

ORDINANCE NO. 2108

AN ORDINANCE TO AMEND  
SECTION 23.30 OF THE MUNICIPAL CODE RELATED TO SMOKING PROHIBITIONS

WHEREAS, the Common Council finds that amending Section 23.30 of the Municipal code related to smoking prohibitions will promote and best serve the public health, safety, comfort and general welfare of the people of the City of South Milwaukee, and especially the health interests of nonsmokers, who constitute a majority of the population of the City:

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

**SECTION 1:** The following subsections of Section 23.30 of the Municipal Code are hereby amended to read as follows, all other existing sections and subsections remain as currently published (as currently published there are two subsections labelled "(F)", the second "F" subsection is entitled "Violations and Penalties", that subsection is herein relabeled "(I)":)

(A) **Purpose.** The Common council recognized 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. The purported health benefits from electronic smoking devices (commonly known as e-cigarettes, e-pipes and several other trade and brand names) have not been scientifically proven, and use of these devices has not been proven safe, either for their users or for bystanders. Research indicates electronic smoking devices may lead youth to try other tobacco products. In addition, research indicates that youth who use electronic smoking devices are more likely to use tobacco products, including cigarettes, than those youth who do not use electronic smoking devices. Adopting this ordinance will promote the health, safety, comfort and general welfare of the people of the City of South Milwaukee, and especially the health interests of nonsmokers, who constitute a majority of the population of the City

(B) (11) ***Smoking***- means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form.

a. Smoking also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking as outlined in this Code.

b. Electronic delivery device means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product.

c. Electronic delivery device includes any component part of such product whether or not sold separately. Electronic delivery device shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

(C) (1) (a) Any enclosed space of a public place or place of employment, including the common areas of a multi-unit dwelling.

(F) **Smoking Receptacles.** Cigarette waste must be disposed 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.

(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.

(I) **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 if the person in charge has not been previously warned about the provisions of this ordinance.

(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 not 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.

**SECTION 2:** Section 23.30 (C) (3), (4), (5) and (6) are hereby created to read as follows:

(3) *Statute adopted.* Except as expressly altered by this section, the provisions of § 101.123, § 134.66, and § 254.92, Wis. Stats., are hereby adopted and incorporated herein.

(4) *Use of electronic smoking devices on school grounds.* No person shall use an electronic smoking device on school grounds or in school buildings.

**SECTION 3:** All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed

**SECTION 4:** This ordinance shall take force and be in effect from and after its passage and publication.

This Ordinance was adopted at a regular meeting of the Common Council of the City of South Milwaukee on July 28, 2015, five aldermen voting in favor thereof and three voting against.

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

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Erik Brooks, Mayor

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James Shelenske, City Clerk

Date Adopted: July 28, 2015

Date Published: August 6, 2015