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2 Introduced by

Prepared by

3 _____
4 _____
5 Referred to

Date

6
7 ORDINANCE 2006-O-26

8
9 THE SMOKE-FREE FITCHBURG ORDINANCE

10
11 The Common Council of the City of Fitchburg ordains as follows:

12
13 **Section 1.** The Fitchburg Code of Ordinances is modified as follows:

- 14
15 1. Ord. Chapter 7, Exhibit A is modified to delete the word "Public" in the title of Sec.
16 14.10 in two places (under "Building Inspector" and under "Fire Chief" *et al.*).
17
18 2. Ord. Chapter 7, Exhibit B is modified to delete the word "Public" in the title of Sec.
19 14.10 (under Chapter 14) and to change the penalties for first offense to \$125 and
20 subsequent offenses to \$500.
21
22 3. Ord. Sec. 14.10 is hereby repealed and replaced by:

23
24 **14.10 SMOKING PROHIBITED IN CERTAIN AREAS**

25 (1) **Intent and Purpose.**

26 (a) The Common Council of the City of Fitchburg hereby finds that:

- 27 1. The 2006 U.S. Surgeon General's Report, *The Health*
28 *Consequences of Involuntary Exposure to Tobacco Smoke*, has
29 concluded that (1) secondhand smoke exposure causes disease and
30 premature death in children and adults who do not smoke; (2)
31 children exposed to secondhand smoke are at an increased risk for
32 sudden infant death syndrome (SIDS), acute respiratory problems,
33 ear infections, and asthma attacks, and that smoking by parents
34 causes respiratory symptoms and slows lung growth in their
35 children; (3) exposure of adults to secondhand smoke has
36 immediate adverse effects on the cardiovascular system and causes
37 coronary heart disease and lung cancer; (4) there is no risk-free
38 level of exposure to secondhand smoke; (5) establishing smokefree
39 workplaces is the only effective way to ensure that secondhand
40 smoke exposure does not occur in the workplace, because
41 ventilation and other air cleaning technologies cannot completely
42 control for exposure of nonsmokers to secondhand smoke; and (6)
43 evidence from peer-reviewed studies shows that smokefree
44 policies and laws do not have an adverse economic impact on the
45 hospitality industry. (U.S. Department of Health and Human
46 Services. *The Health Consequences of Involuntary Exposure to*

47 *Tobacco Smoke: A Report of the Surgeon General.* U.S.
48 Department of Health and Human Services, Centers for Disease
49 Control and Prevention, National Center for Chronic Disease
50 Prevention and Health Promotion, Office on Smoking and Health,
51 2006.)
52

- 53 2. Numerous studies have found that tobacco smoke is a major
54 contributor to indoor air pollution, and that breathing secondhand
55 smoke (also known as environmental tobacco smoke) is a cause of
56 disease in healthy nonsmokers, including heart disease, stroke,
57 respiratory disease, and lung cancer. The National Cancer Institute
58 determined in 1999 that secondhand smoke is responsible for the
59 early deaths of approximately 53,000 Americans annually.
60 (National Cancer Institute (NCI), "Health effects of exposure to
61 environmental tobacco smoke: the report of the California
62 Environmental Protection Agency. Smoking and Tobacco Control
63 Monograph 10," *Bethesda, MD: National Institutes of Health, NCI,*
64 *August 1999.*)
65
- 66 3. The Public Health Service's National Toxicology Program (NTP)
67 has listed secondhand smoke as a known carcinogen.
68 (Environmental Health Information Service, "Environmental
69 tobacco smoke: first listed in the Ninth Report on Carcinogens,"
70 *U.S. Department of Health and Human Services, Public Health*
71 *Service, NTP, 2000; reaffirmed by the NTP in subsequent reports*
72 *on carcinogens, 2003, 2005.*)
73
- 74 4. Based on a finding by the California Environmental Protection
75 Agency in 2005, the California Air Resources Board has
76 determined that secondhand smoke is a toxic air contaminant,
77 finding that exposure to secondhand smoke has serious health
78 effects, including low birth-weight babies; SIDS; increased
79 respiratory infections in children; asthma in children and adults;
80 lung cancer, sinus cancer, and breast cancer in younger,
81 premenopausal women; heart disease; and death. (Appendix II
82 Findings of the Scientific Review Panel: Findings of the Scientific
83 Review Panel on Proposed Identification of Environmental
84 Tobacco Smoke as a Toxic Air Contaminant as adopted at the
85 Panel's June 24, 2005 Meeting," *California Air Resources Board*
86 *(ARB), September 12, 2005.*)
87
- 88 5. There is no safe level of exposure to secondhand smoke.
89 (Environmental Protection Agency (EPA), "Respiratory health
90 effects of passive smoking: lung cancer and other disorders, the
91 report of the U.S. Environmental Protection Agency. Smoking and
92 Tobacco Control Monograph 4," *Bethesda, MD: National*

