

11.53 SMOKE FREE DINING.

(1) PURPOSE. The purpose of this section is to promote and protect the health, safety and general welfare of the public.

(2) DEFINITIONS.

(a) "Accessory Seating" can include tables and chairs or booths in the immediate vicinity of the bar.

(b) "Documentation" shall be no less than a letter from the business establishment's accountant that identifies the source of sales that come from food, alcohol and other categories.

(c) "Full Service Bar" means a counter-like object with accessory seating for customers, over which fermented malt beverages, intoxicating liquors or wine are sold for consumption on the premises. A service bar without accessory seating for customers shall not be considered a full service bar.

(d) "Full Service Bar Area" means the full-service bar and the area immediately adjacent to the full-service bar.

(e) "Private Club" means churches, religious, fraternal, youth and patriotic organizations, service clubs or civic organizations which prepare and serve or sell meals to members and guests only. When a private club is open to the public, it does not meet this definition.

(f) "Restaurant" shall mean an establishment as defined in s. 254.61(5), Wis. Stats.

(g) "Review Committee" shall consist of 1 member of the Health & Human Services Board, 1 member of the La Crosse County Board, 1 representative of the Restaurant Association, 1 Citizen at-large and 1 representative from an inspection department in La Crosse County where a similar ordinance is in place. All members of the Review Committee shall be appointed by the County Board Chair subject to confirmation by the County Board.

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(h) "Separately ventilated" shall mean that the area is ventilated so that there is a negative air pressure in the designated smoking area.

(i) "Service Bar" means an area without accessory seating for customers, at which fermented malt beverages or intoxicating liquors are prepared for service with meals.

(j) "Smoking" shall mean to smoke or carry a lighted pipe, cigar, cigarette or tobacco-related product in any form.

(3) UNLAWFUL SMOKING. Except as provided in Section 4 below or any other provision of the General Code of La Crosse County, it shall be unlawful for any person to smoke tobacco products in all enclosed, indoor areas of restaurants.

(4) EXCEPTIONS. Exceptions to this ordinance shall apply to the following:

(a) Full service bar area and accessory area.

(b) The owner or proprietor may designate a smoking room which is separately ventilated from each and every other area of the establishment.

(c) Restaurants whose sale of alcoholic beverages account for more than 50% compared to the sale of food for the most recent alcohol licensing year shall comply with s. 101.123, Wis. Stats., the Clean Indoor Air Act.

(d) Private clubs when they are not open to the public.

(e) An owner of a restaurant may be granted an exception from the requirements of this ordinance by:

1. Showing that the business has experienced a loss of 15% in the first 3 months this ordinance is in effect compared to the same 3 months of the previous year.

2. Showing that any decrease in business has resulted to the business of the restaurant as a result of complying with the provisions of this ordinance for a period of not less than 6 months. Written proof by an accountant not employed by the business establishment shall be required. The owner shall provide a comparison of sales receipts during said 6 months of compliance as compared with sales receipts for the same 6 months of the year prior to compliance; or
3. It shall be the responsibility of the owner of the restaurant to demonstrate that the restaurant has complied with this ordinance and that any business losses were the result of compliance with this ordinance and not as a result of other factors unrelated to this ordinance.
4. This hardship provision shall only be effective for a period of 12 months after the effective date of this ordinance. Applications for hardship may be received until August 1, 2004; however, the provision shall only apply to losses incurred prior to, and including 12 months after the effective date of this ordinance.

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5. Once hardship is determined it will be in force for 5 years and then a reapplication process must occur.

(f) Upon request of the Health Officer or his/her designee, owners of restaurants shall provide the necessary documentation to the Review Committee to apply for exception under subsections 4(a)-(e).

(5) ENFORCEMENT. Enforcement of this Code shall be the responsibility of the La Crosse County Health Department.

(6) SIGNS.

(a) Signs that prohibit, prohibit except in designated areas, or permit smoking, as the case may be, shall be posted conspicuously at every entrance and in prominent locations throughout the premises by the proprietor or other person in charge of each building, structure or public place. Signs shall contain a reference that regulation is by ordinance, such as "No Smoking – La Crosse County Ordinance s. 11.53", "Smoking Prohibited by La Crosse County Ordinance Except in Designated Areas", or equivalent.

(b) Restaurants 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 8½") indicating whether they are smoke-free. Each sign shall contain a non-emergency number for the Sheriff's Department.

(c) It shall be unlawful for any person to remove, deface, or destroy any legally required "No Smoking" sign, or to smoke in any place where any such sign is posted.

(d) It shall be the duty of the Health Department Director or his/her designees, and they shall have the power, whenever they may deem it necessary, to enter upon the premises described in this section to ascertain whether signs required are posted, and to order the posting of such signs where required. A compliance time of not less than 1 week shall be granted. Upon failure to comply with such written or verbal order, a citation may be issued. This enforcement procedure shall be supplementary to any other remedies provided by law.

(7) PREVENTION OF SMOKING IN PROHIBITED AREAS: The proprietor or other persons in charge of premises regulated hereunder shall make reasonable efforts to prevent smoking in prohibited areas upon witnessing the same or upon request of any person by:

(a) Approaching smokers who fail to voluntarily comply with this section and request that they extinguish their smoke and refrain from smoking.

(b) Any other means that may be deemed appropriate by said proprietor, including refusal of service to anyone smoking in a prohibited public area.

(8) PENALTY.

(a) Any owner or proprietor of any establishment who violates any provision of this section shall be required to forfeit not less than \$10 nor more than \$100 plus costs. Each day of violation shall constitute a separate violation.

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(b) Any customer of an establishment who violates for the first time any provision of this section shall be required to forfeit not less than \$50 plus costs. For a violation committed within 12 months of a previous violation, a customer shall be required to forfeit not less than \$100 plus costs.

(c) Any person not designated in subsections 7(a) and (b) above who violates any provision of this Code for the first time shall be required to forfeit not less than \$10 nor more than \$100 plus costs. For a violation committed within 12 months of a previous violation, a person shall be required to forfeit not less than \$25 nor more than \$100 plus costs.

(d) The following cash deposits are established for use with citations issued under this section: \$50 plus costs for a first time violation and \$100 plus costs for a violation committed within 12 months of a previous violation.

(9) SEVERABILITY. The provisions of this section are severable. If any provision of this section is held to be invalid or unconstitutional or if the application of any provision of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the valid or unconstitutional provisions or applications. It is hereby declared to be the intent of the County Board that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein.

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