

ORDINANCE 2006 - _____ OF THE ORDINANCES FOR THE CITY OF MENOMONIE FOR 2006.

An ordinance regarding the establishment of a smoking ban in public places and places of employment.

THE COMMON COUNCIL OF THE CITY OF MENOMONIE DO ORDAIN AS FOLLOWS:

Section 1. Chapter 9 Section IV of the City Code is hereby created as follows:

Section IV. Prohibition of smoking in public places and places of employment.

(1) Intent and Purpose.

(a) The Common Council of the City of Menomonie 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 nonsmokers 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 studies, including studies conducted by the Surgeon General of the United States, have shown that breathing sidestream or secondhand smoke is a significant health hazard to nonsmokers, 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 nonsmokers.

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

(2) Definitions.

- (a) “Alcohol beverages” means fermented malt beverages and intoxicating liquors.
- (b) “Bar” means an establishment licensed under Ch. 125, Wis. Stats. and Sec. 13 I, City Code, where fermented malt beverages and/or intoxicating liquors are sold for consumption upon such premises and in which the serving of food is only incidental to the consumption of alcohol beverages, including but not limited to taverns, nightclubs and cocktail lounges.
- (c) "Bed and breakfast establishment “ has the meaning set forth in Sec. 254.61(1), Wis. Stats.
- (d) “Childcare facility” means any state licensed or county certified childcare 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.

- (e) “Cigarette” has the meaning set forth in Sec. 139.30(1), Wis. Stats.
- (f) “City buildings” means all City-owned and operated buildings and those portions of buildings leased and operated by the City.
- (g) “Common areas in bed and breakfast establishments, hotels and motels” means lobbies, community rooms, hallways, laundry rooms, stairwells, elevators, enclosed parking facilities, pool areas, and restrooms contiguous thereto.
- (h) “Common areas of malls” means those areas within a mall customarily accessible to patrons.
- (i) “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.
- (j) “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.
- (k) “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.
- (l) “Entrance” means a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk or parking lot.
- (m) “Health care facility” has the meaning set forth in Sec. 155.01(6), Wis. Stats
- (n) “Hotel and motel” have the meaning set forth in Sec. 254.61(3), Wis. Stats.

- (o) “Mall” means an enclosed, indoor area containing common areas and discrete businesses and stores 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) “Other person in charge” means the agent of the proprietor authorized to perform administrative direction to and general supervision of the activities within the public place or place of employment at any given time.
- (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 rooms and classrooms, employee cafeterias and hallways. A private residence is not a ‘place of employment’ within the meaning of this ordinance unless used as a childcare facility, adult daycare facility or health care facility.
- (t) “Private club” 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 at all times, 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 affairs and management of the private club are conducted by a board of directors, executive committee or similar body chosen by the members at an annual meeting. The private club has established bylaws and/or a constitution to govern the club’s activities. The private club has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C.A. section 501.

- (u) “Private residence” means premises owned, rented or leased for temporary or permanent habitation.
- (v) “Proprietor” means the party, regardless of whether the party is owner or lessee of the public place or place of employment where smoking is regulated under this section, who ultimately controls, governs or directs the activities within the public place or place of employment. The term does not mean the owner of the property unless the owner ultimately controls, governs or directs the activities within the public place or place of employment. The term shall include a sole proprietorship, partnership, joint venture, corporation or other business entity.
- (w) “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.
- (x) “Restaurant” means any building, room or enclosed area where meals are prepared or served or sold to transients or the general public. This includes restaurants within a mall and with adjacent seating in an enclosed area.
- (y) “Retail tobacco store” means a business whose primary purpose is the sale of cigarettes, tobacco products and accessories and in which the sale of other products is merely incidental.
- (z) “Room” means a space within a building completely enclosed with walls, partitions, floor and ceiling, except for openings for light, ventilation, ingress and egress.
- (aa) “Smoking” means inhaling, exhaling, burning, possessing or carrying any lighted cigarette or any lighted tobacco product in any form or in any manner.
- (bb) “Sports arenas” means sports pavilions, stadiums, gymnasiums, health spas, swimming pools, roller and indoor ice rinks, and bowling centers.
- (cc) “Tobacco products” has the meaning set forth in Sec. 139.75(12), Wis. Stats.

