

Ordinance No. 2005

**AN ORDINANCE TO REPEAL SECTION 5.29 AND CREATE SECTION 23.30 OF THE MUNICIPAL CODE OF ORDINANCES PERTAINING TO REGULATING SMOKING IN CERTAIN AREAS**

The Common Council of the City of South Milwaukee does hereby ordain as follows:

**SECTION 1:** Section 5.29 of the Municipal Code of Ordinances is hereby repealed and Section 23.30 is hereby created to read as follows:

**Section 23.30: SMOKING PROHIBITED IN CERTAIN AREAS**

- (A) **Purpose.** The Common Council recognizes that smoking of cigarettes and tobacco products is hazardous to an individual's health and may affect the health of nonsmokers/smokers when they are involuntarily in the presence of smoking. Reliable scientific studies assessed by credible health officials have found that secondhand tobacco smoke is a significant health hazard for children, elderly people, and individuals with cardiovascular disease or impaired respiratory function. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort to nonsmokers. This Ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the City of South Milwaukee, especially recognizing the health interests of nonsmokers, who constitute a majority of the population.
- (B) **Definitions.** The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
- (1) ***Assisted living facility*** means a community-based residential facility, as defined in Wis. Stat. § 50.01 (1g), a residential care apartment complex, as defined in Wis. Stat. § 50.01 (1d), or an adult family home, as defined in Wis. Stat. § 50.01 (1) (b).
  - (2) ***Day care center*** means a facility operated by a child care provider that provides care and supervision for 4 or more children under 7 years of age for less than 24 hours a day. (Wis. Stat. § 49.136 (1) (d)).
  - (3) ***Employment*** means any trade, occupation, or process of manufacture or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged.
  - (4) ***Enclosed indoor area*** means all space between a floor and a ceiling that is bounded by walls, doors, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting

the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge screen with an 18 by 16 mesh count is not a wall.

- (5) ***Person in charge*** means the person who ultimately controls, governs or directs the activities aboard a public conveyance or within or at a place where smoking is regulated under this section, regardless of the person's status as owner or lessee.
- (6) ***Place of employment*** means any enclosed indoor area that employees normally frequent during the course of employment, including an office, a work area, an elevator, an employee lounge, a restroom, a conference room, a meeting room, a classroom, a hallway, a stairway, a lobby, a common area, a vehicle, or an employee cafeteria.
- (7) ***Private club*** means a facility used by an organization that limits its membership and is organized for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose.
- (8) ***Public place*** means any enclosed indoor area that is open to the public, regardless of whether a fee is charged or a place to which the public has lawful access or may be invited.
- (9) ***Restaurant*** means an establishment defined in Wis. Stat. § 254.61(5).
- (10) ***Retail establishment*** means any store or shop in which retail sales is the principal business conducted.
- (11) ***Smoking*** means burning or holding or inhaling or exhaling smoke from, any of the following items containing tobacco:
  - (a) A lighted cigar.
  - (b) A lighted cigarette.
  - (c) A lighted pipe.
  - (d) Any other lighted smoking equipment.
- (12) ***Sports arena*** means any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held.
- (13) ***Tavern*** means any establishment, other than a restaurant, that holds a "Class B" intoxication liquor license or Class "B" fermented malt beverages license.
- (14) ***Tobacco product*** means any form of tobacco prepared in a manner suitable for smoking but not including a cigarette.

**(C) Prohibition against smoking.**

- (1) Except as otherwise provided, no person may smoke in any of the following spaces:
  - (a) Any enclosed space of a public place or place of employment.
  - (b) Areas in City parks as posted and so designated by the Street Department including the athletic field/bleachers and dugouts, playground and swing set areas, and park restrooms.
  - (c) Sports arenas.
  - (d) Within the outdoor premises of a day care center when children who are receiving a day care services are present.
  - (e) City-owned or leased motor vehicles and equipment.
  - (f) Public forms of transportation, including, but not limited to, motor buses, taxicabs, or other public passenger vehicles.
  - (g) Milwaukee County facilities which have been designated by Milwaukee County authorities by ordinance and posting to be areas where smoking is prohibited.
- (2) The prohibition of smoking under sub. (1) does not apply to any of the following places:
  - (a) A private residence.
  - (b) A room used by only one person in an assisted living facility as his or her residence.
  - (c) A room in an assisted living facility in which 2 or more people reside if every person who lives in that room smokes and each of those people has made a written request to the person in charge of the assisted living facility to be placed in a room where smoking is allowed.
  - (d) Designated outdoor areas of municipal buildings.

