23.05 SMOKING PROHIBITED IN CERTAIN AREAS.

(1) Definitions.

"Bed and breakfast establishment " has the meaning set forth in sec. 254.61(3), Wis. Stats. This definition shall become effective July 1, 2005. (Cr. by Ord. 13,604, 5-11-04)

"Childcare facility" means any state licensed or county certified child care facility including, but not limited to licensed family day care or licensed group day care centers, licensed day camps, certified school-age programs and Head Start programs.

"City buildings" means all City-owned and operated buildings and those portions of buildings leased and operated by the City. (Cr. by Ord. 12,832, 6-6-01)

"Common areas of buildings" means all areas not part of a tenant's leased premises, including but not limited to lobbies, community rooms, hallways, laundry rooms, stairwells, elevators, enclosed parking facilities, pool areas, and restrooms contiguous thereto. This definition shall become effective July 1, 2005. (Cr. by Ord. 13,604, 5-11-04)

"Common areas of malls" means those areas within a mall customarily accessible to patrons. (Cr. by Ord. 12,571, 5-3-00)

"Educational Facility" means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board. (Cr. by Ord. 11,091, 12-22-94)

"Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit, including those full time, part-time, temporary or contracted for from a third party; employee also means any person who serves as a volunteer for a business or nonprofit entity.

"Employer" means any person, partnership, limited liability company, corporation, or other entity, including a public or non-profit entity who employs the services of one (1) or more individual persons.

"Enclosed Area" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passage ways) which extend from floor to ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, 'other landscaping' or similar structures. (Cr. by Ord. 12,571, 5-3-00)

"Entrance" means a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk or parking lot. (Cr. by Ord. 12,832, 6-6-01)

"Health Care Facility" has the meaning set forth in Sec. 155.01(6), Wis. Stats. (Cr. by Ord. 12,571, 5-3-00)

"Hotel and motel" has the meaning set forth in sec. 254.61(3), Wis. Stats.

"Mall" means an enclosed, indoor area containing common areas and discrete businesses primarily devoted to the retail sale of goods and services. (Cr. by Ord. 12,571, 5-3-00)

"Medical Services" has the meaning set forth in Sec. 647.01(6), Wis. Stats. (Cr. by Ord. 12,571, 5-3-00)

"NonSmoking" means smoking is prohibited. (Cr. by Ord. 12,571, 5-3-00)

"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. (Cr. by Ord. 12,571, 5-3-00)

"Place of employment" means an enclosed area controlled by the employer, which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a 'place of employment' within the meaning of this ordinance unless used as a childcare facility.

""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. (Cr. by Ord. 13,604, 5-11-04)

"Private residence" means premises owned, rented or leased for temporary or permanent habitation. (Cr. by Ord. 12,571, 5-3-00)

"Public place" means any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a public place. (Cr. by Ord. 12,571, 5-3-00)

"Restaurant" means an establishment defined in Sec. 254.61(5), Wis. Stats., whose sale of alcohol beverages accounts for fifty percent (50%) or less of the establishment's gross receipts of the most recent alcohol licensing year, but does not mean churches, religious, fraternal, youth or patriotic organizations, service clubs and civic organizations which prepare and serve or sell meals to members and guests only. This includes restaurants within a mall and adjacent seating. This definition is effective January 2, 2003. (Am. by Ord. 11,558, 3-29-96, 4-4-96; Ord. 13,195, 12-10-02)

"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.

"Room" means a space within a building completely enclosed with walls, partitions, floor and ceiling, except for openings for light, ventilation, ingress and egress.

"School Board" means the school board in charge of the public schools, grades K-12, of a school district. (Cr. by Ord. 11,091, 12-22-94)

"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. (Am. by Ord. 13,195, 12-10-02)

"Smokefree" means absence from the ambient air of the smoke by-product from the burning, inhaling, exhaling, or carrying of a lighted cigarette, cigar, pipe, weed, plant, or other combustible substance in any manner in any form.

"Smoking" means to smoke or carry a lighted pipe, cigar, cigarette or tobacco-related products in any form.

