mall* means an enclosed, indoor area containing common areas and discrete businesses primarily devoted to the retail sale of goods and services.

(p) *Medical services* has the meaning set forth in sec. 647.01(6), Wis. Stats.

(q) *Non-smoking* means smoking is prohibited.

(r) *Person in charge* means the person who ultimately controls, governs or directs the activities aboard a public conveyance or within or at a place where smoking is regulated under this section, regardless of the person's status as owner or lessee.

(s) *Place of employment* means an enclosed area controlled by the employer, which employees normally frequent during the course of employment including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not considered a place of employment within the meaning of this ordinance unless used as a childcare facility.

(t) *Private residence* means premises owned, rented or leased for temporary or permanent habitation.

(u) *Public place* means any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a public place.

(v) *Restaurant* means an establishment defined in sec. 254.61(5), Wis. Stats., in which the sale of alcohol beverages accounts for fifty percent (50%) or less of the establishment's gross receipts of the most recent alcohol licensing year, but does not mean churches, religious, fraternal, youth or patriotic organizations, service clubs and civic organizations which prepare and serve or sell meals to members and guests only. This includes restaurants within a mall and adjacent seating.

(w) *Room* means a space within a building completely enclosed with walls, partitions, floor and ceiling, except for openings for light, ventilation, ingress and egress.

(x) *Smoke free* means absence from the ambient air of the smoke by-product from the burning, inhaling, exhaling or carrying of a lighted cigarette, cigar, pipe, weed, plant or other combustible substance, in any manner in any form.

(y) *Smoking* means to smoke or carry a lighted pipe, cigar, cigarette or tobacco-related product in any form.

(z) *Sports arena* means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and indoor ice rinks and bowling centers.

(aa) *Tavern* means any establishment with a full service bar in which fermented malt beverages or intoxicating liquors are sold for consumption upon said premises and whose sale of alcohol beverages accounts for more than fifty percent (50%) of the establishment's gross receipts of the most recent licensing year.

(bb) *Tobacco product* means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco prepared in such a manner as to be suitable for smoking in a pipe or otherwise smoking; but *tobacco product* does not include cigarettes or chewing tobacco.

(4) *Prohibition of smoking in public places.* Except as otherwise provided, it shall be unlawful for any person to smoke or use tobacco products in public places including, but not limited to, the following:

(a) Elevators and enclosed stairwells of County parking ramps.

(b) Public forms of transportation including, but not limited to, motor buses, taxicabs or other public passenger vehicles.

(c) Theatres, libraries, museums, auditoriums and convention halls.

(d) Childcare facilities. Incorporated herein by reference are the following Wisconsin statutory and administrative code sections and any amendments or renumbering thereof: Sec. 101.123(1)(ad) and (2)(bm), Wis. Stats; Secs. HFS 45.02(4), 45.06(8)(g), 46.03(13), 46.06(2)(h) and 46.08(2)(c), Wis. Admin. Code.

(e) Retail stores.

(f) Health care facilities.

(g) Waiting rooms, hallways and rooms of health care laboratories.

(h) Waiting rooms, hallways and rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.

(i) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political or social purposes.

(j) Polling places.

(k) Service lobbies, waiting areas and the common areas open to the public of financial institutions, business and professional offices and multi-unit commercial facilities.

(L) Self-service laundry facilities.

(m) Enclosed, indoor areas of restaurants.

(n) Common areas of malls.

(o) Public bus and transfer point shelters.

(p) Common areas of buildings which contain three or more rental units. Written rental agreements shall include reference to this subsection. Subsection (9)(b) shall not apply to this subsection.

(q) County buildings.

(r) County-owned or leased motor vehicles.

(s) Sports arenas.

(t) Taverns.

(u) Common areas in bed and breakfast establishments, hotels and motels, and at least 75% of rooms that are rented to guests.

- (v) Educational facilities.
- (5) *Prohibition of smoking in outdoor areas.* It shall be unlawful for any person to smoke or use tobacco products in the following outdoor areas.
- (a) Within a distance of 15 feet outside entrances, operable windows and ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.
1. Every building where smoking is prohibited shall have at least one entrance which is smoke-free.
- (b) County parks and beaches as posted and so designated by the Park Commission.
- (c) Anywhere on the grounds of the Badger Prairie Health Care Center. This facility and all of its grounds are designated entirely "Smoke Free."
- (6) *Prohibition of smoking in places of employment.* It shall be unlawful for any person to smoke in all places of employment.
- (7) *Smoking paraphernalia.* Ashtrays, cigarette vending machines and other smoking paraphernalia shall not be located in areas where smoking is prohibited by this ordinance.
- (8) *Exceptions.* The following areas shall not be subject to the restrictions of this section:
- (a) Bed and breakfast, hotel and motel rooms that are rented to guests and are designated as smoking rooms, provided that not more than twenty-five percent (25%) of rooms may be so designated.
- (b) Private residences, except when used as a childcare or health care facility.
- (9) *Signage.* (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 section, said signage being posted by the owner, operator, manager or other person in control of the place.
- (b) Restaurants and taverns shall post, in a conspicuous place at each entrance normally used by the public, a sign not smaller than eleven inches by eight and one-half inches (11" x 8 1/2 ") stating that smoking is prohibited. The signage lettering shall be in bold and the lettering shall be a minimum of two (2) inches in height. Each sign shall contain the telephone number for the City-County Health Department and the non-emergency number for the Dane County Sheriff's Office.
- (c) It shall be unlawful for any person to remove, deface or destroy any sign required by this section.
- (10) *Enforcement.* (a) The Director of Public Health or his or her designee and the Sheriff or his or her designee shall have the authority to enter upon the premises named in this section to ascertain compliance with this ordinance. Each day that a violation exists shall constitute a separate offense. Enforcement may be by citation, as permitted by s. 2.02(10), or through referral to the corporation counsel's office for prosecution for injunctive relief and daily forfeitures.
- (b) The proprietor, employer or other person in charge of premises regulated hereunder, upon either observing or being advised of a violation, shall make reasonable efforts to prevent smoking in prohibited areas by:
1. Approaching smokers who fail to voluntarily comply with this section and requesting that they extinguish their cigarette or tobacco product and refrain from smoking, or
2. Refusing service to anyone smoking in a prohibited area, or
3. Contacting local law enforcement if the person refuses to comply if actions in 1. and 2. above are unsuccessful.

(11) *Retaliation prohibited.* No person shall discharge, refuse to hire, refuse to serve, or in any manner retaliate against any employee, applicant for employment, customer, service user, business patron or any other person who exercises any rights afforded by this section.

(12) *Penalties.* **(a)** A person who smokes in an area where smoking is prohibited by the provisions of this section shall be subject to a forfeiture of not more than one hundred dollars (\$100).

(b) A person who owns, manages, operates or otherwise controls a public place or place of employment and who fails to comply with the provisions of this section shall be subject to a forfeiture as follows:

1. not exceeding one hundred dollars (\$100) for a first violation;
2. not exceeding two hundred dollars (\$200) for a second violation within one (1) year; and
3. not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(13) *Severability.* Should any subsection, clause or provision of this section be declared by the courts to be invalid, the same shall not affect the validity of the section as a whole or to any part thereof, other than the part so declared to be invalid.

ARTICLE 3. Section 34.99(6) is hereby repealed as a new penalty structure for section 34.07 is established within the newly created sec. 34.07, above.

ARTICLE 4. NON-CODE PROVISION: The amendments made by Articles 2 and 3 shall take effect on August 15, 2009.