

ORDINANCE NO. 67-10

POLK COUNTY SMOKE-FREE AIR ORDINANCE

The County Board of Supervisors of the County of Polk does ordain the Polk County Smoke Free Air Ordinance, as follows:

Section. 1 Purpose.

Polk County Government recognizes that smoking of cigarettes and tobacco products is hazardous to an individual's health and may affect the health of nonsmokers/smokers when they are involuntarily in the presence of smoking. Scientific studies have demonstrated that secondhand tobacco smoke is a significant health hazard for children, the elderly, and individuals with cardiovascular disease or impaired respiratory function. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort to nonsmokers. This Ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of Polk County.

Section. 2 Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Assisted living facility means a community – based residential facility, as defined in s. 50.01 (1g), a residential care apartment complex, as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

Child care facility/Daycare Center shall mean any licensed or certified child care facility, including, but not limited to licensed family day care or licensed group day care centers, licensed day camps, certified school-age programs, and Head Start programs, operated by a child care provider that provides care and supervision for 4 or more children under 7 years of age for less than 24 Hours a day. (s. 49.136 (1) (d)).

Correctional facility means any of the following: 1. A state prison, as defined or named in s. 302.01, except a correctional institution under s. 301.046 (1) or 301.048 (4) (b) if the institution is the prisoner's place of residence and no one is employed there to ensure the prisoner's incarceration. 2. A juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile correctional facility, as defined in s. 938.02 (10p), except a juvenile correctional facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5) if the facility is a private residence in which the juvenile is placed and no one is employed there to ensure that the juvenile remains in custody. 3. A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under s. 302.30.

Cigarette has the meaning set forth in sec. 139.30(1), Wis. Stats.

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.

Enclosed space shall mean all space between a floor and ceiling that is bounded by walls, doors, or windows, whether open or closed, covering more than 25 percent 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 18 by 16 mesh count is not a wall.

Entrance shall mean a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk, or parking lot.

Lodging establishment means any of the following:

1. A bed and breakfast establishment, as defined in s. 254.61 (1).
2. A hotel and motel, as defined in s. 254.61 (3).
3. A tourist rooming house, as defined in s. 254.61 (6).

Person in charge means the person who ultimately controls, governs or directs the activities aboard a public conveyance or within or at a place where smoking is regulated under this section, regardless of the person's status as owner or lessee.

Place of employment means any enclosed place that employees normally frequent during the course of employment, including, but not limited to, common work areas, private office, 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, an employee cafeteria and all other enclosed facilities.

Private club shall mean 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.

Private residence shall mean a premise owned, rented, or leased for temporary or permanent habitation.

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.

Reasonable Distance means a distance away from entry ways in which smoke may not infiltrate back into the establishment.

Restaurant means an establishment defined in Sec. 94.113.

Retail establishment means any store or shop in which retail sales is the principal business conducted.

Smoking means burning or holding or inhaling or exhaling smoke from, any of the following items containing tobacco:

1. A lighted cigar.
2. A lighted cigarette.
3. A lighted pipe.
4. Any other lighted smoking equipment.

Sports arena means any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other place where spectator sporting events are held.

Tavern means any establishment, other than a restaurant, that holds a “Class B” intoxication liquor license or Class “B” fermented malt beverages license.

Tobacco product means any form of tobacco prepared in a manner suitable for smoking but not including a cigarette.

Section. 3. Smoking prohibited in public places.

- (1) Except as otherwise provided, no person may smoke in any of the following spaces, including, but not limited to:
 - (a) Any enclosed space of a public place or place of employment.
 - (b) Areas in Polk County parks and recreational areas as posted and so designated by the Forestry Department and/or Polk County Parks Maintenance Department including, but not limited to, the fairground buildings & dugouts, hockey arena, playground and swing set areas, and park restrooms.
 - (c) Sports arenas, meaning sports pavilions, stadiums, gymnasiums, health spas, swimming pools, roller and indoor ice rinks, bowling centers, and other similar places where the public assembles to engage in physical exercise, participate in athletic event competition, or witness a sporting or other event, including the seating areas .
 - (d) Child care facilities/daycare centers.

