

## Legislation Text

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**File #:** 18400, **Version:** 2

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### Fiscal Note

This revision aligns the City's ordinance with new provisions in state law. No significant fiscal impact is anticipated. No appropriation is required.

### Title

SUBSTITUTE. Amending Sections 23.05(1), 23.05(3)(u), and 23.05(7), repealing Sec. 23.05(6)(e) and 23.05(6)(f), renumbering Sec. 23.05(7)(e) to Sec. 23.05(7)(b), respectively, and creating Sec. 23.05(14) of the Madison General Ordinances to modify the smoking ordinance to bring it into conformity with state statute.

### Body

DRAFTER'S ANALYSIS: This substitute ordinance modifies the City's smoking ordinance to bring it into conformity with state law. It authorizes the City Attorney to take action where needed to enjoin continued violation of MGO Sec. 23.05. This substitute ordinance also repeals the subsection that permitted smoking in separately ventilated rooms in places of employment. This ordinance also changes the definition of retail tobacco store and tobacco bar to bring it into conformity with the new state law that becomes effective on July 5, 2010. This ordinance also removes the ability to smoke on stage and in all rooms in bed and breakfast establishments, hotels and motels and private clubs to be in conformity with the new state law.

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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 amending, creating or repealing therein the following:

~~"Retail tobacco store" means a business whose primary purpose is the sale of tobacco products and accessories and in which the sale of other products is merely incidental;~~retail establishment that does not have a "Class B" intoxicating liquor license or a Class "B" fermented malt beverages license and that generates 75 percent or more of its gross annual income from the retail sale of tobacco products and accessories.

~~"Separately ventilated" means that the area is ventilated to a standard specified in the state building code, ch. Comm. 64, Wis. Adm. Code, and that the ventilation system for the smoking area is separate and distinct from the ventilation system for the nonsmoking area or areas. The smoking area ventilation system must have negative air pressure to ensure that there is no mixing of air from the smoking area to the nonsmoking areas. Particulate air cleaners or filtration systems are not considered a ventilation system. This definition is effective January 2, 2003."~~

~~"Tobacco bar" means a tavern, which generates tenfifteen percent (105%) or more of its total annual gross income from the on-site sale of tobacco products;cigars and tobacco for pipes, not including any sales from vending machines."~~

2. 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 amended to read as follows:

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

3. Subdivision (e) of subsection (6) entitled "Prohibition of Smoking in Places of Employment" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is hereby repealed.

4. Subdivision (f) of subsection (6) entitled "Prohibition of Smoking in Places of Employment" of

Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is hereby repealed.

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

- "(7) Exceptions. The following areas shall not be subject to the smoking restrictions of this section:
- (a) Retail tobacco stores in existence on June 3, 2009 and in which only the smoking of cigars and pipes is allowed.
  - (b) Private clubs. Private clubs shall provide a nonsmoking section for customers and otherwise comply with Wis. Stat. § 101.123, the Clean Indoor Air Act. This exception shall not apply to any organization established to avoid compliance with this ordinance. This Section 23.05(7)(b) shall automatically repeal on July 5, 2010.
  - (c) Any stage of any theater when used in connection with any theatrical performance and so noticed in the program. This Section 23.05(7)(c) shall automatically repeal on July 5, 2010.
  - (d) Bed and breakfast, hotel and motel 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. This Section 23.05(7)(d) shall automatically repeal on July 5, 2010.
  - (e) Tobacco bar, subject to the following:
    - 1. The Tobacco bar was in existence on June 3, 2009;
    - 42. Smoking of tobacco products is permitted;
    - 23. Smoking of cigarettes and service of food are not permitted;
    - 34. TenFifteen percent (105%) or more of the tobacco bar's total gross income from the previous fiscal year was from the on-site sale of tobacco products, not including any sales from vending machines;
    - 45. To qualify for this exemption the owner must file written proof subscribed and sworn to by a Certified Public Accountant 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 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;
    - 56. This exemption is only in effect from the date of initial application until June 30, and then from July 1 to June 30, of each year. An application for this exemption must be made annually by April 15th of the application year. To qualify for an annual exemption the tobacco bar must provide written proof subscribed to and sworn by a Certified Public Accountant certifying that tenfifteen percent (105%) or more of the tobacco bar's total gross income from the preceding year was from the on-site sale of tobacco products, not including any sales from vending machines;
    - 6. If the tobacco bar provides written proof subscribed to and sworn by a Certified Public Accountant certifying that ten percent (10%) or more of the tobacco bar's total gross income from the 2004 fiscal year was from the on-site sale of tobacco products, not including any sales from vending machines, then the tobacco bar qualifies for an exemption. This exemption will be in effect through June 30, 2007. After June 30, 2007, the tobacco bar must qualify on a yearly basis for this exemption;
    - 7. A tobacco bar that has not previously qualified under this subdivision, may qualify for an exemption if it provides written proof subscribed to and sworn by a Certified Public Accountant certifying that during the previous six (6) months, ten percent (10%) or more of the tobacco bar's total gross income was from the on-site sale of tobacco products, not including any sales from vending machines. To qualify under this paragraph, the required certification must be filed no later than ninety (90) days after the above-mentioned six (6) months. This exemption will be in effect through the next full licensing year. After that point in time, the tobacco bar must qualify on a yearly basis for the

- ~~above-mentioned exemption.~~
87. Tobacco bars shall display signs, in accordance with the standards in this Subsection (8), that state that cigars and pipes may be smoked in the tobacco bar, that cigarettes may not be smoked in the tobacco bar, and warning of the dangers of secondhand smoke, in language and form as approved by the Director of Public Health."

6. Current Sections 23.05(7)(e) of the Madison General Ordinances will be renumbered to Subdivisions 23.05(7)(b), respectively, after July 5, 2010.

7. Subsection (14) of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is created to read as follows:

"(14) Notwithstanding any other provision of the Madison General Ordinances, the City Attorney is authorized to institute and prosecute actions seeking to enjoin repeated violations of this section."

EDITOR'S NOTE:

1. Section 23.05(6)(e) currently reads as follows:

"(e) For each building, an employer or person in charge may designate a room for employee smoking that is separately ventilated. Such designated areas shall be located so that employees do not have to pass through the area in the normal course of employment and is not frequented by the public. An employer or person in charge may designate an entire place of employment as nonsmoking."

2. Section 23.05(6)(f) currently reads as follows:

"(f) The effective date of this subsection shall be March 1, 2002."