



Legislation Text

File #: 01549, Version: 1

**Fiscal Note**

No additional appropriation is required. There is no anticipated impact upon cost controls or the tax levy.

**Title**

Amending Sections 23.05(1) and 23.05(3)(c), repealing Sections 23.05(3)(s), (t) & (u) and amending Section 23.05(7) of the Madison General Ordinances to eliminate prohibition of smoking in certain public, non City-owned places.

**Body**

DRAFTER'S ANALYSIS: This ordinance reverses the broad smoking ban made by Ord. 13,604 (adopted 4-20-04) which became effective July 1, 2005. It makes no revisions to the provisions of that ordinance which added regulation of smoking on City-owned properties such as Madison Police Department interview rooms and park shelters, but restores the exceptions for privately-owned meeting and conference rooms, taverns, and full service bar areas which that ordinance removed, as well as eliminating the smoking restrictions on common areas in bed and breakfast establishments, hotels and motels, which Ord. 13,604 created. The ordinance also makes permanent the exception for a separately-ventilated smoking room in a restaurant, by deleting the sunset clause which would repeal that exception in January, 2006.

The ordinance also makes changes to several definitions which were established by Ord. 13,604, deleting the definition for "bed and breakfast establishment", a facility which is no longer referenced in Section 23.05, restoring the previous definitions for "full service bar", "full service bar area", and "private club", and eliminating "bowling centers" from the definition of sports arenas and thus from the smoking ban.

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

1. Subsection (1) entitled "Definitions" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is amended by adding, deleting or amending therein the following:

~~"Bed and breakfast establishment" has the meaning set forth in sec. 254.61(3), Wis. Stats. This definition shall become effective July 1, 2005.~~

"Full Service Bar" means a counterlike object with accessory seating for customers, over which fermented malt beverages or intoxicating liquors are sold for consumption upon the premises. A service bar without accessory seating for customers shall not be considered a full service bar.

"Full Service Bar Area" means the full service bar and the area immediately adjacent to the full service bar in which the service of food is incidental to the consumption of alcoholic beverages.

"Private Club" means churches, religious, fraternal, youth or patriotic organizations, service clubs or civic organizations which prepare and serve or sell meals to members and guests only.

~~"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. This definition shall become effective July 1, 2005~~

~~"Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, and roller and indoor ice rinks, and bowling centers. This definition shall become effective on July 1, 2005.~~

2. Subdivision (c) of Subsection (3) entitled "Prohibition of Smoking in Public Places" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is amended to read as follows:

"(c) Theatres, libraries, museums, auditoriums, and sports arenas, and convention halls, which are used by or open to the public."

3. Subdivision (s) of Subsection (3) entitled "Prohibition of Smoking in Public Places" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is hereby repealed.

4. Subdivision (t) of Subsection (3) entitled "Prohibition of Smoking in Public Places" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is hereby repealed

5. Subdivision (u) of Subsection (3) entitled "Prohibition of Smoking in Public Places" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is hereby repealed

6. Subsection (7) entitled "Exceptions" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is hereby amended to read as follows.

"(7) Exceptions. The following areas shall not be subject to the smoking restrictions of this section:

(a) Privately-owned and separately ventilated meeting and conference rooms when used for private functions such as weddings, parties, testimonial dinners and similar functions.

(a)(b) A smoking room in a restaurant which is separately ventilated from each and every other area of the restaurant.  
1. The restaurant must provide the Madison Public Health Department and the Building Inspection Department with plans of the ventilation system and a certification from a certified HVAC engineer that the system meets the requirements specified in the State Building Code and Wisconsin Administrative Code ch. Comm 64. The plans will be reviewed by the Madison Public Health Department and Madison Building Inspection Department. The smoking room must be completely separated from the rest of the restaurant by solid walls of rigid construction that run from floor to ceiling with a separate entrance that has a solid door that effectively closes. This door is to remain closed at all times except when patrons or employees enter or leave the room.

2. This subsection is applicable only to separately ventilated rooms in existence as of the effective date of this ordinance. Any restaurant which has made a good-faith effort, as evidenced by plans and specifications and work performed, to provide a separately ventilated smoking room and that room does not currently meet the standards specified in the State Building Code and Wisconsin Administrative Code ch. Comm 64, will have thirty (30) days after this ordinance is adopted to bring the existing ventilation system into compliance with the requirements of this subsection. It will be the Public Health Department's determination, based upon the work performed and plans and specifications, whether a good faith effort was made to provide a separately ventilated smoking room for purposes of this subsection.

3. After the effective date of this ordinance no separately ventilated rooms may be created. ~~This exception is repealed on January 2, 2006.~~

4. Plan Review Fee. At the time a restaurant submits ventilation plans to the Madison Public Health Department for review, the restaurant shall submit a \$75.00 (seventy-five dollar) plan review fee payable to the City of Madison Treasurer.

(b)(c) Retail tobacco stores.

(e)(d) Private clubs. Private clubs shall provide a nonsmoking section for customers and otherwise comply with Sec. 101.123, Wis. Stats., the Clean Indoor Air Act. ~~This exception shall not apply to any organization established to avoid compliance with this ordinance.~~

(d)(e) Any stage of any theater when used in connection with any theatrical performance and so noticed in the program.

(e)(f) Bed and breakfast, hHotel and motels with the following conditions: ~~rooms that are rented to guests and are designated as smoking rooms; provided, that not more than twenty-five percent (25%) of rooms rented to guests are designated as smoking.~~

1. Restaurants in hotels and motels shall be subject to (3)(m).

2. In meeting and conference rooms in hotels and motels in which ten (10) or more persons gather for educational, business, professional, union, recreational, political or social purposes, no person shall smoke or use tobacco products unless all persons present consent to waive these prohibitions.

(g) Taverns. Upon request of the Health Department or City Clerk's office, owners of establishments claimed to be taverns shall substantiate the percentage of their gross receipts devoted to food and alcohol beverage sales.

- (h) Full Service Bar Areas subject to the following:
1. Prior to January 25, 2003, the restaurant submitted the required plans designating the full service bar area. The Health Department reviewed these plans and approved the designated full service bar area.
  2. The restaurant has appropriate signage designating the full service bar area and where smoking is permitted.
- (i)(f) Madison Area Technical College Premises. Outdoor areas designated by the MATC Administration and so noticed by appropriate signage."

EDITOR'S NOTE: Sections 23.05(s), (t) and (u) of the Madison General Ordinances currently read as follows:

"(s) Sports arenas."

"(t) Taverns."

"(u) Common areas in bed and breakfast establishments, hotels and motels."