- (e) Within the outdoor premises of a child care facilities/daycare center when children who are receiving daycare services are present.
 - (f) County-owned or leased motor vehicles.
 - (g) Within a reasonable distance from all entry ways of public buildings and structures, including, but not limited to, entry ways, park pavilions, etc., except open air facilities.
 - (h) Public forms of transportation, including, but not limited to, motor buses, taxicabs, or other public passenger vehicles.
 - (i) Correctional facilities.
 - (j) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, and other multiple-unit residential facilities.
 - (k) Self-service laundry facilities.
 - (l) Bars, restaurants, taverns, nightclubs, private clubs and cocktail lounges.
- (2) The prohibition of smoking under sub. (1) does not apply to any of the following places:
- (a) A private residence.
 - (b) A room used by only one person in an assisted living facility as his or her residence.
 - (c) A room in an assisted living facility in which 2 or more people reside if every person who lives in that room smokes and each of those people 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.
 - (d) A retail tobacco store that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.
 - (e) A tobacco bar that is in existence since June 3, 2009, and which only the smoking of cigars and pipes is allowed.

Section. 4. Signs Required

- (1) Signs prohibiting smoking shall be posted conspicuously at every public entrance by the proprietor or other person in charge of each building or structure. Signs in specified outdoor areas designated as non-smoking shall be placed so that the

general public has reasonable notice of the prohibition. Signs shall contain the international symbol for no smoking and the word "No Smoking". Each sign and the language contained therein shall be clearly visible from a distance of at least ten (10) feet.

- (2) It shall be unlawful for any person to remove, deface, or destroy any legally required "No Smoking" sign.

Section. 5. Responsibility of person in charge.

No person in charge may allow any person to smoke in violation of sections 3 at a location that is under the control or direction of the person in charge.

- (1) A person in charge may not provide matches, ashtrays, or other equipment for smoking at the location where smoking is prohibited.
- (2) A person in charge shall make reasonable effort to prohibit persons from smoking at a location where smoking is prohibited by doing all of the following:
 - (a) Posting signs setting forth the prohibition and providing other appropriate notification and information concerning the prohibition.
 - (b) Refusing to serve a person, if the person is smoking in a restaurant, tavern, or private club.
 - (c) Asking a person who is smoking to refrain from smoking and, if the person refused to do so, asking the person to leave the location.
- (3) If a person refuses to leave a location after being requested to do so as provided in paragraph (c), the person in charge shall immediately notify the local law enforcement agency of the violation.
- (4) The person in charge of a restaurant, tavern, private club, or retail establishment may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern private club, or retail establishment where customers, employees, or persons associated with the restaurant, tavern, private club, or retail establishment may smoke.

Section. 6. Enforcement.

- (1) Designated Enforcement Officer: The Polk County Sheriff or designee are designated enforcement officers for purposes of this ordinance. Said designated enforcement officers shall have the power, whenever they may deem it necessary, to enter upon the premises named in this section to ascertain whether the premises are in compliance with this ordinance. The above-listed departments may issue compliance orders and citations pursuant to the provisions of this code.

- (2) The proprietor, employer or other person in charge of premises regulated hereunder, upon either observing or being advised of a violation, shall make reasonable efforts to prevent smoking in prohibited areas by:
 - (a) Approaching smokers who fail to voluntarily comply with this section and requesting that they extinguish their cigarette or tobacco product and refrain from smoking.
 - (b) Refusing service to anyone smoking in a prohibited area.
- (3) Any person who desires to register a complaint under this section may contact the Polk County Sheriff's Department, local law enforcement agencies, or the Polk County Health Department.

Section. 7 Violation and Forfeiture.

