

Ordinance No. 6-08-582

General ordinance of the City of Monona creating Section 8-1-12 of the City of Monona Code of Ordinances pertaining to the prohibition of smoking indoors in public places and private workplaces, including restaurants and bars.

The Common Council of the City of Monona, Dane County, Wisconsin, do ordain as follows:

SECTION 1. Section 8-1-12 of the Code of Ordinances is hereby created to read as follows:

8-1-12 SMOKING PROHIBITED INDOORS IN PUBLIC PLACES AND PRIVATE WORKPLACES, INCLUDING RESTAURANTS AND BARS.

(a) Purpose. The purposes of this Ordinance are:

- (1) To protect the public health and welfare by prohibiting smoking in public places and places of employment; and
- (2) To guarantee the right of nonsmokers to breathe smoke-free air.

(b) Definitions.

- (1) **Bar** means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- (2) **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.
- (3) **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.
- (4) **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.
- (5) **Employer** means any person, partnership, limited liability company, corporation, or other entity, including a public or nonprofit entity who employs the services of one (1) or more individual persons.
- (6) **Enclosed area** means all space between a floor and a ceiling that is closed in on all sides by doors, walls, or windows, whether open or closed, the combination of which extend from the floor to the ceiling. A wall includes any physical barrier, whether temporary or permanent.
- (7) **Health care facility** means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities,

homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

(8) **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.

(9) **Place of employment** means any indoor area at which two or more individuals perform any type of a service for consideration of payment under any type of contractual relationship, including, but not limited to, an employment relationship with or for a private corporation, partnership, individual or government agency. Place of employment includes any indoor area where two or more individuals gratuitously perform services for which individuals are ordinarily paid. A place of employment includes, but is not limited to, public conveyances, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, health care facilities, and rooms or areas containing office equipment used in common. Vehicles used in whole or in part for work purposes are places of employment during hours of operation if more than one person is present. An area in which work is performed in a private residence is a place of employment during hours of operation if: (1) the homeowner uses the area exclusively and regularly as a principal place of business and has one or more on-site employees; or (2) the homeowner uses the area exclusively and regularly as a place to meet or deal with patients, clients, or customers in the normal course of the homeowner's trade or business.

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

(11) **Public place** means any enclosed, indoor areas used by the general public, including, but not limited to, restaurants, bars, and other food or liquor establishments; retail stores and other commercial establishments; educational facilities, both public and private; hospitals; nursing homes; auditoriums; sports arenas, including enclosed areas in outdoor arenas; public transportation vehicles, including buses and taxicabs, and ticket, boarding and waiting areas of public transportation facilities; meeting rooms; elevators; polling places; restrooms, lobbies, reception areas, hallways and other common-use areas; and common areas of apartment buildings and other multiple-unit residential facilities.

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

(13) **Smoking** means inhaling or exhaling smoke from any lighted cigarette, cigar, pipe or similar tobacco product or other lighted plant product intended for inhalation. A person having in their possession or control a lighted tobacco product or lighted plant product is also considered smoking.

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

(15) **Tobacco Bar** means a bar that generates fifty percent (50%) or more of its total annual gross income from the on-site sale of tobacco products, not including any sales from vending machines.

(16) **Retail tobacco store** means a retail establishment that derives more than eighty percent (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 any establishment with a Class 'B' fermented malted beverages license or 'Class B' intoxicating liquor license or any restaurant in existence on 5/1/08.

(c) Prohibition of Smoking in Enclosed Public Places. Except as otherwise provided, it shall be unlawful for any person to smoke in public places, including but not limited to the following:

- (1) Elevators and enclosed stairwells of City parking ramps
- (2) Public forms of transportation, including but not limited to motor buses, taxicabs, or other public passenger vehicles
- (3) Theatres, libraries, museums, auditoriums, and convention halls that are used by or open to the public
- (4) Any childcare facility

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; See s. HFS 45.02(4), 45.06(8)(g), 46.03(13), 46.06(2)(h), and 46.08(2)(c), Wis. Admin. Code.