- (dd) “Transient” means a person who travels from place to place away from his/her permanent residence for vacation, pleasure, recreation, culture, business or employment.
- (3) Prohibition of Smoking in Public Places. Except as otherwise provided in subsection (6), smoking in any public place, including but not limited to the following, is prohibited:
- (a) Theatres, libraries, museums, auditoriums, and convention halls, which are used by or open to the public.
 - (b) Any childcare facility.
 - (c) Retail stores.
 - (d) Health care facilities.
 - (e) Waiting rooms, hallways, rooms of health care laboratories.
 - (f) Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.
 - (g) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political or social purposes.
 - (h) Polling places.
 - (i) Private clubs, but only on those occasions when it is being used for a function to which the public is invited or permitted to enter.
 - (j) Service lobbies, waiting areas, and the common areas open to the public of financial institutions, business and professional offices, and multi-unit commercial facilities.
 - (k) Self-service laundry facilities.

- (l) Restaurants.
 - (m) Common areas of malls.
 - (n) City buildings.
 - (o) Sports arenas.
 - (p) Common areas in bed and breakfast establishments, hotels and motels, and rooms thereof that are rented to guests and designated as non-smoking rooms. At least seventy-five percent (75%) of rooms rented to guests for each such bed and breakfast establishment, hotel and motel must be so designated.
- (4) Prohibition of Smoking in Places of Employment. Except as otherwise provided in subsection (6), smoking in any place of employment is prohibited.
- (5) Prohibition of Smoking in Specified Outdoor Areas. Smoking is prohibited within five (5) feet of (1) all outside entrances to, (2) operable windows of, and/or (3) a ventilation system of those public places or places of employment where smoking is prohibited pursuant to subsections (3) and (4).
- (6) Exceptions. The following shall not be subject to and are exempt from the smoking regulations of this section:
- (a) Bars.
 - (b) Restaurants holding a “Class B” and/or Class “B” license issued pursuant to Ch. 125, Wis. Stats. and Sec. 13 I, City Code, whose gross sales of alcohol beverages exceeded fifty percent (50%) of the total gross sales of the establishment for the previous alcohol beverage licensing year. Each restaurant that claims such an exemption shall follow the following verification procedure:
 - 1. Provide a written certification from an independent, licensed, certified public accountant confirming that gross sales of

alcohol beverages at the establishment during the alcohol beverage licensing year prior to the effective date of the ordinance codified in this section exceeded fifty percent (50%) of the total gross sales of the establishment during that same period. This verification shall be provided to the City Clerk not later than thirty (30) days after the effective date of this ordinance. Any establishment failing to file timely documentation shall not be considered to be exempt from the requirements of this section and no smoking shall be permitted therein until such time as the required documentation has been received and approved by the City Clerk.

2. Thereafter, provide to the City Clerk, once each year, an additional written certification from an independent, licensed, certified public accountant confirming that gross sales of alcohol beverages at the establishment during the previous alcohol beverage licensing year exceeded fifty percent (50%) of the total gross sales of the establishment during that same period. This verification shall be provided not later than July 30 of the required year. Any establishment failing to file timely documentation shall not be considered to be exempt from the requirements of this section and no smoking shall be permitted therein until such time as the required documentation has been received and approved by the City Clerk.
3. Every new or remodeled establishment that requires a new occupancy permit for any reason must provide a certification projecting its food and alcohol sales, and shall comply with the verification and documentation provisions of this subsection for a period covering the first three (3) months immediately following

the time the final certificate of occupancy is issued by the City, and then annually thereafter as set forth in this subsection.

4. Upon receipt of the verification documentation required by this subsection, the City Clerk shall make a determination whether the documentation satisfies the requirements of this subsection. If the requirements are met, the City Clerk shall issue an exemption to said establishment, said exemption to expire at the end of the alcohol beverage licensing year. If the City Clerk determines that the documentation does not satisfy the requirements of this subsection, then no exemption shall be issued and smoking shall be prohibited in said establishment.
 5. Any establishment wishing to appeal a determination made by the City Clerk under this subsection may appeal the determination to the Common Council.
 6. Any establishment denied an exemption under this provision may reapply for an exemption twelve (12) months after the date on which the denied application was made.
 7. Certifications submitted to the City pursuant to this subsection are to be maintained by the City as confidential business records, describing trade secrets of the businesses to which they refer, and may be withheld from release pursuant to the terms of the Wisconsin Open Records Law, except as to whether the gross sales of alcohol beverages exceeded fifty percent (50%) of the total gross sales of the establishment.
- (c) Use of tobacco by an enrolled member of an Indian tribe, as those terms are defined in Sec. 139.30(4) and (5), Wis. Stats., as part of a traditional spiritual or cultural ceremony.

