

ORDINANCE NO. _____

BY: ALDERMAN DON MOLDENHAUER
ALDERMAN ERIC J. HAUGAARD
ALDERMAN DONALD K. HOLLAND
ALDERMAN RAYMOND MISNER
ALDERMAN TOD OHNSTAD
ALDERMAN MICHAEL J. ORTH
ALDERMAN DAN L. PROZANSKI, JR.
ALDERMAN DONALD RUEF
ALDERMAN G. JOHN RUFFOLO

TO CREATE SECTION 4.04 OF THE CODE OF GENERAL
ORDINANCES FOR THE CITY OF KENOSHA, ENTITLED
"SMOKING PROHIBITED"

The Common Council of the City of Kenosha, Wisconsin, do ordain as follows:

Section One: Section 4.04 of the Code of General Ordinances for the City of Kenosha, Wisconsin, is hereby created as follows:

4.04 SMOKING PROHIBITED

A. Purpose. It is recognized that smoking tobacco-related products are hazardous to the health of both smokers and nonsmokers who are exposed to smoking. 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. Health hazards induced by breathing sidestream or secondhand smoke include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction, and bronchospasm. This Ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the City of Kenosha, especially recognizing the health interests of nonsmokers, who constitute a majority of the population.

B. Definitions. For purposes of this Section, the following terms shall have the meanings indicated:

1. **Adult Daycare Facility** has the meaning set forth in Section 49.45(47)(a), Wisconsin Statutes.
2. **Bed and Breakfast Establishment** has the meaning set forth in Section 254.61(1), Wisconsin Statutes.
3. **Child Care Facility** shall mean any licensed or certified Child Care Facility, including, but not limited to, licensed family daycare or licensed group daycare centers, licensed day camps, certified school-age programs, and Head Start programs.
4. **Cigarette** has the meaning set forth in Section 139.30(1), Wisconsin Statutes.
5. **Enclosed Area** shall mean all space between a floor and ceiling that is enclosed on all sides by

solid walls or windows (exclusive of doorways) which extend from the floor to the ceiling.

6. Entrance shall mean a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk or parking lot.

7. Healthcare Facility has the meaning set forth in Section 155.01(6), Wisconsin Statutes.

8. Hotel and Motel have the meaning set forth in Section 254.61(3), Wisconsin Statutes.

9. Mall shall mean an enclosed indoor area containing common areas and discrete businesses and stores primarily devoted to the retail sale of goods and services.

10. Medical Services has the meaning set forth in Section 647.01(6), Wisconsin Statutes.

11. Nonsmoking shall mean smoking is prohibited.

12. Place of Employment shall mean an enclosed area controlled by the employer which employees normally frequent during the course of employment, including, but not limited to, common work areas, private offices, employee lounges, restrooms, conference and meeting rooms, classrooms, healthcare facilities, cafeterias, stairways, hallways, vehicles, and all other enclosed facilities. A private residence is not a "Place of Employment" within the meaning of this Ordinance.

13. Private Club shall mean 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, that 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.

14. Private Residence shall mean a premise owned, rented or leased for temporary or permanent habitation.

15. Public Place shall mean any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a public place unless it is used as a child care facility, adult daycare facility, or healthcare facility.

16. Smoking shall mean to inhale, exhale, carry, possess, or control any lighted cigarette or any lighted tobacco product in any form or in any manner.

17. Tobacco Product has the meaning set forth in Section 139.75(12), Wisconsin Statutes.

C. Smoking Prohibited In Public Places. Except as provided in Section 4.04 F., smoking in any public place shall be unlawful, including, but not limited to, the following:

1. Theatres, libraries, museums, auditoriums, and convention halls which are used by or open to the public.

2. Child care facilities.

3. Adult daycare facilities.

4. Retail stores.

5. Healthcare facilities.

6. Waiting rooms, hallways, or rooms of healthcare laboratories.

7. Waiting rooms, hallways, and rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist, optician, or other medical service provider.

8. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, and other multiple-unit residential facilities.

9. Restrooms, lobbies, reception areas, hallways, and other common areas which are used by or open to the public.

10. Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political, or social purposes.

11. Polling places.

12. Self-service laundry facilities.

13. Restaurants.

14. Bars, taverns, nightclubs and cocktail lounges.

15. Common areas of malls, meaning those areas within a mall customarily accessible to patrons.

16. City facilities, meaning all City-owned and operated buildings and those portions of buildings leased and operated by the City.

17. City transit buses and public bus shelters of the City, whether or not such bus shelter is an enclosed area.

18. Educational facilities, meaning 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.

19. Sports arenas, meaning sports pavilions, stadiums, gymnasiums, health spas, swimming pools, roller and indoor ice rinks, bowling centers, and other similar places where the public assembles to engage in physical exercise, participate in athletic event competition, or witness a sporting or other event.

