

ORDINANCE NO. 2010-11

An Ordinance Relating to the Regulation of Smoking

Whereas, The Wisconsin State Legislature enacted a State-wide smoking ban for places open to the public as listed herein, effective July 5, 2010; and

Whereas, the City may enact an ordinance regulating or prohibiting outside smoking on public property under its jurisdiction.

The Common Council of the City of Cedarburg, Wisconsin, hereby ordains as follows:

SECTION 1. Section 8-1-8 of the Municipal Code of the City of Cedarburg is hereby repealed and recreated as follows:

SEC. 8-1-8 REGULATION OF SMOKING.

- (a) **Smoking Prohibited in Public Places.** The provisions of Chapter 101.123 of the Wisconsin Statutes, as amended from time to time, relating to the prohibitions of smoking in various enclosed places are hereby adopted and made part of this Code by reference. Smoking in any public place shall be unlawful, including, but not limited to the following:
1. Residence halls or dormitories owned or operated by a college or university.
 2. Day care centers.
 3. Education facilities.
 4. Inpatient health care facilities (includes hospitals, county homes, and county infirmaries, nursing homes, hospices, veterans' homes, and treatment facilities).
 5. Theaters.
 6. Correctional facilities.
 7. State institutions.
 8. Restaurants.
 9. Taverns.
 10. Private clubs (a facility used by an organization that limits the membership and is organized for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose).
 11. Retail establishments.
 12. Common areas of multiple unit residential properties.
 13. Lodging establishments (a bed and breakfast, hotel, or tourist rooming house).
 14. All enclosed places, other than those listed above, that are places of employment or public places.
 15. Government buildings.
- (b) **Definitions.**
- (1) **“Enclosed Place” and “Substantial Wall”.** An enclosed place is a structure or area that has a roof and more than two substantial walls. A substantial wall is a wall with no opening or with an opening that either does not allow air in from the outside or that is less than 25% of the wall's surface area.
 - (2) **“Public Place”.** A public place is an enclosed place 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.

- (3) **“Place of Employment”.** A place of employment is any enclosed place that employees normally frequent during the course of employment, such as 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.
- (c) **Designation of Outdoor Area for Smoking.** The person in charge of any restaurant, tavern, private club or retail establishment subject to this Code and the smoking restrictions in Wisconsin Statutes 101.123 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. Smoking needs to be a reasonable distance from smoke-free places and entrances.
- (d) **Outdoor Smoking.** Outdoor smoking is prohibited in the following places, regardless of whether it meets the definition of an enclosed space:
- (1) Sports arenas (any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held).
 - (2) Bus shelters.
 - (3) Public conveyances.
- (e) **Smoking on Outside Property Under the City’s Jurisdiction.** Smoking on outside property under the City’s jurisdiction is prohibited in the following areas:
- (1) Park shelters, athletic fields, bleachers and dugouts, restrooms, and playground and swing set areas.
- (f) **Smoking Outside School Areas.** Smoking is prohibited at outside areas at schools consistent with School Board policy.
- (g) **Enforcement.**
- (1) Persons in charge of places where smoking is prohibited must enforce the prohibitions by taking steps to ensure compliance, such as not providing ashtrays and matches; posting “no smoking” signs; asking a person to stop smoking; asking a person who is smoking to leave; refusing to serve the person if the place is a restaurant, tavern, or private club; and notifying law enforcement if the person does not leave after being requested to do so.
 - (2) The Cedarburg Police Department and the Department of Engineering and Public Works have the power and duty to enforce the smoking ban. In addition, state or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of the smoking prohibition.
- (h) **Penalty.** Penalties for violation of this section shall be in accordance with Wisconsin Statutes 101.123. Statutory court costs and assessments shall be added to all forfeitures for such violations.

State Law Reference: Sec. 101.123, Wis. Stats.

SECTION 2. This ordinance shall be effective July 5, 2010.

Passed and adopted this 28th day of June, 2010.

Gregory P. Myers, Mayor

Countersigned:

Constance K. McHugh, City Clerk

Approved as to form:

Kaye K. Vance, City Attorney