93 *Institutes of Health, NCI; EPA, August 1993; California*
94 *Environmental Protection Agency, "Health Effects of Exposure to*
95 *Environmental Tobacco Smoke," 1997; California Air Resources*
96 *Board, "Proposed identification of environmental tobacco smoke*
97 *as a toxic air contaminant," Sacramento: California Environmental*
98 *Protection Agency (Cal-EPA), Air Resources Board, Stationary*
99 *Source Division, Air Quality Measures Branch, Office of*
100 *Environmental Health Hazard Assessment (OEHHA), September*
101 *29, 2005.)*

102
103 6. Secondhand smoke is particularly hazardous to elderly people,
104 individuals with cardiovascular disease, and individuals with
105 impaired respiratory function, including asthmatics and those with
106 obstructive airway disease. (California Environmental Protection
107 Agency (Cal EPA), "Health effects of exposure to environmental
108 tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.)
109 The Americans With Disabilities Act, which requires that disabled
110 persons have access to public places and workplaces, deems
111 impaired respiratory function to be a disability. (Daynard, R.A.,
112 "Environmental tobacco smoke and the Americans with
113 Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

114
115 7. Given the fact that there is no safe level of exposure to secondhand
116 smoke, the American Society of Heating, Refrigerating and Air
117 Conditioning Engineers (ASHRAE) bases its ventilation standards
118 on totally smokefree environments. ASHRAE has determined that
119 there is currently no air filtration or other ventilation technology
120 that can completely eliminate all the carcinogenic components in
121 secondhand smoke and the health risks caused by secondhand
122 smoke exposure, and recommends that indoor environments be
123 smokefree in their entirety. (Samet, J.; Bohanon, Jr., H.R.; Coultas,
124 D.B.; Houston, T.P.; Persily, A.K.; Schoen, L.J.; Spengler, J.;
125 Callaway, C.A., "ASHRAE position document on environmental
126 tobacco smoke," *American Society of Heating, Refrigerating and*
127 *Air-Conditioning Engineers (ASHRAE), 2005.)*

- 128
129 (b) Accordingly, the Common Council of the City of Fitchburg finds and
130 declares that the purposes of this ordinance are:
- 131 1. to protect the public health and welfare by prohibiting smoking in
132 public places and places of employment; and
 - 133
134 2. to guarantee the right of nonsmokers to breathe smokefree air, and
135 to recognize that the need to breathe smokefree air shall have
136 priority over the desire to smoke.
- 137

138 (c) This ordinance shall be liberally construed so as to further its purpose. It
139 shall not be interpreted or construed to permit smoking where smoking is
140 otherwise restricted by applicable laws.

141
142 (d) If any provision, clause, sentence, or paragraph of this ordinance or the
143 application thereof to any person or circumstances shall be held invalid,
144 that invalidity shall not affect the other provisions of this ordinance which
145 can be given effect without the invalid provision or application, and to this
146 end the provisions of this ordinance are declared to be severable.

147
148 (2) **Definitions.**

149 (a) **Bed and breakfast establishment** has the meaning set forth in Sec.
150 254.61(1), Wis. Stats.

151
152 (b) **Childcare facility** means any state licensed or county certified child care
153 facility including, but not limited to licensed family day care or licensed
154 group day care centers, licensed day camps, certified school-age programs
155 and Head Start programs.

156
157 (c) **Cigarette** means any roll of tobacco wrapped in paper or in any other
158 substance, but does not include tobacco products, as defined in this
159 subsection.

160
161 (d) **City buildings** means all City-owned buildings and those portions of
162 buildings leased and operated by the City.

163
164 (e) **Common areas of buildings** means all areas not part of a tenant's leased
165 premises, including but not limited to lobbies, community rooms,
166 hallways, laundry rooms, stairwells, elevators, enclosed parking facilities,
167 pool areas, and restrooms contiguous thereto.

168
169 (f) **Common areas of malls** means those areas within a mall customarily
170 accessible to patrons.

