

ORDINANCE NO. 11-3-9

**AN ORDINANCE REGARDING
REGULATION OF SMOKING**

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

SECTION I. REPEAL AND ADOPTION OF PROVISIONS.

Section 11-3-9 of the Owen Code of Ordinances is repealed and recreated to read as follows:

Sec. 11-3-9 Regulation of Smoking.

- (a) **Purpose.** This Section is adopted for the purposes of:
- (1) **Public Health Protection.** Protecting the public health, general welfare and safety of the people of the City of Owen;
 - (2) **Assistance With Regulation Compliance.** Assisting business owners, managers and operators in complying with State law and municipal ordinance requirements; and
 - (3) **Clarifying/Expansion of State Statute.** Clarifying and expanding upon Wisconsin's Smoking Ban Law enacted by 2009 Act 12 under authority creating Sections 101.123(2)(e) and 101.123(4m), Wis. Stats., as created created by the Act.
- (b) **Findings of Fact.** It is recognized that smoking of tobacco-related products is hazardous to the health of both smokers and nonsmokers who are exposed to smoking.
- (1) **Scientific Studies.** Reliable scientific studies, including studies conducted by the Surgeon General of the United States, having shown that breathing secondhand smoke (i.e. sidestream smoke) is a significant health hazard to nonsmokers, particularly to children, the elderly, individuals with cardiovascular disease and individuals with impaired respiratory functions, including asthmatics and those individuals with obstructive airway disease.
 - (2) **Health Hazards Related to Smoking.** Numerous scientific studies have found that tobacco smoke is a major contributor to indoor pollution. Related health hazards induced by breathing secondhand smoke include bronchoconstriction, lung cancer, bronchospasm,

respiratory infection, decreased exercise tolerance, and decreased respiratory function.

- (3) **Air Pollution.** Smoking-caused air pollution is an offensive annoyance and irritant, and smoking results in significant and serious physical discomfort to nonsmokers.
- (c) **Definitions.** As used in this Section, the definitions of Section 101.123(1), Wis. Stats., are hereby adopted and incorporated herein by reference, except as set forth below. In this Section:
- (1) **City Buildings.** All City-owned or operated buildings and those portions of buildings leased or operated by the City of Owen.
 - (2) **Enclosed Indoor Area.** All space between a floor and a ceiling that is bound by walls, doors, or windows, whether open or closed, covering more than fifty percent (50%) of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge screen with an eighteen (18) by sixteen (16) mesh count is not a wall for purposes of this Section.
- (d) **Smoking Prohibition.** No person may smoke in any of the following:
- (1) **Statutory Prohibitions; Adoption of Statute.** No person may smoke in any place prohibited by Section 101.123(2), Wis. Stats. Except as expressly modified by this Section, the provisions of Section 101.123, Wis. Stats., are expressly adopted and incorporated herein by reference.
 - (2) **Enclosed Indoor Areas.** No person may smoke in any enclosed indoor area, as defined in Subsection (c)(2) above, in any place prohibited by Section 101.123(3), Wis. Stats.
 - (3) **City Buildings/Enclosed Equipment.** No person may smoke in any City building or enclosed equipment owned, leased or rented by the City of Owen.
 - (4) **School Events at City Parks and Grounds.** No person may smoke while on any City park or grounds while such facilities are being used for a school-related event by the Owen-Withee Public School District.
- (e) **Outside Areas.** Any person managing or in charge of a tavern, restaurant, retail establishment or private club that is subject to this Section may designate an outside area that is a reasonable distance from the entrance to said establishment where employees, customers and/or other persons associated with the establishment may smoke. The designated outside smoking area shall contain receptacles for trash and cigarette butts and shall be maintained in a neat and orderly manner. All refuse and cigarette butts shall be placed in proper receptacles.
- (f) **Exceptions.** The prohibitions against smoking shall not apply to those places or areas set forth in Section 101.123(3), Wis. Stats.
- (g) **Inspection; Enforcement.**
- (1) **Inspection and Enforcement Authorities.** Law enforcement officers, public health officials and City building inspectors shall have the authority to enter any premises subject to this Section and the smoking

ban under State law to ascertain whether the premises are in compliance with the requirements of this Section, and such officials shall take appropriate enforcement action pursuant to this Section and Section 101.123, Wis. Stats.

(2) **Penalties.** The following penalties shall be applicable for violations of this Section:

- a. Any person who violates Subsections (d) or (e) of this Section shall be subject to those penalties and forfeitures prescribed in Section 1-1-7.
- b. Any person in charge of premises who violates Section 101.123 (2m), Wis. Stats., shall be subject to those penalties prescribed in Section 1-1-7, except that the forfeiture shall be One Hundred Dollars (\$100.00). Prior to issuing a citation to a person in charge for a violation of this Section, enforcement officials shall first issue a written warning notice; once a person in charge has been issued such a warning notice, he/she may be issued citations for subsequent violations of this Section.
- c. In addition to applicable forfeitures, any person who violates the provisions of this Section shall pay the costs of prosecution, except for the drug enforcement and crime laboratories surcharge under Section 165.755(1)(a), Wis. Stats. Each day of violation shall constitute a separate offense.

(h) **Interpretation.** Whenever the provisions of the Wisconsin Statutes and this Section conflict, the provisions of this Section shall apply.

SECTION II. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION III. EFFECTIVE DATE.

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 13th day of July, 2010.

CITY OF OWEN, WISCONSIN

Timothy F. Siggew
Mayor

Servie Ernest
Clerk-Treasurer

Published and/or Posted: July 21, 2010