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2 Introduced by

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Prepared by

3
4 PSHS, CEDA, Finance & Parks
5 Referred to

June 13, 2006
Date

6
7 ORDINANCE 2006-O-12

8
9 AN ORDINANCE TO REPEAL AND REENACT FITCHBURG ORD. SECTION 14.10:
10 THE SMOKE-FREE FITCHBURG ORDINANCE

11
12 **WHEREAS**, everyone has the right to breathe clean air; and

13
14 **WHEREAS**, smoking tobacco has been proven to cause sickness and death; and

15
16 **WHEREAS**, smoking in enclosed areas causes sickness and death to innocent bystanders
17 (secondhand smoke); and

18
19 **WHEREAS**, it is the duty of the Common Council of City of Fitchburg to act for the health,
20 safety, and welfare of the public;

21
22 The Common Council of the City of Fitchburg ordains as follows:

23
24 **Section 1.** The Fitchburg Code of Ordinances is modified as follows:

- 25
26 1. Ord. Chapter 7, Exhibit A is modified to delete the word "Public" in the title of Sec.
27 14.10 in two places (under "Building Inspector" and under "Fire Chief" *et al.*).
28
29 2. Ord. Chapter 7, Exhibit B is modified to delete the word "Public" in the title of Sec.
30 14.10 (under Chapter 14) and to change the penalties for first offense to \$125 and
31 subsequent offenses to \$500.
32
33 3. Ord. Sec. 14.10 is hereby repealed and replaced by:

34
35 **14.10 SMOKING PROHIBITED IN CERTAIN AREAS**

36 (1) **Definitions.**

- 37 (a) **Bed and breakfast establishment** has the meaning set forth in Sec.
38 254.61(1), Wis. Stats.
39
40 (b) **Chewing tobacco** means snuff, snuff flour, cavendish; plug and twist
41 tobacco; fine cut and other chewing tobaccos; refuse scraps, clippings,
42 cuttings and sweepings of tobacco and other kinds and forms of tobacco
43 prepared in such manner as to be suitable for chewing.
44
45 (c) **Childcare facility** means any state licensed or county certified child care
46 facility including, but not limited to licensed family day care or licensed

- 47 group day care centers, licensed day camps, certified school-age programs
48 and Head Start programs.
- 49
- 50 (d) **Cigarette** means any roll of tobacco wrapped in paper or any substance
51 other than chewing tobacco or tobacco products.
- 52
- 53 (e) **City buildings** means all City-owned buildings and those portions of
54 buildings leased and operated by the City.
- 55
- 56 (f) **Common areas of buildings** means all areas not part of a tenant's leased
57 premises, including but not limited to lobbies, community rooms,
58 hallways, laundry rooms, stairwells, elevators, enclosed parking facilities,
59 pool areas, and restrooms contiguous thereto.
- 60
- 61 (g) **Common areas of malls** means those areas within a mall customarily
62 accessible to patrons.
- 63
- 64 (h) **Educational facility** means any building used principally for educational
65 purposes in which a school is located or a course of instruction or training
66 program is offered that has been approved or licensed by a state agency or
67 board.
- 68
- 69 (i) **Employee** means any person who is employed by any employer for direct
70 or indirect monetary wages or profit, including those full time, part-time,
71 temporary or contracted for from a third party; employee also means any
72 person who serves as a volunteer for a business or nonprofit entity.
- 73
- 74 (j) **Employer** means any person, partnership, limited liability company,
75 corporation, or other entity, including a public or non-profit entity who
76 employs the services of one (1) or more individual persons.
- 77
- 78 (k) **Enclosed area** means all space between a floor and ceiling that is
79 enclosed on all sides by solid walls or windows (exclusive of door or
80 passage ways) that extend from floor to ceiling, including all space therein
81 screened by partitions that do not extend to the ceiling, are not solid, or are
82 landscaping or similar structures.
- 83
- 84 (l) **Entrance** means a doorway and adjacent area that gives direct access to a
85 building from a contiguous street, plaza, sidewalk or parking lot.
- 86
- 87 (m) **Health care facility** has the meaning set forth in Sec. 155.01(6), Wis.
88 Stats.
- 89
- 90 (n) **Hotel and motel** have the meaning set forth in Sec. 254.61(3), Wis. Stats.
- 91

