

ORDINANCE #10-10

CREATING §8-3 DE PERE MUNICIPAL CODE
RELATING TO REGULATION OF SMOKING

THE COMMON COUNCIL OF THE CITY OF DE PERE DO ORDAIN AS

FOLLOWS:

Section 1: §8-3 De Pere Municipal Code (DPMC) is hereby repealed and recreated as follows:

§8-3, Smoking Regulations.

Wis. Stats. §101.123, as may be amended from time to time, is adopted by reference and incorporated as though fully set forth herein.

101.123 Smoking prohibited.

(1) Definitions. In this section:

(ab) "Assisted living facility" means a community-based residential facility, as defined in s. 50.01 (1g), a residential care apartment complex, as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

(abm) "Child care center" has the meaning given in s. 49.136 (1) (ad).

(ac) "Correctional facility" means any of the following:

1. A state prison, as defined or named in s. 302.01, except a correctional institution under s. 301.046 (1) or 301.048 (4) (b) if the institution is the prisoner's place of residence and no one is employed there to ensure the prisoner's incarceration.
2. A juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile correctional facility, as defined in s. 938.02 (10p), except a juvenile correctional facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5) if the facility is a private residence in which the juvenile is placed and no one is employed there to ensure that the juvenile remains in custody.
3. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under s. 302.30.

- (ae) "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.
- (aj) Notwithstanding s. 101.01 (5), "employment" means any trade, occupation, or process of manufacture or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged.
- (ak) "Enclosed place" means a structure or area that has all of the following:
 - 1. A roof.
 - 2. More than 2 substantial walls.
- (ar) "Immediate vicinity of the state capitol" means the area directly adjacent to the state capitol building, as determined by rule of the department of administration.
"Immediate vicinity of the state capitol" does not include any location that is more than six feet from the state capitol building.
- (b) "Inpatient health care facility" means a hospital, as defined in s. 50.33 (2), a county home established under s. 49.70, a county infirmary established under s. 49.72, a nursing home, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a Wisconsin veterans home under s. 45.50, or a treatment facility.
- (bn) "Lodging establishment" means any of the following:
 - 1. A bed and breakfast establishment, as defined in s. 254.61 (1).
 - 2. A hotel, as defined in s. 254.61 (3).
 - 3. A tourist rooming house, as defined in s. 254.61 (6).
- (d) "Person in charge" means the person, or his or her agent, who ultimately controls, governs or directs the activities aboard a public conveyance or at a location where smoking is prohibited or regulated under this section.
- (dj) Notwithstanding s. 101.01 (11), "place of employment" means any enclosed place that employees normally frequent during the course of employment, including 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.
- (dn) "Private club" means a facility used by an organization that limits its membership and is organized for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose.
- (e) "Public conveyance" means a mass transit vehicle as defined in s. 340.01 (28m), a school bus as defined in s. 340.01 (56), or any other device by which persons are transported, for hire, on a highway or by rail, water, air, or guidewire within this state, but does not include such a device while providing transportation in interstate commerce.
- (eg) "Public place" means any 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.
- (f) "Restaurant" means an establishment as defined in s. 254.61 (5).
- (g) "Retail establishment" means any store or shop in which retail sales is the principal business conducted.
- (gg) "Retail tobacco store" means a retail establishment that does not have a "Class B" intoxicating liquor license or a Class "B" fermented malt beverages license and that

generates 75 percent or more of its gross annual income from the retail sale of tobacco products and accessories.

- (h) "Smoking" means burning or holding, or inhaling or exhaling smoke from, any of the following items containing tobacco:
 - 1. A lighted cigar.
 - 2. A lighted cigarette.
 - 3. A lighted pipe.
 - 4. Any other lighted smoking equipment.
- (hm) "Sports arena" means any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held.
- (i) "State institution" means a mental health institute, as defined in s. 51.01 (12), a center for the developmentally disabled, as defined in s. 51.01 (3), or a secure mental health facility at which persons are committed under s. 980.06.
- (id) "Substantial wall" means a wall with an opening that may be used to allow air in from the outside that is less than 25 percent of the wall's surface area.
- (im) "Tavern" means an establishment, other than a restaurant, that holds a "Class B" intoxicating liquor license or Class "B" fermented malt beverages license.
- (in) "Tobacco bar" means a tavern that generates 15 percent or more of its annual gross income from the sale on the tavern premises, other than from a vending machine, of cigars and tobacco for pipes.
- (io) "Tobacco product" means any form of tobacco prepared in a manner suitable for smoking but not including a cigarette.
- (ip) "Treatment facility" means a publicly or privately operated inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill, or developmentally disabled persons.
- (j) "Type 1 juvenile correctional facility" has the meaning given in s. 938.02 (19).

(2) Prohibition against smoking.