- (5) Retail stores
- (6) Health care facilities
- (7) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political or social purposes
- (8) Polling places
- (9) Service lobbies, waiting areas, and the common areas open to the public of financial institutions, business and professional offices, and multi-unit commercial facilities
- (10) Self-service laundry facilities
- (11) Enclosed, indoor areas of restaurants
- (12) Common areas of malls
- (13) City buildings
- (14) City-owned or leased motor vehicles
- (15) Sports arenas, including enclosed places in outdoor arenas
- (16) Enclosed, indoor areas of bars
- (17) Bed and breakfast establishments, hotels and motels, except as provided in Section (t)(2)
- (18) Educational facilities, both public and private

(d) Prohibition of Smoking in Places of Employment.

- (1) It shall be unlawful for any person to smoke cigarettes or tobacco products in places of employment.
- (2) Every building that is a place of employment shall have at least one entrance that is smoke-free. For buildings with fewer than four (4) entrances, no more than one entrance may be designated as a smoking entrance. For buildings with four (4) or more entrances, no more than twenty-five percent (25%) of all entrances may be designated as a smoking entrance.

(e) Prohibition of Smoking in Outdoor Areas. Smoking shall be prohibited in the following outdoor places:

- (1) Within a reasonable distance of 5 feet outside any entrances designated smoke free pursuant to subsection (d)(2) above, open windows, and intake of ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.
- (2) In all outdoor arenas, stadiums, and amphitheatres, except in designated smoking areas, which may be established only in perimeter areas at least 15 feet from any seating areas or concession stands. Smoking shall also be prohibited in, and within 15 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- (3) In all public transportation stations, platforms, and shelters under the authority of the City of Monona.
- (4) In outdoor common areas of nursing homes, except in designated smoking areas, which must be located at least 15 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.
- (5) City Parks as posted and so designated by the Park and Recreation Board.

(f) Where Smoking is Not Regulated. The following areas shall not be subject to the smoking restrictions of this section:

- (1) Private residences, except when used as a childcare, adult day care, or healthcare facility.
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than twenty percent (25%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into areas where smoking is prohibited under the provisions of this Ordinance. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.
- (3) Tobacco bars, subject to the following:
 - a. Smoking of tobacco products is permitted.
 - b. Smoking of cigarettes is not permitted.
 - c. Service of food is not permitted.
 - d. The tobacco bar was in existence on May 1, 2008.
 - e. To qualify for this exemption the owner must file written proof by providing an income statement sworn by the owner certifying the tobacco bar's total gross income and the percentage of tobacco product sales from the tobacco bar. The City Clerk or City Attorney may at any time request further information, including an audit of the tobacco bar's records, if there is reason to believe the financial data may not be accurate.
 - f. Tobacco bars shall display signs, in accordance with the standards in Section (g), that state that smoking is permitted but that cigarettes may not be smoked in the tobacco bar, and warning of the dangers of secondhand smoke.
- (4) Retail tobacco stores in existence on May 1, 2008.
- (5) Outdoor areas of places of employment except those covered by the provisions of Section (e).

(g) Signage.

- (1) "Smoke-free Establishment" or "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 Ordinance, by the owner, operator, manager, or other person in control of that place. Signs shall reference "Monona Ordinance 8-1-12."

(2) "Smoking Allowed" signs shall be clearly and conspicuously posted in every public place and place of employment where smoking is not prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place. Signs shall reference "Monona Ordinance 8-1-12."

(3) Every public place and place of employment where smoking is prohibited by this Ordinance shall have posted at every entrance a sign not smaller than eleven by eight and one-half (11" x 8 ½") inches clearly stating that smoking is prohibited. Each sign and the language contained therein shall be clearly visible from a distance of at least ten (10) feet. Every vehicle that constitutes a place of employment under this Ordinance shall have at least one conspicuous sign, visible from the exterior of the vehicle, clearly stating that smoking is prohibited.