**(D) Responsibility of person in charge.**

No person in charge may allow any person to smoke in violation of the provisions herein outlined at a location that is under the control or direction of the person in charge.

- (1) A person in charge may not provide matches, ashtrays, or other equipment for smoking at the location where smoking is prohibited.
- (2) A person in charge shall make reasonable effort to prohibit persons from smoking at a location where smoking is prohibited by doing all of the following:
  - (a) Posting signs setting forth the prohibition and providing other appropriate notification and information concerning the prohibition.
  - (b) Refusing to serve a person, if the person is smoking in a restaurant, tavern, or private club.
  - (c) Asking a person who is smoking to refrain from smoking and, if the person refuses to do so, asking the person to leave the location.
- (3) If a person refuses to leave a location after being requested to do so as provided in par (c), the person in charge shall immediately notify an appropriate law enforcement agency of the violation.
- (4) The person in charge of a restaurant, tavern, private club, or retail establishment may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club, or retail establishment where customers, employees, or persons associated with the restaurant, tavern, private club, or retail establishment may smoke.

(E) **Signs.**

- (1) No smoking signs shall include the plainly visible “No Smoking” symbol, consisting of a burning cigarette enclosed in a red circle with a red bar across the cigarette.
- (2) Each sign and the language contained therein shall be clearly visible from a distance of at least ten (10) feet and meet the uniform dimensional requirements specified by the Wisconsin Department of Commerce in accordance with Wis. Stat. § 101.123(6).

(F) **Smoking Receptacles.** Cigarette waste must be deposited of in a non-combustible container meeting the requirements of a third-party testing agency such as Underwriter’s Laboratories (UL), Factory Mutual (FM), or the American Society for Testing and Materials (ASTM). All taverns and restaurants adjacent to city sidewalks will be required to provide at least one suitable smoking receptacle.

(G) **Enforcement.**

- (1) This Ordinance shall be enforced by the Health Department, Building Inspector, and Police Department or an authorized designee.
- (2) Notice of the provisions of this Ordinance shall be given in writing to all applicants for a business license in the City of South Milwaukee.
- (3) Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Health Department or the Police Department.
- (4) The Health Department, Police Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.
- (5) If an owner, manager, operator, or employee of an establishment subject to this Ordinance observes a person violating the Ordinance, he or she shall immediately direct the person in violation to stop smoking. If the person violating the Ordinance does not stop smoking, the owner, manager, operator, or employee shall make reasonable efforts to prevent smoking in prohibited areas by:
  - a. Approaching smokers who fail to voluntarily comply with this section and requesting that they extinguish their cigarette or tobacco product and refrain from smoking, or
  - b. Refusing service to anyone smoking in a prohibited area
- (6) In addition to the remedies provided by the provisions of this Section, the Health Department, the Police Department or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

(G) **Violation and penalties.**

- (1) Any person who violates provisions herein by smoking in a prohibited place shall be subject to a forfeiture of not less than \$100 nor more than \$250 for each violation.
- (2) Any person in charge who violates provisions herein shall be subject to a forfeiture of \$100 for each violation.
  - (a) For violations subject to the forfeiture, if the person in charge has not previously received a warning notice for a violation of this ordinance, the law enforcement officer shall issue the person in charge a warning notice and may not issue a citation.

- (b) No person in charge may be required under this ordinance, to forfeit more than \$100 in total for all violations of this ordinance, occurring on a single day.

(H) **Clean indoor air.**

- (1) Intent and construction. The City of South Milwaukee finds that it is in the interest of the health, safety and welfare of the community to adopt by reference Wis. Stat. § 101.123 and subsequent amendments, additions and recodifications. It is the intent of the Common Council that where there may be conflict between Wis. Stat. § 101.123 and this ordinance, that the most restrictive section shall apply. This ordinance shall not be construed to mean that progressive discipline of City employees for violations of laws, rules and regulations is only authorized where explicitly provided by ordinance.
- (2) Penalty. The penalties provided by Wis. Stat. § 101.123 shall be in addition to the penalties provided for violation of this ordinance when a person has violated both laws. In addition to the penalties provided by this ordinance and Wis. Stat. § 101.123, any City employee who violates any provision of this ordinance or Wis. Stat. § 101.123, may also be subject to progressive discipline by his or her employer.

SECTION 2: All ordinances or parts of ordinances contravening this ordinance are hereby repealed.

SECTION 3: This ordinance shall take effect on and after its adoption and publication.

BY ORDER OF THE COMMON COUNCIL  
OF THE CITY OF SOUTH MILWAUKEE

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Thomas Zepecki, Mayor

Attest:

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James Shelenske, City Clerk

Date Adopted: June 1, 2010  
Date Published: June 10, 2010