

..Number
050296
..Version
SUBSTITUTE 1
..Reference

..Sponsor
ALD. DAVIS

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

..Sections
105-50.5 cr

..Analysis
This ordinance regulates smoking inside places that are open to the public, places of employment and areas directly or indirectly under the control of proprietors of such places. These proprietors shall prevent tobacco smoke from entering these designated nonsmoking areas.

Exceptions to the regulations include:

1. Private residences except those operated as a day care center as defined in s. 295-201-137.
2. Retail tobacco stores, where sale of tobacco products and smoking accessories are the primary sources of revenue.
3. Outdoor patios, these are structures that are not fully enclosed by exterior walls and or a roof.

The health department and police department shall enforce these regulations. Those who fail to comply with this section shall receive a written notice to comply. The second failure to comply will result in a \$75 forfeiture and each subsequent failure to comply within one calendar year shall result in a forfeiture of \$100.

..BODY:

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

Part 1. Section 105-50.5 of the code is created to read:

105-50.5 Smoking in Workplaces.

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. "Employee" means a person who is employed by an employer or who contracts with an employer or third person to perform services for an employer or who otherwise performs services for an employer for compensation or for no compensation.

- b. "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.
- c. "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.
- d. "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.
- e. "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, 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.
- f. "Proprietor" means an employer, owner, manager, operator, liquor permit holder or person in charge or control of a public place or place of employment.
- g. "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.
- h. "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.
- i. "Smoking" means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe or other lighted smoking device for burning tobacco or any other plant. "Smoking" does not include the burning of incense in a religious ceremony.

3. PROHIBITIONS.
- a. No proprietor of a public place or place of employment, except as permitted in sub.4, shall permit smoking in the public place or place of employment or in the areas directly or indirectly under the control of the proprietor immediately adjacent to locations of ingress or egress to the public place or place of employment.
 - b. A proprietor of a public place or place of employment shall ensure that tobacco smoke does not enter any area in which smoking is prohibited under this section through entrances, windows, ventilations systems or other means.
 - c. No person or employer shall discharge, refuse to hire or in any manner retaliate against an individual for exercising any right including reporting a violation or performing any obligation under this section.
 - d. No person shall refuse to immediately discontinue smoking in a public place, place of employment or establishment, facility or outdoor area designated as nonsmoking in this section.
 - e. Lack of intent to violate a provision of this section shall not be a defense to a violation.

4. EXCEPTIONS. The following shall be exempt from this section: a. Private residences except those operated as a day care center as defined in s. 295-201-137.
b. Family-owned and operated places of employment in which all employees are related to the owner but only if the enclosed areas of the place of employment are not open to the public and are in a free standing structure occupied solely by the place of employment and smoke from the place of employment does not migrate into an enclosed area where smoking is prohibited under this section.
c. Retail tobacco stores as defined by sub. 2-h.
d. Outdoor patios as defined in sub. 2-d. 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. If windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area and subject to the prohibitions of sub. 2.
e. Notwithstanding any other provision of this section, the owner, manager, operator or other person in charge or control of an establishment, facility or outdoor area which does not otherwise qualify as a public place or place of employment may declare such establishment, facility or outdoor area a nonsmoking place. Smoking shall be prohibited in any place declared nonsmoking under this section where a sign is posted.

5. ENFORCEMENT. The health department and the police department shall enforce this section.

6. PENALTY. A person who fails to comply with this section shall receive a written notice to comply with respect to the alleged violation. Failure to comply following such notification shall result in a forfeiture of \$75 and the second and each subsequent failure to comply within a calendar year shall result in a forfeiture of \$100.

..LRB
APPROVED AS TO FORM

Barry Zalben
Legislative Reference Bureau
Date: 6/29/2005

..ATTORNEY
IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney
Date: _____
Department

..Drafter
LRB: 05256-3
RAC
6/29/05