

LEGISTAR #54155 – Version 2 Body - Substitute

DRAFTER'S ANALYSIS: Under the exercise of the City's statutory home rule authority, as established by Wis. Stat. Sec. 62.11(5), the City is establishing a limitation on the use of certain air conditioners. The overuse of air conditioners contributes to wasted air conditioning during summer months and is harmful to the public's health, safety and welfare by contributing to significant peak time demands on the electrical grid and the subsequent release of greenhouse gases. This ordinance would prevent commercial establishments from keeping windows and doors open longer than is reasonably necessary if the adjacent space is air conditioned. Commercial use is defined, by ordinance, to include a use that involves the exchange of cash, goods or services, barter, forgiveness of indebtedness, or any other remuneration in exchange for goods, services, lodging, meals, entertainment in any form, or the right to occupy space over any period of time. This ordinance would be enforceable by Public Health, Building Inspection and the Police Department.

This substitute creates an exception to the requirements of this section for hotel rooms since those are generally out of the control of the owner or operator of the hotel. This substitute also sets a threshold of 82 degrees for the air conditioning prohibition based upon input received from commercial representatives who expressed that at this temperature, windows and doors are usually closed because the adjoining space cannot be sufficiently cooled with air conditioning. Air conditioning of space open to the outside at this temperature would be wasteful and impractical. This substitute also creates an exception for the separate air conditioning of kitchens or the use of flex spaces adjacent to air conditioned spaces. Kitchens present their own issues related to the high temperatures generated by food preparation. Recent design trends have favored the use of flex spaces and this amendment clarifies that these areas would still be permitted, provided the conditioned air is not comingled with the flex space that is open.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 23.61 entitled "Air Conditioning Prohibitions" of the Madison General Ordinances is created as follows:

"23.61 AIR CONDITIONING PROHIBITIONS.

- (1) Purpose and Findings. Air conditioners are a necessary facet of modern life. However, air conditioners use a substantial amount of energy, placing substantial demands, particularly during the summer, upon the power grid. Until such time as the City is supplied with only renewable energy, increased energy consumption attributable to wasted air conditioning will lead to the increase in fossil fuel consumption and the generation of greenhouse gases, which in turn will result in further climate change. The City has seen firsthand the effects of global warming in the form of more frequent and intense storm events that have led to urban flooding and substantial damages to infrastructure within the City. In order to combat climate change and to help meet the City's renewable energy goals, as well as to protect the public's health, safety and welfare, the Common Council finds that it is necessary to impose certain restrictions on the use of air conditioners. By preventing commercial establishments from cooling areas with open doors and windows, it is expected that air conditioning waste will be reduced, less energy will be consumed in the City, and less greenhouse gasses be released into the environment.
- (2) Definitions. For the purposes of this Section, the following definitions apply:
 - (a) Air Conditioning means a device that removes heat and moisture from the interior of an occupied space and redistributes conditioned, cooled air back into the space.
 - (b) Commercial Use has the meaning provided under Sec. 28.211.
 - (c) Door or window means any opening in a building or structure that, when left open, allows for the co-mingling of indoor and outdoor air. This definition does not include the doors or windows of a hotel room.
 - (d) Keep open means to leave open a door or window longer than is reasonably necessary for the purposes of the commercial use.
 - (d) Person shall mean the person in control of the air-conditioned space adjacent to an open door or window.
- (3) Prohibition. Except as provided in sub. (3), it shall be unlawful to keep open any door or window of a building or structure with a commercial use while an air conditioner is operating

that cools the area adjacent to such door or window, except as needed to permit the ingress and egress of people and the delivery and shipping of goods.

- (4) Exceptions. The prohibition in sub. (3) does not apply to the following:
- (a) Where an emergency situation exists.
 - (b) When the air temperature outside is less than 82 degrees Fahrenheit.
 - (c) For buildings or structures with commercial uses that include a kitchen, the kitchen area can be air conditioned if it is separated from the adjoining dining area by walls and is able to be air conditioned separate from that portion of the adjoining area where there are open windows or doors.
 - (d) To non-air conditioned areas of buildings or structures that are separated from air conditioned areas in such a manner as to prevent or significantly minimize the comingling of air-conditioned air.
- (5) Penalty. Any person who violates this provision shall upon conviction be subject to a forfeiture of not less than fifty dollars (\$50) nor more than two-hundred and fifty dollars (\$250). Each day or portion thereof such violation continues shall be considered a separate offense.”

2. Subdivision (a) of Subsection (3) entitled “Schedule of Deposits” of Section 1.08 entitled “Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits” of the Madison General Ordinances is amended by creating therein the following:

<u>“Offense</u>	<u>Ord. No./Adopted Statute No.</u>	<u>Deposit</u>
Prohibited use of air conditioning.	23.61	\$50, 1 st \$100, 2 nd \$250, 3 rd +”

3. Subsection (4) entitled “Issuance of Citations” of Section 1.08 entitled “Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits” of the Madison General Ordinances is amended by amending therein the following:

<u>“Enforcement Official</u>	<u>Ordinance Chapter or Section or Title</u>
Director of Public Health Madison and Dane County or her/his designee and Police Department.	Chapter 7, Public Health; Section 9.05, Adult Entertainment Establishments; Section 23.05, Smoking Prohibited in Certain Public Areas; Section 23.12, Transient Hotels and Motels Regulated; Section 23.38, Possession of Tobacco Products by Children; Section 23.385, Sale of Tobacco Products to Children Forbidden; Section 23.44, Consumers to Be Offered Selection of Containers; <u>Section 23.61, Prohibited Use of Air Conditioning.</u>
Director of the Building Inspection Division of the Department of Planning and Community and Economic Development or designee.	Section 7.55, Outdoor Wood Boilers Prohibited; Section 8.15, Regulating Private Use of Greenways and Park Lands, and the Southwest Bike Path; Section 9.13, License for Selling on Public Streets; Section 9.25, Licensing of Landlords of Chronic Nuisance Properties; Section 9.54, Equipment Placement on Sidewalks and Terraces, Permits for Information Tables and Expressive Street Vending; Section 12.128(14), Off-Driveway Parking; Section 12.145(1)(d), No Street Vending from Parking Meter; Chapter 22, Consumer Protection and Weights and Measures; Section 23.29, Noxious Weed Control; <u>Section 23.61, Prohibited Use of Air Conditioning</u> ; Section 24.04(7), Noise Disturbances, Refuse Collection Vehicles; Section 24.08, Noise Control Regulation; Chapters 10, 18, 19, 27, 28, 29, 30, 31, 37; Section 33.24 (Urban Design Commission,) and Chapter 41 (Historic Preservation).”

EDITOR’S NOTE: A new or revised forfeiture range must be approved by the Municipal Judge prior to adoption. This new range has been so approved.