- 92 (o) **Mall** means an enclosed, indoor area containing common areas and
93 discrete businesses primarily devoted to the retail sale of goods and
94 services.
95
- 96 (p) **Medical services** has the meaning set forth in Sec. 647.01(6), Wis. Stats.
97
- 98 (q) **Nonsmoking** means smoking is prohibited.
99
- 100 (r) **Person in charge** means the person who ultimately controls, governs or
101 directs the activities aboard a public conveyance or within or at a place
102 where smoking is regulated under this section, regardless of the person's
103 status as owner or lessee.
104
- 105 (s) **Place of employment** means an enclosed area controlled by the employer
106 that employees normally frequent during the course of employment,
107 including, but not limited to, work areas, employee lounges and restrooms,
108 conference and classrooms, employee cafeterias and hallways. A private
109 residence is not a 'place of employment' within the meaning of this
110 ordinance unless used as a childcare facility.
111
- 112 (t) **Private residence** means premises owned, rented or leased for temporary
113 or permanent habitation.
114
- 115 (u) **Public place** means any enclosed area to which the public is invited or in
116 which the public is permitted. A private residence is not a public place.
117
- 118 (v) **Restaurant** means an establishment defined in Sec. 254.61(5), Wis. Stats.
119 This includes restaurants within a mall and adjacent seating.
120
- 121 (w) **Room** means a space within a building completely enclosed with walls,
122 partitions, floor and ceiling, except for openings for light, ventilation,
123 ingress and egress.
124
- 125 (x) **School board** means the school board in charge of the public schools,
126 grades K-12, of a school district.
127
- 128 (y) **Smokefree** means absence from the ambient air of the smoke by-product
129 from the burning, inhaling, exhaling, or carrying of a lighted cigarette,
130 cigar, pipe, weed, plant, or other combustible substance in any manner in
131 any form.
132
- 133 (z) **Smoking** means to smoke or carry a lighted pipe, cigar, cigarette or
134 tobacco-related products in any form.
135

- 136 (aa) **Sports arena** means sports pavilions, stadiums, gymnasiums, health spas,
137 boxing arenas, swimming pools, roller and indoor ice rinks, and bowling
138 centers.
139
- 140 (bb) **Tavern** means any establishment in which fermented malt beverages or
141 intoxicating liquors are sold for consumption upon said premises and
142 whose sale of alcohol beverages accounts for more than fifty percent
143 (50%) of the establishment's gross receipts of the most recent licensing
144 year.
145
- 146 (cc) **Tobacco product** means cigars; cheroots; stogies; periques; granulated,
147 plug cut, crimp cut, ready-rubbed and other smoking tobacco; shorts;
148 refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds
149 and forms of tobacco prepared in such a manner, as to be suitable for
150 smoking in a pipe or otherwise smoking; but tobacco product does not
151 include cigarettes or chewing tobacco.
152
- 153 (dd) **Use tobacco products** means to consume by means other than smoking
154 including, but not limited to, the chewing, spitting, swallowing, snorting,
155 inhaling or ingesting of any tobacco product.
156

157 (2) **Intent and Purpose.**

- 158 (a) The Common Council of the City of Fitchburg hereby finds that:
159
- 160 1. Smoking of cigarettes and using tobacco products is hazardous to
161 an individual's health and may affect the health of nonsmokers
162 when they are involuntarily in the presence of smoking.
 - 163 2. Numerous scientific studies have found that tobacco smoke is a
164 major contributor to indoor air pollution.
165
 - 166 3. Reliable scientific studies, including studies conducted by the
167 Surgeon General of the United States, have shown that breathing
168 sidestream or secondhand smoke is a significant health hazard to
169 nonsmokers; particularly to children, elderly people, individuals
170 with cardiovascular disease, and individuals with impaired
171 respiratory function, including asthmatics and those with
172 obstructive airway disease.
173
 - 174 4. Health hazards induced by breathing sidestream or secondhand
175 smoke include lung cancer, respiratory infection, decreased
176 respiratory function, decreased exercise tolerance,
177 bronchoconstriction and bronchospasm.
178
 - 179 5. Reliable scientific studies assessed by the California
180 Environmental Protection Agency have found that sidestream and

181 secondhand tobacco smoke is a leading cause of premature death
182 and disability among non-smokers.

183
184 6. Air pollution caused by smoking is an offensive annoyance and
185 irritant. Smoking results in serious and significant physical
186 discomfort to nonsmokers.

187
188 (b) This ordinance is adopted for the purpose of protecting the public health,
189 safety, comfort and general welfare of the people of the City of Fitchburg,
190 especially recognizing the rights of nonsmokers who constitute a majority
191 of the population; educating citizens affected by this ordinance; and
192 assisting owners, operators; and managers in maintaining compliance.