- (1) **WARNING:** With regards to violations of Sections 4, 5 or 6 of this ordinance, a designated enforcement officer shall issue a warning notice prior to issuance of a citation or taking further enforcement action. With respect to violation of Section 3 of this ordinance, a designated enforcement officer may issue a citation or take other enforcement action without the issuance of such a warning notice.
- (2) **FORFEITURES:**
 - (a) An individual who violates Sec. 3 shall be subject to a forfeiture of not less than \$100, plus court costs, nor more than \$250, plus court costs, for each violation.
 - (b) Any person in charge who violates Sec. 3 shall be subject to a forfeiture of \$100, plus court costs, per day. No person in charge may be required to forfeit more than \$100, plus court costs, in total for all violations of Section 5 or 6 that may occur on a single day.
 - (c) A proprietor, employer or other person in charge of premises regulated hereunder who has violated this ordinance shall be subject to a forfeiture of \$100, plus court costs, per day. No proprietor, employer or other person in charge may be required to forfeit more than \$100, plus court costs, in total for all violations of this ordinance may occur on a single day.
- (3) **ISSUANCE OF CITATIONS**
 - (a) The procedure set forth in Sec. 66.0113(1) (a) (2000), Wis. Stats., for the use and issuance of citations for violations of this ordinance is adopted, authorized and incorporated for the enforcement of this ordinance.

- (b) Form – The citation shall contain the following:
1. The name and address of the alleged violator.
 2. Factual allegations describing the alleged violation.
 3. The time and place of the offense.
 4. The section of the ordinance violated.
 5. A description of the offense in such a manner as can be readily understood by a person making a reasonable effort to do so.
 6. The time at which the alleged violator may appear in court.
 7. A statement, which, in essence, informs the alleged violator:
 - a. That a cash deposit based on the schedule established by this section may be made which shall be delivered to the Clerk of Court prior to the time of the scheduled court appearance.
 - b. That if a deposit is made, no appearance in court is necessary unless he/she is subsequently summoned.
 - c. That if a cash deposit is made and the alleged violator does not appear in court, he/she will be deemed to have entered a plea of no contest or, if the court does not accept the plea of no contest, a summons will be issued commanding him/her to appear in court to answer the complaint.
 - d. That if no cash deposit is made and the alleged violator does not appear in court at the time specified, an action may be commenced to collect the forfeiture.
 8. A direction that if alleged violator elects to make a cash deposit, the statement which accompanies the citation shall be signed to indicate that the statement required under Para. 7 above has been read. Such statement shall be brought with the cash deposit.
 9. Such other information as the County deems necessary.
- (c) Schedule of Deposits – Any person who receives a citation shall be subject to the appropriate forfeiture as set forth in this ordinance.
- (d) Who may Issue – The designated enforcement officer, as recognized under this ordinance shall have authority to issue citations.
- (e) The procedure set forth in Section 66.0113(3), Wis. Stats., relating to a violator’s options and procedure on default, is hereby and incorporated herein.
- (f) Nonexclusivity.
- a. Adoption of this ordinance does not preclude the County Board from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matters.

- b. The issuance of a citation hereunder shall not preclude the County or any authorized officer from proceeding under any other ordinance or law by any other enforcement method to enforce any ordinance, regulation or order.
- c. Notwithstanding enforcement of this ordinance through issuance of citation, enforcement of this ordinance may be initiated upon a referral of a designated enforcement officer to the Office of Corporation Counsel, who may, in addition to the prosecution of a citation issued in conformance with this ordinance, seek an injunction to correct and/or abate the violation or seek court-imposed forfeiture under this ordinance by summons and complaint.

Section. 8. Additional private prohibitions.

Nothing in this ordinance shall prevent a proprietor or other person in charge of any private place from prohibiting smoking in any indoor or outdoor area under their control.

Section. 9. Other applicable laws or regulations.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other law or regulation.

Section. 10. Severability.

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

Funding Source and Amount: Not Applicable
Finance Committee Advised: Not Applicable
Recommendation: Not Applicable
Effective date: Upon Passage and Publication

Approved as to Form: _____
Jeffrey B. Fuge, Corporation Counsel

Date Submitted to the Polk County Board: October 12, 2010.

Sponsored and Submitted By:

Patricia Schmidt

At its regular business meeting on October 12, 2010, the Polk County Board of Supervisors adopted the above ordinance, Ordinance No. 67 -10: POLK COUNTY SMOKE-FREE AIR ORDINANCE, by a vote of 17 in favor and 6, against.

William Johnson, IV, County Board Chairperson

Attest: _____
Carole Wondra, Polk County Clerk

The Polk County Smoke Free Ordinance was published in the Inter-County Leader on the ~~27th~~ ^{27th} day of Oct, 2010.

Carole G. Wondra
Carole Wondra, County Clerk

