

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 Section 34.07 is repealed and recreated to read as follows: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

47 (c) Chewing tobacco means plug and twist tobacco; fine cut and other
48 chewing tobaccos; snuff, snuff flour, cavendish; refuse scraps, clippings, cuttings
49 and sweepings of tobacco and other kinds and forms of tobacco prepared in
50 such manner as to be suitable for chewing.
51 (d) Cigarette means any roll of tobacco wrapped in paper or any substance
52 other than chewing tobacco or tobacco products.
53 (e) County buildings means all County-owned and operated buildings and
54 those portions of buildings leased and operated by the County.
55 (f) Common areas of buildings means all areas not part of a tenant's leased
56 premises including, but not limited to, lobbies, community rooms, hallways,
57 laundry rooms, stairwells, elevators, enclosed parking facilities, pool areas and
58 restrooms contiguous thereto.
59 (g) Common areas of malls means those areas within a mall customarily
60 accessible to patrons.
61 (h) Educational facility means any building used principally for educational
62 purposes in which a school is located or a course of instruction or training
63 program is offered that has been approved or licensed by a state agency or
64 board.
65 (i) Employee means any person who is employed by any employer for direct
66 or indirect monetary wages or profit including those full-time, part-time, temporary
67 or contracted for from a third party. Employee also means any person who
68 serves as a volunteer for a business or nonprofit entity.
69 (j) Employer means any person, partnership, limited liability company,
70 corporation or other entity, including a public or non-profit entity who employs the
71 services of one (1) or more individual persons.
72 (k) Enclosed area means all space between a floor and ceiling which is
73 enclosed on all sides by solid walls or windows (exclusive of door or passage
74 ways) which extend from floor to ceiling, including all space therein screened by
75 partitions which do not extend to the ceiling or are not solid, 'other landscaping'
76 or similar structures.
77 (L) Entrance means a doorway and adjacent area which gives direct access
78 to a building from a contiguous street, plaza, sidewalk or parking lot.
79 (m) Food means a raw, cooked or processed edible substance or ingredient
80 used or intended for use or for sale in whole or in part for human consumption. It
81 does not include ice, beverages or chewing gum.
82 (n) Health care facility has the meaning set forth in sec. 155.01(6), Wis. Stats.
83 (o) Hotel and motel has the meaning set forth in sec. 254.61(3), Wis. Stats.
84 (p) Mall means an enclosed, indoor area containing common areas and
85 discrete businesses primarily devoted to the retail sale of goods and services.
86 (q) Medical services has the meaning set forth in sec. 647.01(6), Wis. Stats.
87 (r) Non-smoking means smoking is prohibited.
88 (s) Person in charge means the person who ultimately controls, governs or
89 directs the activities aboard a public conveyance or within or at a place where
90 smoking is regulated under this section, regardless of the person's status as
91 owner or lessee.