20. Common areas in bed and breakfast establishments, hotels and motels, and rooms thereof that are rented to guests and designated as nonsmoking rooms, including lobbies, community rooms, hallways, laundry rooms, stairwells, elevators, enclosed parking facilities, pool areas, and restrooms within said facilities.

D. Smoking Prohibited in Places of Employment. Excepted as provided for in Section 4.04 F., smoking in any place of employment shall be unlawful.

This prohibition on smoking shall be communicated to all existing employees prior to the effective date of this Ordinance and to all prospective employees upon their application for employment.

E. Smoking Prohibited in Specified Outdoor Areas. Smoking shall be unlawful in the following areas:

1. Within a reasonable distance of all outside entrances to, operable windows of, or ventilation systems of public places or places of employment where smoking is prohibited pursuant to Section 4.04 C. and 4.04 D. so as to prevent smoke from entering said enclosed areas in which smoking is prohibited.

2. In the seating areas of all outdoor arenas, stadiums, and amphitheaters, as well as in the bleachers and grandstands used by spectators at sporting and other public events, including, without limitation, football and baseball stadiums.

3. Those portions of City parks temporarily posted as no smoking areas by the Park Department at the request of a park permit holder or park facility lessee, or when necessary for the public health or safety.

4. Those areas outside of City facilities that are posted as no smoking by the City Administrator or their designee.

F. Exceptions. The following shall not be subject to and are exempt from the smoking prohibitions of this Section:

1. Use of tobacco by an enrolled member of an Indian tribe, as those terms are defined in Sections 139.30(4) and (5) of the Wisconsin Statutes, as part of a traditional spiritual or cultural ceremony.

2. Bed and breakfast establishments, and hotel and motel rooms that are rented to guests and are designated as smoking rooms, provided that not more than twenty-five (25%) percent of the rooms rented to guests are designated as smoking rooms. This exception does not include common areas as defined in Section 4.04 C.20.

3. Private residences, except when used as a child care facility, adult daycare facility, or healthcare facility.

4. Private clubs, except when used for a function to which the public is invited or permitted to enter. This exception shall not apply to any organization established to avoid compliance with the Ordinance.

G. Signs Required. Signs prohibiting smoking shall be posted conspicuously at every entrance by the proprietor or other person in charge of each building or structure regulated by Sections 4.04 C. and 4.04 D. Signs in specified outdoor areas designated as nonsmoking pursuant to Section 4.04 E. shall be placed so that the general public has reasonable notice of the prohibition. Signs shall contain a reference that regulation is by Ordinances, such as "No Smoking - Section 4.04, City of Kenosha Code of General Ordinances", or equivalent. A sign provided by or approved by the Kenosha County Division of Health shall not be smaller than 8-1/2" by 5-1/2", except that signs in specified outdoor areas may be reduced in size and displayed on tabletop tents or menus. It shall be unlawful for any person to remove, deface, or destroy any legally required "No Smoking" sign.

H. Enforcement.

1. The proprietor or other person in charge of premises regulated hereunder shall make reasonable efforts to prevent smoking in prohibited areas by:

a. Approaching persons who fail to voluntarily comply with this Section and requesting that they extinguish their smoking material and refrain from smoking upon witnessing the same or upon the request from any person.

b. Any other means which may be deemed appropriate by said proprietor, including refusal of service to anyone smoking in a prohibited area.

2. No proprietor or other person in charge of premises regulated by this Section shall place, provide, or make available any ashtray or similar device used to facilitate smoking in an area where smoking is prohibited.

3. Any person who is smoking shall be refused admittance to a City transit bus.

4. Any person smoking on a City transit bus shall be required to leave such bus as ordered by the person in charge or their designee of the bus at the time, without reimbursement for any fee or charge which may have been paid for admittance to said bus.

5. Any person who desires to register a complaint under this Section may contact the Kenosha County Health Division.

6. 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.

7. The Kenosha County Health Division, Department of Neighborhood Services and Inspections, Fire Department, Police Department or Park Department shall have the power, whenever it may deem necessary, to enter a building, structure or property regulated under this Section to ascertain whether the premises are in compliance with this Section. The above listed departments may issue compliance orders

and citations pursuant to the provisions of this Section.

I. Additional Private Prohibitions. Nothing in this Ordinance shall prevent a proprietor or other person in charge of any place from prohibiting smoking in any indoor or outdoor area under their control.

J. Other Applicable Laws or Regulations. This Section shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other law or regulation.

K. Liberal Construction. This Ordinance shall be liberally construed to achieve the purposes set forth in this Section.

L. 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 provisions or applications not been included herein.

M. Penalty. Any person who violates any provision of this Section shall be required to forfeit not less than Fifty (\$50.00) Dollars, nor more than Five Hundred (\$500.00) Dollars. Each day of violation shall constitute a separate offense.

Section Two: This Ordinance shall become effective upon passage and publication.

ATTEST: _____ City Clerk

APPROVED: _____ Mayor Date: _____

Passed:
Published:

Drafted By:
PATRICK J. SHEEHAN,
City Attorney