

Ordinance 10906 - B
TOWN OF HULL
NO SMOKING ORDINANCE

The Town of Hull Board of Supervisors finds and determines that the smoking of tobacco, or any other weed or plant, is a positive danger to the health and material annoyance, inconvenience, discomfort, and health hazard to those who are present in confined spaces. That smoking indoors and in vehicles adversely affects, among other things, health, safety, comfort, employee production, and building and vehicle maintenance expenses.

The Hull Town Board further adopts the findings of the federal agencies such as the Environmental Protection Agency and the Surgeon General of the United States which indicate that smoking contributes to health problems of town employees and members of the public exposed to indoor smoke, both directly through deliberate use of smoking materials and indirectly, to nonsmokers, through involuntary inhalation of smoke in the air.

(1) Definitions. The following words and phrases, whenever used in this ordinance, shall be construed as defined in this section:

(A)“Adult Day Care Facility” means any facility as defined in section 49.45(47)(a) of the Wisconsin Statutes.

(B)“Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

(C)“Childcare Facility” means any state licensed or county certified childcare facility including licensed family day care or licensed group day care centers, licensed day camps, certified school-age programs and Head Start programs.

(D) “Educational Facility” means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board.

(E)“Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

(F)“Enclosed Area” means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

(G)“Health Care Facility” means an office or institution providing care or treatment of diseases as defined in section 155.01(6) of the Wisconsin Statutes.

(H) “Home Based Business” means an accessory use of a dwelling unit for a business that is secondary and incidental to the primary use of the dwelling as a residence, and does not change the residential character of the building or site.

(I)“Place of Employment” means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles.

(J)“Private Club” means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used for club purposes, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose but not for pecuniary gain and that 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.

(K)“Public Place” means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, health care facilities, Laundromats, public transportation facilities, reception areas, retail food production and marketing establishments, retail service establishments, retail stores, shopping mall, sports arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a childcare, adult day care, or health care facility.

(L)“Restaurant” means any building, room or place where meals are prepared or served or sold to transients or the general public. The term “restaurant” shall not include a “tavern” as defined in this section.

(M)“Retail Tobacco Store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

(N)“Service Line” means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

(O)“Shopping Mall” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

(P)“Smoking” means inhaling, exhaling, burning, or carrying a lighted cigar, cigarette, pipe or any other lighted tobacco smoking equipment.

(Q)“Sports Arena” means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and other similar places where members of the general public assemble to engage in physical exercise.

(R)“Tavern” means a licensed establishment with a full service bar in which fermented malt beverages and/or intoxicating liquors are sold for consumption on the premises and whose sale of alcoholic beverages account for fifty percent (50%) or more of the establishment’s gross receipts for the most recent licensing year.

(2) Prohibition of Smoking in Public Places. Smoking shall be prohibited in all enclosed public places within the Town of Hull, including but not limited to, the following places:

(A)All enclosed areas of worksites and public places owned, rented, leased or otherwise under the control of the Town of Hull, including town motor vehicles.

(B) Adult day care facilities.

(C) Aquariums, galleries, libraries and museums.

(D) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to professional offices, banks, Laundromats, hotels and motels.

(E) Bingo facilities.

(F) Childcare facilities.

(G) Educational facilities, including all premises owned, rented by or under the control of a school board.

(H) Elevators.

(I) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital or other similar performance, except performers when smoking is part of a stage production.

(J) Health care facilities.

(K) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

(L) Fire Department Training Room/Polling Place

(M) Public transportation facilities, including ticketing, boarding and waiting areas of public transit depots, taxicabs and bus shelters.

(N) Restaurants with a seating capacity of more than 50 persons.

(O) Restrooms, lobbies, reception areas, hallways, and other common areas within prohibited places.

(P) Retail stores.

(Q) Rooms, chambers. Places of meeting or public assembly under the control of an agency, board, commission, committee or board of the Town of Hull or a political subdivision of the State of Wisconsin when a public meeting is in progress, to the extent the place is subject to the jurisdiction of the Town of Hull.

(R) Service lines.

(S) Shopping malls.

(T) Sports arenas, including enclosed places in outdoor arenas.

(3) Prohibition of Smoking in Places of Employment.