- 92 (t) Place of employment means an enclosed area controlled by the employer,
- 93 which employees normally frequent during the course of employment including,
- 94 but not limited to, work areas, employee lounges and restrooms, conference and
- 95 classrooms, employee cafeterias and hallways. A private residence is not
- 96 considered a place of employment within the meaning of this ordinance unless
- 97 used as a childcare facility.
- 98 (u) Private residence means premises owned, rented or leased for temporary
- 99 or permanent habitation.
- 100 (v) Public place means any enclosed area to which the public is invited or in
- 101 which the public is permitted. A private residence is not a public place.
- 102 (w) Restaurant means an establishment defined in sec. 254.61(5), Wis. Stats.,
- 103 in which the sale of alcohol beverages accounts for fifty percent (50%) or less of
- 104 the establishment's gross receipts of the most recent alcohol licensing year, but
- 105 does not mean churches, religious, fraternal, youth or patriotic organizations,
- 106 service clubs and civic organizations which prepare and serve or sell meals to
- 107 members and guests only. This includes restaurants within a mall and adjacent
- 108 seating.
- 109 (x) Room means a space within a building completely enclosed with walls,
- 110 partitions, floor and ceiling, except for openings for light, ventilation, ingress and
- 111 egress.
- 112 (y) Smoke free means absence from the ambient air of the smoke by-product
- 113 from the burning, inhaling, exhaling or carrying of a lighted cigarette, cigar, pipe,
- 114 weed, plant or other combustible substance, in any manner in any form.
- 115 (z) Smoking means to smoke or carry a lighted pipe, cigar, cigarette or
- 116 tobacco-related product in any form.
- 117 (aa) Sports arena means sports pavilions, stadiums, gymnasiums, health spas,
- 118 boxing arenas, swimming pools, roller and indoor ice rinks and bowling centers.
- 119 (bb) Tavern means any establishment with a full service bar in which
- 120 fermented malt beverages or intoxicating liquors are sold for consumption upon
- 121 said premises and whose sale of alcohol beverages accounts for more than fifty
- 122 percent (50%) of the establishment's gross receipts of the most recent licensing
- 123 year.
- 124 (cc) Tobacco product means cigars; cheroots; stogies; periques; granulated,
- 125 plug cut, crimp cut, ready-rubbed and other smoking tobacco; shorts; refuse
- 126 scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms
- 127 of tobacco prepared in such a manner as to be suitable for smoking in a pipe or
- 128 otherwise smoking; but tobacco product does not include cigarettes or chewing
- 129 tobacco.
- 130 (dd) Use tobacco products means to consume by means other than smoking
- 131 including, but not limited to, the chewing, spitting, swallowing, snorting, inhaling
- 132 or ingesting of any tobacco product.
- 133 (4) Prohibition of smoking in public places. Except as otherwise provided, it
- 134 shall be unlawful for any person to smoke or use tobacco products in public
- 135 places including, but not limited to, the following:
- 136 (a) Elevators and enclosed stairwells of County parking ramps.

- 137 (b) Public forms of transportation including, but not limited to, motor buses,
138 taxicabs or other public passenger vehicles.
- 139 (c) Theatres, libraries, museums, auditoriums and convention halls.
- 140 (d) Childcare facilities. Incorporated herein by reference are the following
141 Wisconsin statutory and administrative code sections and any amendments or
142 renumbering thereof: Sec. 101.123(1)(ad) and (2)(bm), Wis. Stats; Secs. HFS
143 45.02(4), 45.06(8)(g), 46.03(13), 46.06(2)(h) and 46.08(2)(c), Wis. Admin. Code.
- 144 (e) Retail stores.
- 145 (f) Health care facilities.
- 146 (g) Waiting rooms, hallways and rooms of health care laboratories.
- 147 (h) Waiting rooms, hallways and rooms in offices of any physician, dentist,
148 psychologist, chiropractor, optometrist or optician, or other medical services
149 provider.
- 150 (i) Meeting and conference rooms in which people gather for educational,
151 business, professional, union, governmental, recreational, political or social
152 purposes.
- 153 (j) Polling places.
- 154 (k) Service lobbies, waiting areas and the common areas open to the public
155 of financial institutions, business and professional offices and multi-unit
156 commercial facilities.
- 157 (L) Self-service laundry facilities.
- 158 (m) Enclosed, indoor areas of restaurants.
- 159 (n) Common areas of malls.
- 160 (o) Public bus and transfer point shelters.
- 161 (p) Common areas of buildings which contain three or more rental units.
162 Written rental agreements shall include reference to this subsection. Subsection
163 (9)(b) shall not apply to this subsection.
- 164 (q) County buildings.
- 165 (r) County-owned or leased motor vehicles.
- 166 (s) Sports arenas.
- 167 (t) Taverns.
- 168 (u) Common areas in bed and breakfast establishments, hotels and motels,
169 and at least 75% of rooms that are rented to guests.
- 170 (v) Educational facilities.
- 171 (5) Prohibition of smoking in outdoor areas. It shall be unlawful for any
172 person to smoke or use tobacco products in the following outdoor areas.
- 173 (a) Within a distance of 15 feet outside entrances, operable windows and
174 ventilation systems of enclosed areas where smoking is prohibited, so as to
175 insure that tobacco smoke does not enter those areas.
- 176 (b) County parks and beaches as posted and so designated by the Park
177 Commission.
- 178 (6) Prohibition of smoking in places of employment. It shall be unlawful for
179 any person to smoke or otherwise use any tobacco products in all places of
180 employment.