171
172 (g) **Educational facility** means any building used principally for educational
173 purposes in which a school is located or a course of instruction or training
174 program is offered that has been approved or licensed by a state agency or
175 board.

176
177 (h) **Employee** means any person who is employed by any employer for direct
178 or indirect monetary wages or profit, including those who are employed
179 full time, part time, or on a temporary basis or contracted from a third
180 party. Employee also means any person who serves as a volunteer for a
181 business or nonprofit entity.

182

- 183 (i) **Employer** means any person, partnership, limited liability company,
184 corporation, or other entity, including a public or non-profit entity who
185 employs the services of one (1) or more individual persons.
186
- 187 (j) **Enclosed area** means all space between a floor and ceiling that is
188 bordered on all sides by solid walls (exclusive of windows, doors,
189 ventilation openings, or passage ways) that extend from floor to ceiling,
190 including all space therein screened by partitions that do not extend to the
191 ceiling, are not solid, or are landscaping or similar structures.
192
- 193 (k) **Entrance** means a doorway and adjacent area that gives direct access to a
194 building from a contiguous street, plaza, sidewalk or parking lot.
195
- 196 (l) **Food** means a raw, cooked, or processed edible substance or ingredient
197 used or intended for use or for sale in whole or in part for human
198 consumption. It does not include ice, beverages or chewing gum.
199
- 200 (m) **Health care facility** has the meaning set forth in Sec. 155.01(6), Wis.
201 Stats.
202
- 203 (n) **Hotel and motel** have the meaning set forth in Sec. 254.61(3), Wis. Stats.
204
- 205 (o) **Mall** means an enclosed, indoor area containing common areas and
206 discrete businesses primarily devoted to the retail sale of goods and
207 services.
208
- 209 (p) **Medical services** has the meaning set forth in Sec. 647.01(6), Wis. Stats.
210
- 211 (q) **Nonsmoking** means smoking is prohibited.
212
- 213 (r) **Person in charge** means the person who ultimately controls, governs or
214 directs the activities aboard a public conveyance or within or at a place
215 where smoking is regulated under this section, regardless of the person's
216 status as owner or lessee.
217
- 218 (s) **Place of employment** means an enclosed area controlled by the employer
219 that employees normally frequent during the course of employment,
220 including, but not limited to, work areas, employee lounges, restrooms,
221 conference rooms, classrooms, employee cafeterias, and hallways. A
222 private residence is not a 'place of employment' within the meaning of this
223 ordinance unless used as a childcare, adult day care, or health care facility.
224
- 225 (t) **Private residence** means premises owned, rented or leased for temporary
226 or permanent habitation.
227

- 228 (u) **Public place** means an enclosed area to which the public is invited or in
229 which the public is permitted, including but not limited to, banks,
230 educational facilities, gaming facilities, health care facilities, hotels and
231 motels, laundromats, public transportation facilities, reception areas,
232 restaurants, retail food production and marketing establishments, retail
233 service establishments, retail stores, shopping malls, sports arenas,
234 taverns, theaters, and waiting rooms. A private residence is not a "public
235 place" unless it is used as a child care, adult day care, or health care
236 facility.
237
- 238 (v) **Restaurant** means an establishment defined in Sec. 254.61(5), Wis. Stats.
239 This includes restaurants within a mall and seating areas adjacent to
240 restaurants, as well as any bar (or tavern) areas within the restaurant.
241
- 242 (w) **Room** means an enclosed area within a building.
243
- 244 (x) **Smokefree** means absence from the ambient air of the smoke by-product
245 from the burning, inhaling, exhaling, or carrying of a lighted cigarette,
246 cigar, pipe, weed, or plant.
247
- 248 (y) **Smoking** means to smoke or carry a lighted pipe, cigar, cigarette or
249 tobacco-related products in any form.
250
- 251 (z) **Sports arena** means sports pavilions, stadiums, gymnasiums, health spas,
252 boxing arenas, swimming pools, roller and indoor ice rinks, and bowling
253 centers.
254
- 255 (aa) **Tavern** means any establishment in which fermented malt beverages or
256 intoxicating liquors are sold for consumption upon said premises and
257 whose sale of alcohol beverages accounts for more than fifty percent
258 (50%) of the establishment's gross receipts of the most recent licensing
259 year.
260
- 261 (bb) **Tobacco bar** means a tavern that generates ten percent (10%) or more of
262 its total annual gross income from the on-site sale of tobacco products, not
263 including any sales from vending machines.
264
- 265 (cc) **Tobacco product** means cigars; cheroots; stogies; periques; granulated,
266 plug cut, crimp cut, ready-rubbed and other smoking tobacco; shorts;
267 refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds
268 and forms of tobacco prepared in such a manner, as to be suitable for
269 smoking in a pipe or otherwise smoking; but tobacco product does not
270 include cigarettes or chewing tobacco.
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- (3) **Prohibition of Smoking in Public Places.** Except as otherwise provided, it shall be unlawful for any person to smoke in public places, including but not limited to the following:
- (a) Elevators and enclosed stairwells of City parking ramps
 - (b) Public forms of transportation, including but not limited to motor buses, taxicabs, or other public passenger vehicles
 - (c) Theatres, libraries, museums, auditoriums, and convention halls that are used by or open to the public
 - (d) Childcare facilities
Incorporated herein by reference are the following Wisconsin statutory and administrative code sections and any amendments or renumbering thereof: Sec. 101.123(1)(ad) and (2)(bm), Wis. Stats; Secs. HFS 45.02(4), 45.06(8)(g), 46.03(13), 46.06(2)(h), and 46.08(2)(c), Wis. Admin. Code.
 - (e) Retail stores
 - (f) Health care facilities
 - (g) Waiting rooms, hallways, rooms of health care laboratories
 - (h) Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider
 - (i) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political or social purposes
 - (j) Polling places
 - (k) Service lobbies, waiting areas, and the common areas open to the public of financial institutions, business and professional offices, and multi-unit commercial facilities
 - (l) Self-service laundry facilities
 - (m) Enclosed areas of restaurants
 - (n) Common areas of malls
 - (o) Public bus and transfer point shelters