- (a) Except as provided in sub. (3), no person may smoke in any of the following enclosed places:
 - 1g. The state capitol.
 - 1m. Residence halls or dormitories owned or operated by a college or university.
 - 1r. Child care centers.
 - 2. Educational facilities.
 - 3. Inpatient health care facilities.
 - 4. Theaters.
 - 5m. Correctional facilities.
 - 5t. State institutions.
 - 7. Restaurants.
 - 7m. Taverns.
 - 7r. Private clubs.
 - 8. Retail establishments.
 - 8d. Common areas of multiple-unit residential properties.
 - 8g. Lodging establishments.

8r. State, county, city, village, or town buildings.

9. All enclosed places, other than those listed in subs. 1g. to 8r. that are places of employment or that are public places.

- (d) No person may smoke at any of the following outdoor locations:
 - 1. In the immediate vicinity of the state capitol.
 - 2. Anywhere on the premises of a child care center when children who are receiving child care services are present.
 - 3. Anywhere on the grounds of a Type 1 juvenile correctional facility.
 - 4. A location that is 25 feet or less from a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System.
- (e) No person may smoke in any of the following:
 - 1. A sports arena.
 - 2. A bus shelter.
 - 3. A public conveyance.

(2m) Responsibility of persons in charge.

- (a) No person in charge may allow any person to smoke in violation of sub. (2) at a location that is under the control or direction of the person in charge.
- (b) A person in charge may not provide matches, ashtrays, or other equipment for smoking at the location where smoking is prohibited.
- (c) A person in charge shall make reasonable efforts to prohibit persons from smoking at a location where smoking is prohibited by doing all of the following:
 - 1. Posting signs setting forth the prohibition and providing other appropriate notification and information concerning the prohibition.
 - 2. Refusing to serve a person, if the person is smoking in a restaurant, tavern, or private club.
 - 3. Asking a person who is smoking to refrain from smoking and, if the person refuses to do so, asking the person to leave the location.
- (d) If a person refuses to leave a location after being requested to do so as provided in par. (c) 3., the person in charge shall immediately notify an appropriate law enforcement agency of the violation.
- (e) A person in charge may take measures in addition to those listed in pars. (b) and (c) to prevent persons from being exposed to others who are smoking or to further ensure compliance with this section.

(3) Exceptions.

The prohibition against smoking in sub. (2) (a) does not apply to the following:

- (h) A private residence.
- (i) A room used by only one person in an assisted living facility as his or her residence.
- (j) A room in an assisted living facility in which 2 or more persons reside if every person who lives in that room smokes and each of those persons has made a written

request to the person in charge of the assisted living facility to be placed in a room where smoking is allowed.

- (L) A retail tobacco store that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.
- (m) A tobacco bar that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.

(4m) Local authority.

This section does not limit the authority of any county, city, village or town to enact ordinances or of any school district to adopt policies that, complying with the purpose of this section, protect the health and comfort of the public. If a county, city, village, or town enacts an ordinance, or if a school district adopts a policy, regulating or prohibiting outside smoking in certain areas as authorized under this subsection, the ordinance may apply only to public property under the jurisdiction of the county, city, village, town, or school district. Such ordinance shall provide that the person in charge of a restaurant, tavern, private club, or retail establishment located in an area subject to the ordinance 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. Such ordinance may not define the term "reasonable distance" or set any specified measured distance as being a "reasonable distance."

(6) Uniform signs.

The department shall, by rule, specify uniform dimensions and other characteristics of the signs required under sub. (2m). These rules may not require the use of signs that are more expensive than is necessary to accomplish their purpose.

(7) Signs for state agencies.

The department shall arrange with the department of administration to have signs prepared and made available to state agencies for use in state facilities that set forth the prohibition against smoking.

(8) Penalties.

- (a) Any person who violates sub. (2) shall be subject to a forfeiture of not less than \$100 nor more than \$250 for each violation.
- (d) Except as provided in par. (dm) or (em), any person in charge who violates sub. (2m) (b) to (d) shall be subject to a forfeiture of \$100 for each violation.
 - (dm) For violations subject to the forfeiture under par. (d), if the person in charge has not previously received a warning notice for a violation of sub. (2m) (b) to (d), the law enforcement officer shall issue the person in charge a warning notice and may not issue a citation.

(em) No person in charge may be required under par. (d) to forfeit more than \$100 in total for all violations of sub. (2m) (b) to (d) occurring on a single day.

(9) Injunction.

Notwithstanding s. 165.60, state or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of this section.

Section 2: All ordinances, or parts of ordinances in conflict herewith are hereby repealed.

Section 3: This ordinance shall take effect on July 5, 2010.

Adopted by the Common Council of the City of De Pere, Wisconsin, this 1st day of June, 2010.

APPROVED:

Michael J. Walsh, Mayor

ATTEST:

Charlene M. Peterson, Clerk-Treasurer

Ayes: 7

Nays: 0