181 (7) Smoking paraphernalia. Ashtrays, cigarette vending machines and other
182 smoking paraphernalia shall not be located in areas where smoking is prohibited
183 by this ordinance.

184 (8) Exceptions. The following areas shall not be subject to the restrictions of
185 this section:

186 (a) Bed and breakfast, hotel and motel rooms that are rented to guests and
187 are designated as smoking rooms, provided that not more than twenty-five
188 percent (25%) of rooms may be so designated.

189 (b) Private residences, except when used as a childcare or health care
190 facility.

191 (9) Signage. (a) "No Smoking" signs or the international "No Smoking"
192 symbol (consisting of a pictorial representation of a burning cigarette enclosed in
193 a red circle with a red bar across it) shall be clearly and conspicuously posted in
194 every public place and place of employment where smoking is prohibited by this
195 section, said signage being posted by the owner, operator, manager or other
196 person in control of the place.

197 (b) Restaurants and taverns shall post, in a conspicuous place at each
198 entrance normally used by the public, a sign not smaller than eleven inches by
199 eight and one-half inches (11" x 8 1/2 ") stating that smoking is prohibited. The
200 signage lettering shall be in bold and the lettering shall be a minimum of two (2)
201 inches in height. Each sign shall contain the telephone number for the City-
202 County Health Department and the non-emergency number for the Dane County
203 Sheriff's Office.

204 (c) It shall be unlawful for any person to remove, deface or destroy any sign
205 required by this section.

206 (10) Enforcement. (a) The Director of Public Health or his or her designee and
207 the Sheriff or his or her designee shall have the authority to enter upon the
208 premises named in this section to ascertain compliance with this ordinance.
209 Each day that a violation exists shall constitute a separate offense. Enforcement
210 may be by citation, as permitted by s. 2.02(10), or through referral to the
211 corporation counsel's office for prosecution for injunctive relief and daily
212 forfeitures.

213 (b) The proprietor, employer or other person in charge of premises regulated
214 hereunder, upon either observing or being advised of a violation, shall make
215 reasonable efforts to prevent smoking in prohibited areas by:

216 1. Approaching smokers who fail to voluntarily comply with this section and
217 requesting that they extinguish their cigarette or tobacco product and refrain from
218 smoking, or

219 2. Refusing service to anyone smoking in a prohibited area, or

220 3. Contacting local law enforcement if the person refuses to comply if actions
221 in 1. and 2. above are unsuccessful.

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

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(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. NON-CODE PROVISION: This amendment shall first take effect 90 days after the date of publication.

Submitted By:

Scott Howell / Mark Opitz primary sponsor

Cancel An Du Bonye

Dave De Felice / KPT

Charles F. ...

Rob R. ...

[Signature]

Brentley

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Patricia ...

Al Mahmo

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Wyndham Manning

John Hendrick

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Referred to:

- Executive
- Hlth/Hum Needs
- Pers/Finance
- Pub Prot/Jud
- Pub Wks/Transp
- Envir/Ag/Nat Res
- Zoning/Urban Dev
- Bd. of Health

Approved as Submitted

Fiscal Note Not Required

Policy Note Not Required

Forward to:

for completion of: Public Health for

Policy Note

Fiscal Note

Madison

& Daniels