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42-19

AN ORDINANCE AMENDING ARTICLE IV OF CHAPTER 7 OF THE MUNICIPAL CODE OF THE CITY OF APPLETON, RELATING TO SMOKE FREE INDOOR AIR.
(Board of Health – 05/15/2019)

The Common Council of the City of Appleton does ordain as follows:

Section 1: That Article IV of Chapter 7 of the Municipal Code of the City of Appleton, relating to smoke free indoor air, is hereby amended to read as follows:

ARTICLE IV. SMOKE FREE INDOOR AIR

Sec. 7-100. Smoking prohibited in certain areas.

(a) ***Definitions.***

Bed and breakfast establishment has the meaning set forth in Sec. 9-321.

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.

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.

Common areas of malls means those areas within a mall customarily accessible to patrons.

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.

Electronic smoking device means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component part, or accessory of such a device, whether or not sold separately. Electronic smoking device include any such device,

whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

Electronic smoking device paraphernalia means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of electronic smoking device.

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.

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

Health care facility has the meaning set forth in Sec. 155.01(6), Wis. Stats.

Hotel and motel has the meaning set forth in Sec. 9-341.

Incidental means so minor in significance and non-essential to the primary use, purpose or operation that if the incidental use is discontinued, the primary purpose would continue without harm.

Mall means an enclosed, indoor area containing common areas and discrete businesses primarily devoted to the retail sale of goods and services.

Medical services has the meaning set forth in Sec. 647.01(6), Wis. Stats.

Non-smoking means smoking is prohibited.

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.

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 residence means premises owned, rented or leased by temporary or permanent habitation.

Restaurant means an establishment defined in Sec. 9-236.

Retail electronic delivery device store means a business whose primary purpose is the sale of electronic delivery devices and accessories and in which the sale of other products is merely incidental.

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.

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 or plant.

Smoking means inhaling, exhaling, burning, or carrying any lighted, heated or ignited cigar, cigarettes, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.

Sports arena means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and indoor ice rinks, and bowling centers.

Tavern means any establishment whose primary purpose is the sale of fermented malt beverages or intoxicating liquors for consumption upon said premises and in which the sale of other products is merely incidental.

Tobacco product means a combustible cigarette, cigar, weed, plant or other combustible substance prepared in such a manner that it is suitable for smoking. This section shall not include smoke-free tobacco products.

Use tobacco products means to consume by burning, inhaling, exhaling or carrying a lighted cigarette, cigar, pipe, weed, plant, or any other combustible substance in any manner in any form.

(b) **Intent and purpose.**

- (1) The Common Council of the City of Appleton hereby finds that:
 - a. 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.
 - 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, elderly people, 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. 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 nonsmokers.
 - f. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort to nonsmokers.
- (2) This ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the City of Appleton, 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.

(c) ***Prohibition of smoking in indoor public places.*** Except as otherwise provided, it shall be unlawful for any person to smoke tobacco products in indoor public places, including, but not limited to, the following:

- (1) Elevators and enclosed stairwells, including those within City parking ramps.

- (2) Public forms of transportation, including, but not limited to, motor buses, taxicabs, or other public passenger vehicles.
- (3) Theaters, libraries, museums, auditoriums, sports arenas, convention halls which are used by or open to the public.
- (4) 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. Adm. Code.
- (5) Retail stores.
- (6) Health care facilities.
- (7) Waiting rooms, hallways, rooms of health care laboratories.
- (8) Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.
- (9) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political or social purposes.
- (10) Polling places.
- (11) Service lobbies, waiting areas, and the common areas open to the public of financial institutions, business and professional offices, and multi-unit commercial facilities.
- (12) Self-service laundry facilities.
- (13) Enclosed, indoor areas of restaurants.
- (14) Common areas of malls.
- (15) Public bus and transfer point shelters.
- (16) Common areas of building which contain three (3) or more rental units. Written Rental Agreements shall include reference to this subdivision.
- (17) City buildings.
- (18) City-owned or leased motor vehicles.

