

**AGENDA # \_\_\_\_\_**

**CITY OF MADISON, WISCONSIN**

A SECOND SUBSTITUTE  
ORDINANCE \_\_\_\_\_

**amending Sections 23.05(1), (3)(c), (3)(m), and (3)(p), repealing Section 23.05(3)(s), creating Sections 23.05(3)(s), (3)(t), (3)(u), (7)(j) and amending Sections 23.05(7), (8)(b), and (11), and amending Section 1.08(3)(a)** of the Madison General Ordinances to create new and delete unnecessary definitions; to modify various portions of the regulations which prohibit smoking in public places and smoking in places of employment; to eliminate several exceptions to the smoking restrictions; to clarify rules for signage; to modify the penalties for violation of the section; and to increase the bail deposit amount.

PRESENTED January 20, 2004  
REFERRED Public Health Commission (3/1/04); Economic Development Commission (2/4/04); Common Council Meeting, 3/16/04  
REREFERRED PHC, EDC (3/16/04)

REPORTED BACK 3-16-04; 4-20-04

ADOPTED X POF \_\_\_\_\_  
RULES SUSPENDED \_\_\_\_\_  
PUBLIC HEARING \_\_\_\_\_

\* \* \* \*

MAYOR SIGNED 4-26-04  
PUBLISHED 5-11-04

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APPROVAL OF FISCAL NOTE IS NEEDED  
BY THE COMPTROLLER'S OFFICE  
Approved By  
\_\_\_\_\_  
Comptroller's Office

Drafted by: Marci A. Paulsen  
Assistant City Attorney  
  
Date: April 8, 2004  
  
Fiscal Note: Minor increase in General Fund revenues.  
  
SPONSORS: Aids. Holtzman, MacCubbin, Sloan, Webber, Markle, Konkel, Onken, Golden, and Mayor Cieslewicz

\* \* \* \*

2<sup>nd</sup> SUBST. ORD. NUMBER 13604  
ID NUMBER 35354

The Common Council of the City of Madison do hereby ordain as follows:

1. Subsection (1) entitled "Definitions" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is amended by adding, deleting or amending therein the following:

"Bed and breakfast establishment " has the meaning set forth in sec. 254.61(3), Wis. Stats. This definition shall become effective July 1, 2005.

"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. This definition shall become effective July 1, 2005.

"Full Service Bar" means a counterlike object with accessory seating for customers, over which fermented malt beverages or intoxicating liquors are sold for consumption upon the premises.

**Approved as to form:**

/s/  
**James M. Voss, Acting City Attorney**

A service bar without accessory seating for customers shall not be considered a full service bar. This definition shall be repealed on July 1, 2005.

“Full Service Bar Area” means the full service bar and the area immediately adjacent to the full service bar in which the service of food is incidental to the consumption of alcoholic beverages. Immediately adjacent means the area enclosed by walls, rails, ropes or a reasonable distance from the bar itself with identifiable barriers. This definition shall be repealed on July 1, 2005.

“Private Club” means churches, religious, fraternal, youth or patriotic organizations, service clubs or civic organizations which prepare and serve or sell meals to members and guests only. This definition shall be repealed on July 1, 2005.

“Private Club” means 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, which 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. This definition shall become effective July 1, 2005.

“Service Bar” means an area without accessory seating for customers, at which fermented malt beverages or intoxicating liquors are prepared for service with meals. This definition shall be repealed on July 1, 2005.

“Sports Arena” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and indoor ice rinks, and bowling centers. This definition shall become effective on July 1, 2005.

2. Effective July 1, 2005, Subdivision (c) of Subsection (3) entitled “Prohibition of Smoking in Public Places” of Section 23.05 entitled “Smoking Prohibited in Certain Areas” of the Madison General Ordinances is amended to read as follows:

“(c) Theatres, libraries, museums, auditoriums, ~~and sports arenas~~, convention halls, which are used by or open to the public.”

3. Effective July 1, 2005, Subdivision (m) of Subsection (3) entitled “Prohibition of Smoking in Public Places” of Section 23.05 entitled “Smoking Prohibited in Certain Areas” of the Madison General Ordinances is amended to read as follows:

“(m) Enclosed, indoor areas of restaurants.