"Sports Arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and indoor ice rinks, and bowling centers. This definition shall become effective on July 1, 2005. (Cr. by Ord. 13,604, 5-11-04)

"Tavern" means any establishment with a full service bar in which fermented malt beverages or intoxicating liquors are sold for consumption upon said premises and whose sale of alcohol beverages accounts for more than fifty percent (50%) of the establishment's gross receipts of the most recent licensing year as specified in Chapter 38 of these ordinances. This definition is effective January 2, 2003. (Am. by Ord. 11,558, 3-29-96, 4-4-96; Ord. 13,195, 12-10-02)

"Tobacco Product" has the meaning found in Sec. 139.75, Wis. Stats. (Cr. by Ord. 12,571, 5-3-00)

"Use Tobacco Products" means to consume by means other than smoking including, but not limited to, the chewing, spitting, swallowing, snorting, inhaling or ingesting of any tobacco product. (Cr. by Ord. 10,679, 6-11-93)

(Sec. 23.05(1) Am. by Ord. 10,531, 12-30-92; Ord. 12,571, 5-3-00; Ord. 12,938, 12-11-01)

(2) Intent and Purpose.

(a) The Common Council of the City of Madison hereby finds that:

1. It is recognized that smoking of cigarettes and tobacco products is hazardous to an individual's health and may affect the health of nonsmokers when they are involuntarily in the presence of smoking.
2. Numerous scientific studies have found that tobacco smoke is a major contributor to indoor air pollution.
3. Reliable scientific studies, including studies conducted by the Surgeon General of the United States, have shown that breathing sidestream or secondhand smoke is a significant health hazard to nonsmokers; particularly to children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.
4. Health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction and bronchospasm.

5. Reliable scientific studies assessed by the California Environmental Protection Agency have found that sidestream and secondhand tobacco smoke is a leading cause of premature death and disability among non-smokers.
6. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort to nonsmokers.

(b) This ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the City of Madison, especially recognizing the rights of nonsmokers who constitute a majority of the population; educating citizens affected by this ordinance; and assisting owners, operators; and managers in maintaining compliance.

(Sec. 23.05(2) Am. by Ord. 12,571, 5-3-00)

(3) Prohibition of Smoking in Public Places. Except as otherwise provided, it shall be unlawful for any person to smoke or use tobacco products in public places, including but not limited to the following:

(a) Elevators and enclosed stairwells of City parking ramps. (Am. by Ord. 11,327, 8-11-95)
(b) Public forms of transportation, including but not limited to motor buses, taxicabs, or other public passenger vehicles. (Am. by Ord. 10,983, 9-14-94)
(c) Theatres, libraries, museums, auditoriums, and convention halls, which are used by or open to the public.
(d) Any childcare facility. Incorporated herein by reference are the following Wisconsin statutory and administrative code sections and any amendments or renumbering thereof: Sec. 101.123(1)(ad) and (2)(bm), Wis. Stats; Secs. HFS 45.02(4), 45.06(8)(g), 46.03(13), 46.06(2)(h), and 46.08(2)(c), Wis. Admin. Code. (Am. by Ord. 11,091, 12-22-94)
(e) Retail stores.
(f) Health care facilities. (Am. by Ord. 6208, 3-29-78; Ord. 12,571, 5-3-00)
(g) Waiting rooms, hallways, rooms of health care laboratories.
(h) Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.
(i) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political or social purposes. (Am. by Ord. 5694, 12-28-76; Ord. 12,571, 5-3-00)
(j) Polling places. (Am. by Ord. 12,571, 5-3-00)
(k) Service lobbies, waiting areas, and the common areas open to the public of financial institutions, business and professional offices, and multi-unit commercial facilities. (Cr. by Ord. 5694, 12-28-76)
(l) Self-service laundry facilities. (Cr. by Ord. 5694, 12-28-76)
(m) Enclosed, indoor areas of restaurants.
(n) Common areas of malls. (Cr. by Ord. 10,199, 2-14-91; Am. by Ord. 1,2571, 5-3-00)
(o) Public bus and transfer point shelters. (Cr. by Ord. 10,615, 3-31-93; Am. by Ord. 12,571, 5-3-00)
(p) Common areas of buildings which contain three or more rental units Written Rental Agreements shall include reference to this subdivision. Subsection (9)(b) shall not apply to this subdivision.
(q) City buildings. (Am. by Ords. 10,633 & 10,634, 4-16-93; Ord. 10,656, 5-29-93; Ord. 10,895, 5-2-94; Ord. 12,571, 5-3-00; Ord. 12,794, 4-9-01; Ord. 12,832, 6-6-01)
(r) City-owned or leased motor vehicles. (Cr. by Ord. 10,247, 4-26-91; Am. by Ord. 12,571, 5-3-00)
(s) Sports arenas.
(t) Taverns.
(u) Common areas in bed and breakfast establishments, hotels and motels.