317 (p) Common areas of buildings that contain three (3) or more rental units.
318 Written Rental Agreements shall include reference to this subdivision.
319 Subparagraph (7)(b) shall not apply to this subdivision.

320
321 (q) City buildings

322
323 (r) City-owned or leased motor vehicles

324
325 (s) Sports arenas

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327 (t) Taverns

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329 (u) Bed and breakfast establishments, hotels and motels

330
331 (v) Educational facilities

332
333 (4) **Prohibition of Smoking in Places of Employment.**

334 (a) It shall be unlawful for any person to smoke in places of employment.

335
336 (b) Every building that is a place of employment shall have at least one
337 entrance that is smokefree. For buildings with fewer than four (4)
338 entrances, no more than one entrance may be designated as a smoking
339 entrance. For buildings with four (4) or more entrances, no more than
340 twenty-five percent (25%) of all entrances may be designated as a
341 smoking entrance.

342
343 (5) **Exceptions.** The following areas shall not be subject to the smoking restrictions
344 of this section:

345 (a) Any stage of any theater when used in connection with any theatrical
346 performance and so noticed in the program

347
348 (b) Private residences, except when used as a childcare, adult day care, or
349 health care facility

350
351 (c) Hotel and motel rooms that are rented to guests and are designated as
352 smoking rooms; provided, however, that not more than twenty percent
353 (20%) of rooms rented to guests in a hotel or motel may be so designated.
354 All smoking rooms on the same floor must be contiguous and smoke from
355 these rooms must not infiltrate into areas where smoking is prohibited
356 under the provisions of this ordinance. The status of rooms as smoking or
357 nonsmoking may not be changed, except to add additional nonsmoking
358 rooms.

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360 (d) Tobacco bars may qualify for a limited exemption to allow smoking of
361 cigars only, subject to the following:

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1. Smoking of cigarettes and other tobacco products and service of food are not permitted;
 2. The tobacco bar was in existence on January 1, 2004;
 3. The tobacco bar has remained at the same physical location since January 1, 2004;
 4. Ten percent (10%) or more of the tobacco bar's total gross income from the 2005 fiscal year was from the on-site sale of tobacco products, not including any sales from vending machines;
 5. To qualify for this exemption the owner must file written proof subscribed and sworn to by a Certified Public Accountant certifying the tobacco bar's total gross income and the percentage of tobacco product sales from the tobacco bar. The City Clerk or City Attorney may request further information, including an audit of the tobacco bar's records, if there is reason to believe the financial data may not be accurate;
 6. This exemption is only in effect from the date of initial application until June 30, and then from July 1 to June 30, of each year. An application for this exemption may be made annually by April 15th of the application year. To qualify for an annual exemption the tobacco bar must apply and provide written proof subscribed to and sworn by a Certified Public Accountant certifying that ten percent (10%) or more of the tobacco bar's total gross income from the preceding year was from the on-site sale of tobacco products, not including any sales from vending machines; and
 7. Tobacco bars shall display signs that state that cigars may be smoked in the tobacco bar, that cigarettes and other tobacco products may not be smoked in the tobacco bar, and warning of the dangers of secondhand smoke, in language and form approved by the Public Safety and Human Services Committee.