- (19) Sports arenas.
- (20) Taverns.
- (21) Common areas in bed and breakfast establishments, hotels and motels.

(d) ***Prohibition of smoking in outdoor areas.*** It shall be unlawful for any person to smoke or use tobacco products in the following outdoor areas.

- (1) Within twenty (20) feet from all entry ways of City-owned buildings and structures. In the Blue Ramp, smoking or tobacco product use is strictly prohibited except in specifically designated areas. Within the Red, Green, and Yellow Ramps, smoking or tobacco product use is strictly prohibited unless on the top floor of the ramp and at least twenty (20) feet from the entry way.

(Ord 59-17, §1, 9-12-17)

- (2) Outside of the Appleton Public Library, on the sidewalk between the main entrance and public parking lot, extending from Appleton Street to Oneida Street.
- (3) Outside of the Transit Center in the area, inclusive of sidewalk area, from the north edge of the Transit Center building to Washington Street and from Oneida Street to the west edge of the East Parking Ramp.
- (4) City parks as posted and so designated by the Parks, Recreation and Facilities Management Department. Additionally, smoking, vaping, and use of all electronic nicotine devices shall be prohibited within twenty (20) feet of playground equipment located within city parks as well as at the Appleton Skate Park located within Telulah Park.

(Ord 71-18, §1, 8-7-18)

(e) ***Prohibition of smoking in educational facilities.*** It shall be unlawful for any person to smoke or otherwise use any tobacco products:

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

(f) ***Prohibition of smoking in places of employment:***

- (1) It shall be unlawful for any person to smoke any tobacco products in all places of employment.
- (2) Every building which is a place of employment shall have at least one (1) entrance which is smokefree.

- (3) 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.
- (4) Within ninety (90) days of the effective date of this ordinance, each employer having a place of employment located within the City of Appleton shall adopt, implement and communicate written notice of the provisions of this ordinance to each employee.

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

- (1) Retail tobacco stores.
- (2) Any stage of any theater when used in connection with any theatrical performance and so noticed in the program.
- (3) 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 the rooms rented to guests are designated as smoking.
- (4) Retail electronic delivery device stores that are in existence on June 11, 2019 in which only persons age 21 or older are permitted to enter and in which only the sampling of an electronic delivery device product is allowed.

(h) **Enforcement.**

- (1) The Health Officer 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 (1) week shall be granted. Enforcement may be by citation, as permitted by Sec. 1-16.
- (2) 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:
 - a. 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
 - b. Refusing service to anyone smoking in a prohibited area.

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

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

(i) ***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.

(j) ***Violations and penalties.***

(1) General. Any person who violates any of the provisions of this section may be subject to a forfeiture of no more than one hundred 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.

(k) ***Clean indoor air.***

(1) Intent and construction. The City of Appleton 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. 7-100, 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.

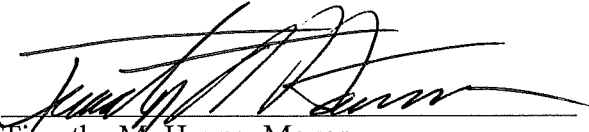
(2) Penalty. The penalties provided by Sec. 101.123, Wis. Stats. shall be in addition to the penalties provided for violation of Sec. 7-100 when a person has violated both laws. In addition to the penalties provided by Sec. 7-100 and Sec. 101.123 Wis. Stats., any City employee who violates any provision of Sec. 7-100 or Sec. 101.123. Wis. Stats., may also be subject to progressive discipline by his or her employer.

(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 provision or applications not been included herein.

(m) The provisions of this ordinance, in its entirety, shall become effective on July 1, 2005.
(Ord 35-05, §1, effective 7-1-05)

Section 2: This ordinance shall be in full force and effect from and after its passage and publication.

Dated: June 5, 2019



Timothy M. Hanna, Mayor
City Law A18-0936 / AMEND042



Kami Lynch, City Clerk