(Sec. 23.05(3) Am. by Ord. 10,679, 6-11-93; Am. by Ord. 12,571, 5-3-00; Am. by Ord. 12,938, 12-11-01)

(4) Prohibition of Smoking in Outdoor Areas. It shall be unlawful for any person to smoke or use tobacco products in the following outdoor areas.

(a) Outside the City-County Building:

1. Between the public sidewalk and the Martin Luther King, Jr. Boulevard side of the building including but not limited to the entrance steps, the planters, and all cement areas adjacent to the building;
2. Between the public sidewalk and the West Wilson Street side of the building, including but not limited to the entrance steps, the planters, and all cement areas adjacent to the building.

(Cr. by Ord. 11,023, 10-31-94; Am. by Ord. 12,794, 4-9-01)

(b) Outside the Bernard Schwab Building of the Madison Public Library, known as the Central Library, between the front entrance of the library and the public sidewalks on the Fairchild Street and the Mifflin Street sides of the building including but not limited to the entrance steps, the planters, and all cement areas adjacent to the building. (Cr. by Ord. 12,167, 7-20-98)

(c) In addition to Subdivisions (a) and (b), outside at least one entrance to all City buildings.

1. Within forty-five (45) days of adoption of this subdivision, all current employees of each City building shall designate, by majority vote, which entrance(s) shall be smokefree.
2. No more than one entrance may be designated as a smoking area.
3. This subsection shall be effective sixty (60) days after publication.

(Cr. by Ord. 12,832, 6-6-01)

(d) City parks and beaches as posted and so designated by the Park Commission. (Cr. by Ord. 12,784, 3-28-01; Renumbered by Ord. 12,832, 6-6-01)

(Former Sec. 23.05(3)(s) Am. and Renum. to Sec. 23.05(4) by Ord. 12,571, 5-3-00)

(5) Prohibition of Smoking in Educational Facilities. It shall be unlawful for any person to smoke or otherwise use any tobacco products:

(a) In all educational facilities and in or upon all other premises owned, rented by or under the control of a school board.

(b) In or upon all premises of the Madison Area Technical College, including all buildings owned or operated by the district for the primary purpose of vocational, technical or adult education. This includes outdoor areas between the public sidewalks and buildings.

(Am. by Ord. 11,091, 12-22-94; Am. and Renum. by Ord. 12,571, 5-3-00; Am. by Ord. 12,938, 12-11-01; Ord. 13,510, 2-10-04)

(6) Prohibition of Smoking in Places of Employment

(a) It shall be unlawful for any person to smoke or otherwise use any tobacco products in all places of employment.

(b) Every building which is a place of employment shall have at least one entrance which is smokefree. For buildings with fewer than four (4) entrances, no more than one entrance may be designated as a smoking entrance. For buildings with four (4) or more entrances, no more than 25% of all entrances may be designated as a smoking entrance.

(c) Each employer, operator, manager, lessee or other person having control of the place of employment shall make reasonable efforts to ensure a smokefree workplace for all employees and frequenters.

(d) Within ninety (90) days of the effective date of this ordinance, each employer having a place of employment located within the City of Madison shall adopt, implement and communicate written notice of the provisions of this ordinance to each employee.

(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. (Am. by Ord. 13,195, 12-10-02)

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

(New Sec. 23.05(6) Cr. by Ord. 12,938, 12-11-01)

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

(a) 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) Retail tobacco stores.

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

(e) 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.]

(Sec. 23.05(7) Am. by Ord. 12,571, 5-3-00; Renum. from 23.05(6) & Am. by Ord. 12,938, 12-11-01; Am. by Ord. 13,195, 12-10-02)

(8) Signage.