1. ~~Hardship. As a result of complying with this ordinance, a restaurant which realizes a loss of gross receipts greater than ten percent (10%) for the three (3) months immediately following the effective date of this ordinance when compared to the average for the same three (3) months of the preceding three (3) years, may apply to the City of Madison Comptroller for a one time temporary hardship exemption. Upon granting of the hardship exemption, the restaurant shall be exempt from the requirements of this ordinance for a period of twelve (12) months. This hardship provision shall be automatically repealed on January 2, 2006.~~
2. ~~To obtain a hardship exemption, application to the Comptroller must be made within one hundred twenty (120) days after this ordinance becomes effective by submitting the following:~~

- a. ~~Written proof subscribed and sworn to by an accountant certifying that the gross receipts have declined by ten percent (10%) for the time period indicated above.~~
- b. ~~Written proof subscribed and sworn to by an accountant certifying that the restaurant has complied with this ordinance and that the ten percent (10%) decline in gross receipts is the direct result of complying with this ordinance and not a result of other factors unrelated to this ordinance.~~
- 3. ~~The Comptroller shall make its determination regarding hardship within sixty (60) days of receipt of a hardship application or the application will be deemed granted.~~
- 4. ~~This hardship provision does not apply to any restaurant not in existence as of the effective date of this ordinance.~~

4. Effective July 1, 2005, Subdivision (p) of Subsection (3) entitled "Prohibition of Smoking in Public Places" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is amended to read as follows:

"(p) Common areas of buildings which contain three or more rental units. ~~Common areas are 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.~~ Written Rental Agreements shall include reference to this subdivision. Subsection (9)(b) shall not apply to this subdivision."

5. Subdivision (s) of Subsection (3) entitled "Prohibition of Smoking in Public Places" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is hereby repealed.

6. Effective July 1, 2005, New Subdivision (s) of Subsection (3) entitled "Prohibition of Smoking in Public Places" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is created to read as follows:

"(s) Sports arenas."

7. Effective July 1, 2005, Subdivision (t) of Subsection (3) entitled "Prohibition of Smoking in Public Places" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is created to read as follows:

"(t) Taverns."

8. Effective July 1, 2005, Subdivision (u) of Subsection (3) entitled "Prohibition of Smoking in Public Places" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is created to read as follows:

"(u) Common areas in bed and breakfast establishments, hotels and motels."

9. Effective July 1, 2005, Subsection (7) entitled "Exceptions" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is hereby amended to read as follows.

- "(7) Exceptions. The following areas shall not be subject to the smoking restrictions of this section:
- (a) ~~Designated Madison Police Department interview rooms as long as at least one interview room at each Madison Police Department location remains nonsmoking at all times.~~
  - (b) ~~Park shelters when not enclosed for the winter.~~

~~(e)~~ Privately owned and separately ventilated meeting and conference rooms when used for private functions such as weddings, parties, testimonial dinners and similar functions.

~~(d)~~(a) A smoking room in a restaurant which is separately ventilated from each and every other area of the restaurant.

1. The restaurant must provide the Madison Public Health Department and the Building Inspection Department with plans of the ventilation system and a certification from a certified HVAC engineer that the system meets the requirements specified in the State Building Code and Wisconsin Administrative Code ch. Comm 64. The plans will be reviewed by the Madison Public Health Department and Madison Building Inspection Department. The smoking room must be completely separated from the rest of the restaurant by solid walls of rigid construction that run from floor to ceiling with a separate entrance that has a solid door that effectively closes. This door is to remain closed at all times except when patrons or employees enter or leave the room.
2. This subsection is applicable only to separately ventilated rooms in existence as of the effective date of this ordinance. Any restaurant which has made a good-faith effort, as evidenced by plans and specifications and work performed, to provide a separately ventilated smoking room and that room does not currently meet the standards specified in the State Building Code and Wisconsin Administrative Code ch. Comm 64, will have thirty (30) days after this ordinance is adopted to bring the existing ventilation system into compliance with the requirements of this subsection. It will be the Public Health Department's determination, based upon the work performed and plans and specifications, whether a good faith effort was made to provide a separately ventilated smoking room for purposes of this subsection.
3. After the effective date of this ordinance no separately ventilated rooms may be created. This exception is repealed on January 2, 2006.
4. Plan Review Fee. At the time a restaurant submits ventilation plans to the Madison Public Health Department for review, the restaurant shall submit a \$75.00 (seventy-five dollar) plan review fee payable to the City of Madison Treasurer.

~~(e)~~(b) Retail tobacco stores.

~~(f)~~ Taverns. Upon request of the Health Department or City Clerk's office, owners of establishments claimed to be taverns shall substantiate the percentage of their gross receipts devoted to food and alcohol beverage sales.