399 (6) **Signage.**

- 400 (a) "No Smoking" signs or the international "No Smoking" symbol
401 (consisting of a pictorial representation of a burning cigarette enclosed in a
402 red circle with a red bar across it) shall be clearly and conspicuously
403 posted in every public place and place of employment where smoking is
404 prohibited by this ordinance, by the person in charge of that place. Signs
405 shall reference "Fitchburg Ord. 14.10".
406

407 (b) Every public place and place of employment where smoking is prohibited
408 by this ordinance shall have posted at every entrance a conspicuous sign
409 clearly stating that smoking is prohibited.

410
411 (c) It shall be unlawful for any person to remove, deface, or destroy any sign
412 required by this Section, or to smoke in any place where any such sign is
413 posted.

414
415 (7) **Enforcement.**

416 (a) The Building Inspector, Fire Inspector, and Chief of Police, and their
417 designees, shall enforce this ordinance. Enforcement may be by citation,
418 as permitted by Sec. 7.03, or through issuance of a summons and
419 complaint.

420
421 (b) The person in charge of a regulated premises, upon becoming aware of a
422 violation of this ordinance on those premises, shall ask any person who
423 smokes in a prohibited area to extinguish the cigarette or tobacco product
424 and to refrain from smoking. If the person smoking does not refrain from
425 smoking after being asked to do so, the person in charge shall ask the
426 person smoking to leave the premises. If the person smoking refuses to
427 leave, the person in charge shall contact the appropriate law enforcement
428 authorities.

429
430 (c) Any person who desires to register a complaint under this section may
431 contact the Building Inspection Department or the Police Department.

432
433 (d) All ashtrays shall be removed from any area where smoking is prohibited
434 by this ordinance by the person in charge.

435
436 (8) **Retaliation Prohibited.** No person shall discharge, refuse to hire, refuse to serve
437 or in any other manner retaliate against any employee, applicant for employment,
438 customer, service user, business patron or any other person because that person
439 exercises any rights afforded by this section.

440
441 (9) **Clean Indoor Air.**

442 (a) **Intent and Construction.** The City of Fitchburg finds that it is in the
443 interests of the health, safety and welfare of the community to adopt by
444 reference Sec. 101.123, Wis. Stats., and subsequent amendments,
445 additions and recodifications. It is the intent of the Common Council that
446 where there may be conflict between Sec. 101.123, Wis. Stats. and Sec.
447 14.10, that the section most restrictive of smoking and tobacco use shall
448 apply. This ordinance shall not be construed to mean that progressive
449 discipline of City employees for violations of laws, rules, and regulations
450 is only authorized where explicitly provided by ordinance.

451

452 (b) **Penalty.** The penalties provided by Sec. 101.123, Wis. Stats. shall be in
453 addition to the penalties provided for violation of Sec. 14.10 when a
454 person has violated both laws. In addition to the penalties provided by Sec.
455 14.10 and Sec. 101.123, Wis. Stats., any City employee who violates any
456 provision of Sec. 14.10 or Sec. 101.123, Wis. Stats., may also be subject
457 to progressive discipline by his or her employer.
458

459 (10) **Public Education.** The City of Fitchburg shall take reasonable measures to
460 ensure the function of a continuing program to explain and clarify the purposes
461 and requirements of this ordinance to citizens affected by it, and to guide owners,
462 operators, and managers in their compliance with it. The program may include
463 publication of a brochure for affected businesses and individuals explaining the
464 provisions of this ordinance.
465

466 (11) **Adopted Date.** This Sec. 14.10 was duly adopted by the City of Fitchburg
467 Common Council on _____.
468

469 (12) **Effective Date.** This Sec. 14.10 shall take effect on July 14, 2007.
470

471 **Section 2.** This ordinance and changes to Code of Ordinances shall take effect July 14, 2007.
472

473
474 Adopted this _____ day of _____, 20____.
475

476 _____
477 Ruth M. Becker, City Clerk
478

479 _____
480 Thomas Clauder, Mayor
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483 Published: