

ORDINANCE NO. 1803

ORDINANCE AMENDING SECTION 11.09 OF THE MUNICIPAL CODE

WHEREAS, the City of Kaukauna recognizes that smoking and tobacco products are hazardous to an individual's health and may affect the health of nonsmokers/smokers when they are involuntarily in the presence of smoking and electronic delivery device emissions; and,

WHEREAS, reliable scientific studies assessed by credible health officials have found that secondhand tobacco smoke and electronic delivery device aerosol emissions are a significant health hazard for children, elderly people, and individuals with cardiovascular disease or impaired respiratory function; and,

WHEREAS, air pollution caused by smoking *and electronic delivery devices* is an offensive annoyance and irritant; and,

WHEREAS, smoking and electronic delivery device emissions results in serious and significant physical discomfort to nonsmokers; and,

WHEREAS, the City of Kaukauna does recognize that regulation of such products, their use and emissions from such use is required for the purpose of protecting the public health, safety, comfort and general welfare of the people of the City of Kaukauna. ; and,

WHEREAS, the matter having come before the Legislative Committee, and same having been recommended for approval to the City Council;

NOW THEREFORE, the Common Council of the City of Kaukauna does ordain as follows:

SECTION 11.09 of the Kaukauna Municipal Code is hereby repealed and recreated to read as follows:

Sec. 11.09. - Regulation of cigarettes, e-cigarettes, electronic delivery devices, tobacco products and smoking.

(1) DEFINITIONS. In this section:

- (a)** "Assisted living facility" means a community-based residential facility, as defined in Wis. Stat. § 50.01 (1g), a residential care apartment complex, as defined in Wis. Stat. § 50.01 (6d), or an adult family home, as defined in Wis. Stat. § 50.01 (1) (b).
- (ab)** "Child care center" has the meaning given in Wis. Stat. § 49.136 (1) (ad).
- (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.

- (ag) "Electronic Delivery Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. "Electronic Delivery Device" shall include any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
- (aj) Notwithstanding Wis. Stats. §§ 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 municipal buildings" means the area directly adjacent to a municipal building. "Immediate vicinity of the municipal buildings" does not include any location that is more than six feet from a municipal building.
- (b) "Inpatient health care facility" means a hospital, as defined in Wis. Stat. § 50.33 (2), a county home established under Wis. Stats. §§ 49.70, a county infirmary established under Wis. Stats. §§ 49.72, a nursing home, as defined in Wis. Stat. § 50.01 (3), a hospice, as defined in Wis. Stat. § 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 Wis. Stat. § 97.01 (1g).
 2. A hotel, as defined in Wis. Stat. § 97.01 (7).
 3. A tourist rooming house, as defined in Wis. Stat. § 97.01 (15k).
- (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 Wis. Stats. §§ 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 Wis. Stat. § 340.01 (28m), a school bus as defined in Wis. Stat. § 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" has the meaning given in Wis. Stat. § 97.01 (14g).
- (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 inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" shall include the use of an electronic delivery device, which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking or delivery device, electronic or otherwise, for the purpose of circumventing the prohibition of smoking in this Section.
- (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 Wis. Stat. § 51.01 (12), a center for the developmentally disabled, as defined in Wis. Stat. § 51.01 (3), or a secure mental health facility at which persons are committed under Wis. Stats. §§ 980.06.
- (id)** "Substantial wall" means a wall with no opening or with an opening that either does not allow air in from the outside or 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 Wis. Stat. § 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:
 1. Municipal buildings.
 2. Child care centers.
 3. Educational facilities.
 4. Inpatient health care facilities.
 5. Theaters.
 6. Restaurants.
 7. Taverns.
 8. Private clubs.
 9. Retail establishments.
 10. Common areas of multiple-unit residential properties.
 11. Lodging establishments.
 12. State, county, city, village, or town buildings.
 13. All enclosed places, other than those listed in subds. 1. to 13, 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 a municipal building.
 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.
- (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.

(4) 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.

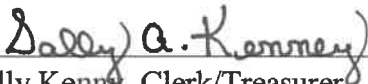
(5) *Severability*. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if any application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect other sections of this Code.

This ordinance shall be in full force and effect from and after its adoption and publication.

APPROVED:



Anthony J. Penterman, Mayor

ATTEST: 

Sally Kenney, Clerk/Treasurer

Adopted: 01/21/20

Published: 01/29/20