193
194 (3) **Prohibition of Smoking in Public Places.** Except as otherwise provided, it shall
195 be unlawful for any person to smoke or use tobacco products in public places,
196 including but not limited to the following:

197 (a) Elevators and enclosed stairwells of City parking ramps

198
199 (b) Public forms of transportation, including but not limited to motor buses,
200 taxicabs, or other public passenger vehicles

201
202 (c) Theatres, libraries, museums, auditoriums, and convention halls that are
203 used by or open to the public

204
205 (d) Any childcare facility
206 Incorporated herein by reference are the following Wisconsin statutory
207 and administrative code sections and any amendments or renumbering
208 thereof: Sec. 101.123(1)(ad) and (2)(bm), Wis. Stats; Secs. HFS 45.02(4),
209 45.06(8)(g), 46.03(13), 46.06(2)(h), and 46.08(2)(c), Wis. Admin. Code.

210
211 (e) Retail stores

212
213 (f) Health care facilities

214
215 (g) Waiting rooms, hallways, rooms of health care laboratories

216
217 (h) Waiting rooms, hallways, rooms in offices of any physician, dentist,
218 psychologist, chiropractor, optometrist or optician, or other medical
219 services provider

220
221 (i) Meeting and conference rooms in which people gather for educational,
222 business, professional, union, governmental, recreational, political or
223 social purposes

224
225 (j) Polling places
226

- 227 (k) Service lobbies, waiting areas, and the common areas open to the public of
 228 financial institutions, business and professional offices, and multi-unit
 229 commercial facilities
 230
 231 (l) Self-service laundry facilities
 232
 233 (m) Enclosed, indoor areas of restaurants
 234
 235 (n) Common areas of malls
 236
 237 (o) Public bus and transfer point shelters
 238
 239 (p) Common areas of buildings that contain three (3) or more rental units.
 240 Written Rental Agreements shall include reference to this subdivision.
 241 Subparagraph (9)(b) shall not apply to this subdivision.
 242
 243 (q) City buildings
 244
 245 (r) City-owned or leased motor vehicles
 246
 247 (s) Sports arenas
 248
 249 (t) Taverns
 250
 251 (u) Bed and breakfast establishments, hotels and motels
 252
 253 (4) **Prohibition of Smoking in Outdoor Areas.** It shall be unlawful for any person
 254 to smoke or use tobacco products in the following outdoor areas.
 255 (a) Within twenty-five (25) feet of entrances to City buildings
 256
 257 (b) City park areas as posted and so designated by the Park Commission
 258
 259 (5) **Prohibition of Smoking and Chewing Tobacco in Educational Facilities.** It
 260 shall be unlawful for any person to smoke or otherwise use any tobacco products
 261 or chewing tobacco:
 262 (a) In educational facilities and in or upon other premises owned, rented by or
 263 under the control of a school board
 264
 265 (b) In or upon premises of the Madison Area Technical College, including all
 266 buildings owned or operated by the district for the primary purpose of
 267 vocational, technical or adult education
 268
 269 This includes outdoor areas between the public sidewalks and buildings.
 270
 271 (6) **Prohibition of Smoking in Places of Employment.**

- 272 (a) It shall be unlawful for any person to smoke or otherwise use any tobacco
273 products in places of employment.
274
- 275 (b) Every building that is a place of employment shall have at least one
276 entrance that is smokefree. For buildings with fewer than four (4)
277 entrances, no more than one entrance may be designated as a smoking
278 entrance. For buildings with four (4) or more entrances, no more than
279 twenty-five percent (25%) of all entrances may be designated as a
280 smoking entrance.
281
- 282 (c) Each employer, operator, manager, lessee or other person having control
283 of the place of employment shall make reasonable efforts to ensure a
284 smokefree workplace for all employees and visitors.
285
- 286 (d) Within ninety (90) days of the effective date of this section, each employer
287 having a place of employment located within the City of Fitchburg shall
288 adopt, implement and communicate written notice of the provisions of this
289 ordinance to each employee.
290
- 291 (7) **Exceptions.** The following areas shall not be subject to the smoking restrictions
292 of this section:
293 (a) Any stage of any theater when used in connection with any theatrical
294 performance and so noticed in the program
295
- 296 (8) **Signage.**
297 (a) Signs prohibiting, prohibiting except in designated areas, or permitting
298 smoking, as the case may be, shall be posted conspicuously at every
299 building, structure, or public place entrance and in prominent locations
300 throughout the premises by the proprietor, employer or other person in
301 charge of each building, structure or public place specified in Paragraphs
302 3-6. Signs in outdoor areas designated as nonsmoking shall be placed so
303 that the public has reasonable notice of the prohibition. Signs shall
304 reference "Fitchburg Ord. 14.10".
305
- 306 (b) Restaurants and taverns shall post, in a conspicuous place at each entrance
307 normally used by the public, a sign not smaller than eleven by eight and
308 one-half (11" x 8 ½") inches indicating they are smokefree. Each sign and
309 the language contained therein shall be clearly visible from a distance of at
310 least ten (10) feet. The signage lettering shall be in bold and the lettering
311 shall be a minimum of two (2) inches in height. Each sign shall contain the
312 phone number for the Building Inspection Department and the non-
313 emergency number for the Police Department. Signs shall reference
314 "Fitchburg Ord. 14.10".
315