(A) Smoking shall be prohibited in all enclosed facilities within places of employment except as noted in (4). This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed facilities.

(B) This prohibition on smoking shall be communicated to all existing employees prior to the effective date of this ordinance and to all prospective employees upon their application for employment.

(C) All employers shall supply a written copy of the smoking policy upon request to any existing or prospective employee.

(4) Where Smoking is Not Regulated. Notwithstanding any other provision of this ordinance to the contrary, the following areas shall be exempt from the provisions in section (2) and (3).

(A) Bowling centers.

(B) Home based businesses.

(C) Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms provided however, that not more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated. Additionally, hotel meeting and conference rooms rented for private functions not to exceed twenty-five percent (25%) of a hotel's entire meeting room inventory.

(D) Outdoor areas of places of employment.

(E) Private and semiprivate rooms in nursing homes and long-term care facilities where smokers and have requested in writing to be placed in a room where smoking is permitted.

(F) Private residences, except when used as a licensed childcare, adult day care, or health care facility.

(G) Restaurant(s) with a seating capacity of fifty (50) persons or less.

(H) Retail tobacco stores.

(I) Taverns.

(J) Private clubs.

(K) Fire Department vehicles and garage – As regulated by Hull Fire Department policy - smoking may be permitted in Fire Department vehicles and garage.

(5) Declaration of Establishment as Non-Smoking. An owner, operator, manager or other person in control of an establishment, facility, or outdoor area may declare the entire premises of an establishment, facility, or outdoor area as smoke free.

(6) Posting of Signs.

(A) The proprietor or other person having control of an establishment where smoking is prohibited under this article shall post, in a conspicuous place at every building entrance and in prominent locations throughout the establishment, a sign not smaller than 24 square inches indicating whether the building permits

smoking or whether it is smoke free. The signs shall be posted in such a manner that the public has reasonable notice of the establishment's smoking policy and must be present at any time the establishment is open for business.

(B) It shall be unlawful for any person to remove, deface or destroy any sign required by this section, or to smoke in any place where any such sign is posted.

(7) Hardship

(A) As a result of complying with this ordinance, a business 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 Town of Hull Clerk for a one-time temporary hardship exemption. Upon granting of the hardship exemption, the business shall be exempt from the requirements of this ordinance for a period of twelve (12) months. This hardship provision shall automatically cease one (1) year after so granting.

(B) To obtain a hardship exemption, application to the Clerk must be made within one hundred twenty (120) days after this ordinance becomes effective by submitting the following:

1. 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.
2. Written proof subscribed and sworn to by an accountant certifying that the business 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.

(C) The Clerk shall make the determination regarding hardship within sixty (60) days of receipt of a hardship application or the application will be deemed granted.

(D) This hardship provision does not apply to any business not in existence as of the effective date of this ordinance.

(8) Non-retaliation. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant or customer exercises any rights afforded by this ordinance or reports or attempts to prosecute a violation of this ordinance.

(9) Violations and Penalties.

(A) Any customer, employee or other person in an establishment regulated by this ordinance who violates any provision of this ordinance shall suffer forfeiture not to exceed \$75 and in lieu of such payment assessed imprisonment as determined by the Court.

(B) Any person, who manages, operates, or otherwise controls a public place or place of employment and who knowingly violates any provision of this ordinance shall suffer forfeiture not to exceed \$75 and in lieu of such payment assessed, imprisonment as determined by the Court.

(C) In addition to the fines established by this section, violation of this ordinance by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued by the Town of Hull to the person for the premises on which the violation occurred.

(D) Each day on which a violation of this ordinance occurs shall be considered a separate and distinct violation.

(10) Other Applicable Laws. This ordinance shall not be interpreted nor construed to permit smoking where it is otherwise restricted by other applicable laws.

(11) Liberal Construction. This ordinance shall be liberally construed so as to further its purposes.

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

(13) Enforcement. This Ordinance shall be enforced by the Chairperson of the Town of Hull or his or her designee.

(14) Effective. The Ordinance shall take effect April 1, 2006 after passage and publication.

For the Town of Hull Board

John Holdridge, Chairperson

Attest: _____
Janet Wolle, Clerk

Dated: 01/09/2006
Passage: 01/09/2006
Publication: 03/27/2006