(4) All ashtrays shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.

(5) It shall be unlawful for any person to remove, deface, or destroy any sign required by this Section, or to smoke in any place where any such sign is posted.

(h) Nonretaliation; Nonwaiver of Rights

(1) 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 Ordinance or reports or attempts to prosecute a violation of this Ordinance. Notwithstanding Section (j), violation of this Subsection shall be punishable by a fine not to exceed \$1000 for each violation.

(2) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

(i) Enforcement.

(1) This Ordinance shall be enforced by the Department of Public Health, Building Inspector, and the Chief of Police or an authorized designee.

(2) Notice of the provisions of this Ordinance shall be given in writing to all applicants for a business license in the City of Monona.

(3) Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Department of Health or the Chief of Police.

(4) The Department of Health, Police Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.

(5) If an owner, manager, operator, or employee of an establishment subject to this Ordinance observes a person violating the Ordinance, he or she shall immediately direct the person in violation to stop smoking. If the person violating the Ordinance does not stop smoking, the owner, manager, operator, or employee shall make reasonable efforts to prevent smoking in prohibited areas by:

a. 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

b. Refusing service to anyone smoking in a prohibited area.

(6) In addition to the remedies provided by the provisions of this Section, the Department of Health, the Chief of Police or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

(j) Violations and Penalties

(1) A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by:

a. A fine not exceeding one hundred dollars (\$100) for a first violation.

b. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.

c. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(2) Except as otherwise provided in Section (h)(1), 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 Ordinance shall be guilty of an infraction, punishable by:

a. A fine not exceeding one hundred dollars (\$100) for a first violation.

b. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.

c. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.

(3) In addition to the fines established by this Section, violation of this Ordinance by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(4) Violation of this Ordinance is hereby declared to be a public nuisance, which may be abated by the City by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

(5) Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

(k) Clean Indoor Air.

(1) Intent and Construction. The City of Monona finds that it is in the interests of the health, safety and welfare of the community to adopt by reference Sec. 101.123, Wis. Stats., and subsequent amendments, additions and recodifications thereto. It is the intent of this Ordinance that where there may be conflict between Sec. 101.123, Wis. Stats., or any subsequent amendments, additions and recodifications thereto, and this Ordinance, that the provisions of the applicable state statute shall apply. This Ordinance shall not be construed to mean that progressive discipline of City employees for violations of laws, rules, and regulations is only authorized where explicitly provided by Ordinance.

(2) Penalty. The penalties provided by Sec. 101.123, Wis. Stats. shall be in addition to the penalties provided for violation of this Ordinance when a person has violated both laws. In addition to the penalties provided by this Ordinance and Sec. 101.123, Wis. Stats., any City employee who violates any provision of this Ordinance or Sec. 101.123, Wis. Stats., may also be subject to progressive discipline by his or her employer.

(l) Liberal Construction. This Ordinance shall be liberally construed so as to further its purposes.

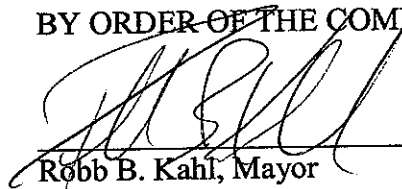
(m) Severability. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 2. Section 11-3-5 of the Code of Ordinances is hereby rescinded.

SECTION 3. This Ordinance shall take effect on June 1, 2009.

Adopted this 2nd day of June, 2008.

BY ORDER OF THE COMMON COUNCIL



Robb B. Kahl, Mayor

ATTEST:



Joan Andrusz, City Clerk

Requested By: Ad Hoc Committee Considering A Smoking Ban
Drafted By: William S. Cole, City Attorney – 05/30/08
Approved As To Form By: William S. Cole, City Attorney – 05/30/08