(a) Signs prohibiting, prohibiting except in designated areas, or permitting smoking, as the case may be, shall be posted conspicuously at every building, structure, or public place entrance and in prominent locations throughout the premises by the proprietor, employer or other person in charge of each building, structure or public place specified in Subsections (3), (4), (5) and (6). Signs in outdoor areas designated as nonsmoking shall be placed so that the public has reasonable notice of the prohibition. (Am. by Ord. 12,938, 12-11-01)

(b) Restaurants and taverns shall post, in a conspicuous place at each entrance normally used by the public, a sign not smaller than eleven by eight and one-half inches (11" x 8 ½") indicating whether they permit smoking or whether they are smokefree. Each sign and the language contained therein shall be clearly visible from a distance of at least ten (10) feet. The signage lettering shall be in bold and the lettering shall be a minimum of two (2) inches in height. Each sign shall contain the phone number for the City health department and the non-emergency number for the City police department.]

(c) It shall be unlawful for any person to remove, deface, or destroy any sign required by this Section, or to smoke in any place where any such sign is posted. (Renumbered by Ord. 12,796, 4-9-01)
(Am. and Renumbered by Ord. 12,571, 5-3-00; Am. and Renumbered by Ord. 12,938, 12-11-01)

(9) Enforcement.

(a) The Director of Public Health or designee and the Chief of Police or designee, shall have the power, whenever they may deem it necessary, to enter upon the premises named in this section to ascertain whether the premises are in compliance with this ordinance. A compliance time of not less than one week shall be granted. Enforcement may be by citation, as permitted by Sec. 1.08, M.G.O., or through issuance of a summons and complaint. (Renum. and Am. by Ord. 10,163, 12-28-90; Renumbered and Am. by Ord. 12,571, 5-3-00)

(b) The proprietor, employer or other person in charge of premises regulated hereunder, upon either observing or being advised of a violation, shall make reasonable efforts to prevent smoking in prohibited areas by:

1. 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
2. Refusing service to anyone smoking in a prohibited area.

(Cr. by Ord. 12,796, 4-9-01)

(c) Any person who desires to register a complaint under this section may contact the Department of Public Health or the Police Department

(d) Ashtrays, cigarette vending machines and other smoking paraphernalia shall not be located in areas where smoking is prohibited.

(Am. and Renum. by Ord. 12,571, 5-3-00; Am. and Renum. by Ord. 12,938, 12-11-01)

(10) Retaliation Prohibited. No person shall discharge, refuse to hire, refuse to serve or in any other manner retaliate against any employee, applicant for employment, customer, service user, business patron or any other person because that person exercises any rights afforded by this section. (Cr. by Ord. 12,938, 12-11-01)

(11) Violations and Penalties.

(a) General. Any person who violates any of the provisions of this section may be subject to a forfeiture of no more than one hundred and twenty-five dollars ($125) for the first offense and no more than five hundred dollars ($500) for the second and subsequent offenses. Each day that a violation occurs shall be considered a separate offense.

(12) Clean Indoor Air.

(a) Intent and Construction. The City of Madison finds that it is in the interests of the health, safety and welfare of the community to adopt by reference Sec. 101.123, Wis. Stats., and subsequent amendments, additions and recodifications. It is the intent of the Common Council that where there may be conflict between sec. 101.123, Wis. Stats. and Sec. 23.05, M.G.O., 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.

(b) Penalty. The penalties provided by Sec. 101.123 Wis. Stats. shall be in addition to the penalties provided for violation of Sec. 23.05 when a person has violated both laws. In addition to the penalties provided by Sec. 23.05 and Sec. 101.123 Wis. Stats., any City employee who violates any provision of Sec. 23.05 or Sec. 101.123 Wis. Stats., may also be subject to progressive discipline by his or her employer.

(Sec. 23.05(9) Renumbered to (10) by Ord. 10,163, 12-28-90; Renumbered to (12) and Am. by Ord. 12,938,12-11-01)

(13) Severability. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the Common Council that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein. (Cr. by Ord. 11,558, 3-29-96, 4-4-96; Renumbered to (13) by Ord. 12,938, 12-11-01)