



City of West Allis

Legislation Text

File #: O-2010-0015, **Version:** 2

An Ordinance to Repeal and Recreate Section 7.032 of the West Allis Revised Municipal Code Relating to Prohibiting Smoking in Certain Areas.

The Common Council of the City of West Allis do ordain as follows:

PART I. Section 7.032 of the Revised Municipal Code of the City of West Allis is hereby repealed and recreated to read:

7.032 SMOKING PROHIBITED IN CERTAIN AREAS.

(1) Findings. The Common Council of the City of West Allis finds that:

(a) It is recognized that smoking of cigarettes and tobacco products is hazardous to an individual's health and affects the health of nonsmokers when they are in the presence of smoking.

(b) Numerous scientific studies have found that tobacco smoke is a major contributor to indoor pollution.

(c) 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, the elderly, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.

(d) Health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction and bronchospasm.

(e) Air pollution caused by smoking is an offensive annoyance and irritant and smoking results in serious and significant physical discomfort to nonsmokers.

(2) Purpose. This ordinance is adopted for the purpose of:

(a) Protecting the public health, safety, comfort and general welfare of the people of the City of West Allis.

(b) Clarifying and expanding upon the State's Smoking Ban Law enacted by 2009 Act 12 under the authority created by subsection 101.123(2)(c) of the Wisconsin Statutes and subsection 101.123(4m) as created by the Act.

(c) Assisting owners, operators and managers in complying with State law and this ordinance.

(3) Definitions. Except as set forth below, the definitions of subsection 101.123(1) of the Wisconsin Statutes are hereby adopted. In this subsection:

(a) "City Buildings" means all City-owned or operated buildings and those portions of buildings leased or operated by the City.

(b) "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.

(4) Prohibition against smoking. No person may smoke in any of the following:

(a) Any place prohibited by subsection 101.123(2) of the Wisconsin Statutes, which are expressly adopted and incorporated herein.

(b) Any City Building, including the grounds of the Farmer's Market. The grounds of the Farmers Market shall include all areas where food is displayed or offered for sale.

(c) Any Enclosed Indoor Area in any place prohibited by subsection 101.123(2) of the Wisconsin statutes.

(d) Any City park or grounds while being used by the West Allis-West Milwaukee School District for school-related events.

(e) Any extended premises under subsection 9.02(5) of the Revised Municipal Code or any outdoor dining area of a food establishment as defined in subsection 7.04(1)(c) of the Revised Municipal Code.

(5) Exceptions. The prohibition against smoking shall not apply to those places or areas set forth in subsection 101.123(3) of the Wisconsin Statutes.

(6) Interpretation. Whenever the provisions of the Wisconsin Statutes and this section conflict, the provisions of this section shall apply.

(7) Outside Areas. Any person in charge of a restaurant, tavern, private club, or retail establishment that is subject to this ordinance may designate an outside area that is a reasonable distance from the entrance to said establishment where customers, employees, or persons associated with the establishment may smoke. The designated smoking area shall contain receptacles for trash and cigarette butts and shall be kept in a neat and orderly manner and all trash or cigarette butts shall be placed in a proper receptacle. Smoking shall not be allowed in outside areas where food and/or beverages are served.

(8) Statute Adopted. Except as expressly altered by this section, the provisions of section 101.123 of the Wisconsin Statutes are hereby adopted and incorporated herein.

(9) Penalty.

(a) Any person who violates subsections (4) or (7) shall forfeit not less than \$100 or more than \$250 for each violation.

(b) Any person in charge who violates subsection 101.123(2m) of the Wisconsin Statutes shall forfeit \$100 for each violation.

(c) In addition to the forfeiture, any person who violates the provisions of this ordinance shall pay the costs of prosecution, except for the crime laboratories and drug law enforcement surcharge under subsection 165.755 (1)(a) of the Wisconsin Statutes. Each day of violation shall constitute a separate offense.

(10) Enforcement. Prior to issuing a citation to a person in charge for a violation of this ordinance, the Police Department shall first issue a written warning notice. Once a person in charge has been issued a warning, she/he may be issued citations for violations of this ordinance but not to exceed \$100 in total for all violations of section 101.123(2m) of the Wisconsin Statutes occurring on a single day.

PART II. All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby amended.

PART III. This ordinance shall take effect and be in force from and after its passage and publication.

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