~~(g)~~(c) Private clubs. Private clubs shall provide a nonsmoking section for customers and otherwise comply with Sec. 101.123, Wis. Stats., the Clean Indoor Air Act. This exception shall not apply to any organization established to avoid compliance with this ordinance.

~~(h)~~(d) Any stage of any theater when used in connection with any theatrical performance and so noticed in the program.

~~(i)~~(e) Bed and breakfast, hotels and motels rooms that are rented to guests and are designated as smoking rooms; provided, that not more than twenty-five percent (25%) of rooms rented to guests are designated as smoking. with the following conditions:

- ~~1. Restaurants in hotels and motels shall be subject to (3)(m).~~
2. In meeting and conference rooms in hotels and motels in which ten (10) or more persons gather for educational, business, professional, union, recreational, political or social purposes, no person shall smoke or use tobacco products unless all persons present consent to waive these prohibitions.
- 3.

10. Subdivision (j) of Subsection (7) entitled "Exceptions" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is hereby created to read as follows.

- (j) Full Service Bar Areas subject to the following:
1. Prior to January 25, 2003, the restaurant submitted the required plans designating the full service bar area. The Health Department reviewed these plans and approved the designated full service bar area.
  2. The restaurant has appropriate signage designating the full service bar area and where smoking is permitted.
  3. This subdivision is repealed on July 1, 2005.

11. Effective July 1, 2005, Subdivision (b) of Subsection (8) entitled "Signage" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is hereby amended to read as follows:

"(b) Restaurants and taverns shall post, in a conspicuous place at each entrance normally used by the public, a sign not smaller than eleven by eight and one-half inches (11" x 8 1/2") indicating whether they permit smoking or whether they are smokefree. Each sign and the language contained therein shall be clearly visible from a distance of at least ten (10) feet. The signage lettering shall be in bold and the lettering shall be a minimum of two (2) inches in height. Each sign shall contain the phone number for the City health department and the non-emergency number for the City police department."

12. Effective July 1, 2005, Subsection (11) entitled "Violations and Penalties" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is hereby amended to read as follows:

"(11) Violations and Penalties.

(a) General. Unless otherwise specified, any person who violates any of the provisions of this section may be subject to a forfeiture of not less than ten dollars (\$10) nor more than one hundred and 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.

(b) ~~Restaurant. Any customer of a restaurant who violates Subsection (3)(m) may be required to forfeit not less than fifty dollars (\$50) nor more than one hundred fifty dollars (\$150). For a violation committed within twelve (12) months of a previous violation, a customer may be required to forfeit not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300)."~~

13. Effective July 1, 2005, Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by amending or deleting therein the following:

<u>"Offense</u>	<u>Ord. No.</u>	<u>Deposit</u>
Smoking prohibited in certain areas.	23.05	<del>\$10</del> <u>\$100</u> <u>\$500, 2nd and subsequent in 1 yr</u>
<del>Smoking prohibited in restaurants.</del>	<del>23.05(3)(m)</del>	<del>\$50, 1st</del> <del>\$100, 2nd, subsequent in 1 yr</del>

EDITOR'S NOTE:

Section 23.05(3)(s) currently reads as follows:

- “(s) Full Service Bar Areas subject to the following exemptions:
1. A restaurant whose sale of alcohol beverages accounts for less than thirty-three percent (33%) of the restaurant’s gross receipts of the most recent licensing year may allow smoking within the full service bar area(s) of their establishment until January 2, 2005, after which time such establishment may no longer be exempt from the provisions of subsection (3) of this ordinance.
  2. A restaurant whose sale of alcohol beverages accounts for thirty-three percent (33%) to fifty percent (50%) of the restaurant’s gross receipts for the most recent licensing year may allow smoking within the full service bar area(s) of their establishment until January 2, 2006, after which time such establishment may no longer be exempt from the provisions of Subsection (3) of this ordinance.
  3. These exemptions do not apply to any restaurant not in existence at the time this ordinance is adopted.
  4. In order to be eligible for an exemption under Subsection (3)(s), a restaurant must submit to the City of Madison Comptroller a written audit subscribed and sworn to by the preparer confirming that the gross sales of alcohol beverages during the preceding full calendar year after the effective date of this ordinance met the percentage requirements of Subsection (3)(s)1. or (3)(s)2. This verification must be submitted to the Comptroller within thirty (30) days after adoption of this ordinance. No smoking shall be permitted in any establishment failing to timely provide such verification.”