- (d) Bed and breakfast establishment, 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 the rooms rented to guests are designated as smoking rooms. This exception does not include common areas in bed and breakfast establishments, hotels and motels.
 - (e) Retail tobacco stores.
- (7) Signs Required.
- (a) The proprietor or other person in charge of establishments regulated by this section shall post in a conspicuous place at each entrance used by members of the public, a sign indicating that smoking is prohibited. The sign shall contain a reference that regulation is by ordinance, such as “No Smoking by City Ordinance”, shall be no smaller than 8½” by 11”, shall be present whenever the establishment is open for business and each sign and the language therein shall be clearly visible from a distance of at least ten (10) feet. Signs in specified outdoor areas designated as non-smoking pursuant to subsection (5) shall be placed so that the general public has reasonable notice of the prohibition.
 - (b) No person shall remove, deface or destroy any sign required by this section.
- (8) Responsibilities of Proprietors and Other Persons in Charge of Non-Exempt Public Places and Non-Exempt Places of Employment.
- (a) The proprietor or other person in charge of premises regulated under this section, upon either observing or being advised of a violation, shall:
 - 1. Approach smokers who fail to voluntarily comply with this section and request that they extinguish their lighted cigarette or lighted tobacco product and refrain from smoking, and, if the person does not refrain from smoking,

2. Refuse service to anyone smoking and remove the person from the premises forthwith.
 - (b) No proprietor or other person in charge of premises regulated by this section shall fail to display signs required by this section.
 - (c) No proprietor or other person in charge shall remove, deface or destroy any sign required by this section, except for purposes of prompt sign replacement.
 - (d) No proprietor or other person in charge of premises regulated by this section shall place, provide or make available any ashtray or similar device used to facilitate smoking in an area where smoking is prohibited.
- (9) Retaliation Prohibited. No person shall discharge, refuse to hire, refuse to serve or in any other manner retaliate against any employee, applicant for employment, customer, service user, business patron or any other person because that person exercises any rights afforded by this section.
- (10) Enforcement. The City health officer or his or her designee, building inspector, police department or fire department shall have the power, whenever they deem it necessary, to enter upon the premises regulated in this section to ascertain whether the required signs are properly posted and to order the proper posting thereof. A compliance time, with respect to the proper posting of required signs, of not less than one (1) week shall be granted.
- (11) Additional Private Prohibitions. Nothing in this ordinance shall prevent a proprietor or other person in charge of any place, not otherwise regulated by this section, to prohibit smoking in any such place.
- (12) Other Applicable Laws or Regulations. This section shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other law or regulation.

(13) Violation and Penalties.

(a) Proprietor or other person in charge. It is unlawful for a proprietor or other person in charge of any public place or place of employment subject to the regulations of this ordinance to violate or knowingly permit to be violated the provisions of subsections (3), (4), (5), (7)(a), (8) and (9). Violations thereof shall be punishable by a forfeiture of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00) plus statutory court costs. For a second or subsequent violation within a twelve (12) month period, violations shall be punishable by a forfeiture of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) plus statutory court costs.

(b) Other offenders. It is unlawful for any person, other than a proprietor or other person in charge of any public place of employment subject to the regulations of this ordinance, to violate the provisions of subsections (3), (4), (5), (7)(b) and (9). Violations thereof shall be punishable by not less than ten dollars (\$10.00) statutory and not more than fifty dollars (\$50.00) plus statutory court costs. For a second and subsequent violation within a twelve (12) month period, violations shall be punishable by a forfeiture of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) plus statutory court costs.

(c) Each day of violation shall constitute a separate offense for which a separate forfeiture may be imposed.

(14) Severability. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the

intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein.

Section 2. Chapter 1 Section V(3)(a)35a. of the City Code is hereby created as follows:

35a. Smoking regulation 9IV 25.00 first
(proprietor or other 50.00 second and subsequent
person in charge) within one year

Section 3. Chapter 1 Section V(3)(a)35b. of the City Code is hereby created as follows:

35b. Smoking regulation 9IV 25.00 first
(other violators) 50.00 second and subsequent
within one year

Section 4. This ordinance shall take effect thirty (30) days after the date of publication.

INTRODUCED _____

APPROVED THIS ____ DAY

FIRST READING _____

OF _____, 2006

SECOND READING _____

MAYOR, DENNIS KROPP

PASSED _____

PUBLISHED _____

SUBMITTED BY:

ATTEST _____

CITY CLERK, JOANN L. KADINGER

ALDERPERSON

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