316 (c) It shall be unlawful for any person to remove, deface, or destroy any sign
317 required by this Section, or to smoke in any place where any such sign is
318 posted.
319

320 (9) **Enforcement.**

321 (a) The Building Inspector, Fire Inspector, and the Chief of Police or their
322 designees, shall have the power, whenever they may deem it necessary, to
323 enter upon the premises named in this section to ascertain whether the
324 premises are in compliance with this ordinance. A compliance time of not
325 less than one week shall be granted. Enforcement may be by citation, as
326 permitted by Sec. 7.03, or through issuance of a summons and complaint.
327

328 (b) The proprietor, employer or other person in charge of premises regulated
329 hereunder, upon either observing or being advised of a violation, shall
330 make reasonable efforts to prevent smoking in prohibited areas by:

331 1. Approaching smokers who fail to voluntarily comply with this
332 section and requesting that they extinguish their cigarette or
333 tobacco product and refrain from smoking, or
334

335 2. Refusing service to anyone smoking in a prohibited area.
336

337 (c) Any person who desires to register a complaint under this section may
338 contact the Building Inspection Department or the Police Department.
339

340 (d) Ashtrays, cigarette vending machines and other smoking paraphernalia
341 shall not be located in areas where smoking is prohibited.
342

343 (10) **Retaliation Prohibited.** No person shall discharge, refuse to hire, refuse to serve
344 or in any other manner retaliate against any employee, applicant for employment,
345 customer, service user, business patron or any other person because that person
346 exercises any rights afforded by this section.
347

348 (11) **Clean Indoor Air.**

349 (a) **Intent and Construction.** The City of Fitchburg finds that it is in the
350 interests of the health, safety and welfare of the community to adopt by
351 reference Sec. 101.123, Wis. Stats., and subsequent amendments,
352 additions and recodifications. It is the intent of the Common Council that
353 where there may be conflict between Sec. 101.123, Wis. Stats. and Sec.
354 14.10, that the section most restrictive of smoking and tobacco use shall
355 apply. This ordinance shall not be construed to mean that progressive
356 discipline of City employees for violations of laws, rules, and regulations
357 is only authorized where explicitly provided by ordinance.
358

359 (b) **Penalty.** The penalties provided by Sec. 101.123, Wis. Stats. shall be in
360 addition to the penalties provided for violation of Sec. 14.10 when a
361 person has violated both laws. In addition to the penalties provided by Sec.

362 14.10 and Sec. 101.123, Wis. Stats., any City employee who violates any
363 provision of Sec. 14.10 or Sec. 101.123, Wis. Stats., may also be subject
364 to progressive discipline by his or her employer.
365

366 (12) **Adopted Date.** This Sec. 14.10 was duly adopted by the City of Fitchburg
367 Common Council on June 27, 2006.
368

369 (13) **Effective Date.** This Sec. 14.10 shall take effect on August 1, 2006.
370

371 And

372 **WHEREAS,** the hazards of secondhand smoke extend wherever tobacco is smoked; and
373

374 **WHEREAS,** the governments of Dane County, the State of Wisconsin, and the United States
375 have been reluctant to enact strong protections against secondhand smoke; and
376

377 **WHEREAS,** diverse local regulations of a single issue make it difficult for the public and
378 businesses to comply;
379

380
381 **Section 2.** The Common Council of the City of Fitchburg urges other Dane County towns
382 and municipalities, the Dane County Board of Supervisors, and the Legislature of
383 the State of Wisconsin to adopt ordinances or statutes that are modeled on
384 Fitchburg Ord. Sec. 14.10, or more restrictive of smoking, and that do not
385 preempt stronger local regulations, in order to protect the public health and create
386 a uniform regulatory environment.
387

388 The City Clerk shall provide copies of this ordinance to the Chair of the Dane
389 County Board of Supervisors, the President of the Dane County Towns
390 Association, the President of the Dane County Cities and Villages Association,
391 and Fitchburg's representatives in the Wisconsin Senate and Assembly for their
392 consideration.
393

394 **Section 3.** This ordinance and changes to Code of Ordinances shall take effect August 1,
395 2006.
396

397 Adopted this _____ day of _____, 20____.
398
399

400 _____
401 Ruth M. Becker, City Clerk
402

403 _____
404 Thomas Clauder, Mayor
405

406
407 Published: