

ORDINANCE REVIEW COMMITTEE

Wednesday, January 29, 2020

5:30 p.m.

Village Hall
221 E Cottage Grove Rd

1. Call to Order.
2. Determination of quorum and that the agenda was properly posted.
3. **Public Appearances** – Public’s opportunity to speak about any subject that is not a specific agenda item.
4. Discuss any Ordinance edits and changes recommended for the purpose of compiling a prioritized list of recommended Ordinance changes to submit to the Village Board.
5. Discuss any Ordinance Request Forms received.
Chapters 1 Request Form
6. Update on Responsible Bidder Ordinance.
Model Lowest Bid Ordinance
7. Discuss Vaping Ordinance.
Vaping Request Form
Department of Justice Smoking Ban Info Sheet
Vaping Ordinance Example
8. Approve the minutes of the October 30, 2019 meeting.
9. Future agenda items.
10. Set next meeting date.
11. Adjournment.

Any item on the agenda is subject to final action. Notice: Persons needing special accommodations should call 608-839-4704 at least 24 hours prior to the meeting. It is possible that members of and possibly a quorum of members of other governmental bodies may be in attendance at the above stated meeting to gather information; no action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to above in this notice.

ORDINANCE REQUEST FORM**NAME OF REQUESTER:** _____ Jon Russell _____**ADDRESS OF REQUESTER:** _____ 311 Southing Grange Cottage Grove _____

The Village of Cottage Grove Ordinance Review Committee (Committee) reviews requests to revise current or create new Ordinances for the Village.

The Committee must analyze the “Who, What, When , Where, Why and How” when deciding whether to pursue a request. This involves a variety of factors including (but not limited to) whether this is a matter affecting the entire Village, number(s) of individuals affected, how the proposal solves the problem, time and expense related to drafting the proposed language, the cost/benefit involved with the enforcement of the Ordinance.

To assist the Committee, please provide as much background as possible:

WHO (is affected by the proposal)

WHAT (is the actual issue involved, specific sections you want revised, proposed language?)

WHEN (has this been a problem?)

WHERE (have problems occurred?)

WHY (are there existing ordinances, state statutes that could be used as an alternative?)

HOW (does this proposal solve the issue? How have other municipalities dealt with this issue (examples of ordinances from other local jurisdictions are helpful.)

Editing for Chapters 1-106. 12-1 c, standing committees – what are the names listed under 1 & 2 and what are the differences? Letter D states these committees must meet monthly. Why, as it currently does not occur. Appointments – why is each committee different? Example, 12-5 Plan commission is 3 years, but Trustees are elected to 2 years. Recommendation – make them for two years starting at the term of the village president. 13-10 outlines an ethics commission – I do not see it listed on the web site, does one exist? Chapter 36 Emergency Government, will need to be reviewed and modified once a Director is hired. 67-1 states the municipal judge’s term is 2 years. It is 4 years as outlined in 27-2b.

_____ The next meeting of the

Village Ordinance Committee is scheduled for: _____ Thank you for your

interest in the Village of Cottage Grove.

Model Responsible Bidder Ordinance

1) Purpose. Pursuant to Wis. Stat. §§ [62.15(1) and (6) for cities; 61.54 and 62.15(1) and (6) for villages; 60.47(3) for towns] and 66.0901, whenever the [city/ village/town] lets public works by contract, the contract must be awarded to the lowest responsible bidder. What constitutes a responsible bidder is a determination that requires the exercise of discretion by the [city/ village/town]. This ordinance is intended to ensure that bids are reviewed by the [city/ village/town] and its departments, officials or employees under reasonably consistent responsible bidder criteria when exercising its discretion.

2) Definitions. In this section, the following definitions shall apply.

a) "Contractor" means a person, corporation, partnership or any other business entity that performs work on a public works contract as a general contractor, prime contractor or subcontractor at any tier.

b) "Class A Apprenticeship Program" means an apprenticeship program that is currently approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyperson status for three (3) years. In addition, a new apprenticeship program that has been registered with the federal or state government within the last three (3) years will be considered a Class A Apprenticeship Program, provided that such new program graduates apprentices to journeyperson status within the indenture period.

c) "Public works contract" means a contract for the construction, alteration, execution, repair, remodeling or improvement of a public work or building, where the contract is required to be bid pursuant to Wis. Stat. § [62.15(1) and (6) for cities; 61.54 and 62.15(1) and (6) for villages; 60.47(3) for Towns].

3) Responsible Bidder Criteria. In order to be a responsible bidder for purposes of being awarded a public works contract, the contractor must meet the following criteria.

a) The contractor maintains a permanent place of business.

b) The contractor is authorized to do business in the State of Wisconsin.

c) The contractor, or agent, partner, employee or officer of the contractor, is not debarred, suspended, proposed for debarment or declared ineligible from contracting with any unit of federal, state or local government.

d) The contractor is in compliance with provisions of Section 2000e of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provisions).

e) The contractor has general liability, workers' compensation and automobile insurance at levels sufficient to protect the [city/ village/town] given the size of the public works.

f) The contractor has complied with all provisions of Wisconsin prevailing wage law and federal Davis-Bacon related Acts, and all rules and regulations therein, for projects undertaken by the contractor that are covered by these laws, for the past five (5) years.

g) The contractor participates in a Class A Apprenticeship Program.

h) The contractor has a written substance abuse prevention program meeting the requirements of Wis. Stat. § 103.503.

i) The contractor's employees who will perform work on the project are properly classified as employees or independent contractors under all applicable state and federal laws.

j) The contractor's employees who will perform work on the project are:

i) Covered under a current workers' compensation policy; and

ii) Properly classified under such policy.

k) The contractor's employees who will perform work on the project have the health insurance coverage required by the federal Affordable Care Act.

l) The contractor possesses all applicable professional and trade licenses required for performing the public works.

m) The contractor has adequate financial resources to complete the public works contract, as well as all other work the bidder is presently under contract to complete.

n) The contractor is bondable for the terms of the proposed public works contract.

o) The contractor has a record of satisfactorily completing at least five projects of similar size and complexity within the last five years. Criteria which will be considered in determining satisfactory completion of projects may include, but are not limited to:

i) Completion of contracts in accordance with drawings and specifications;

ii) Diligent execution of the work and completed contracts according to the established time schedules unless extensions are granted by the owner; and

iii) Fulfilled guarantee requirements of the contract documents.

p) The contractor has, and diligently maintains, a written safety program.

q) The contractor has not received a serious, willful or repeated violation from OSHA in the last ten years.

4) No Restriction on Discretion. If information other than what must be disclosed by the contractor in subsection 3 is discovered by the [city/ village/town] or the department, official or employee responsible for awarding the public works contract, and such information calls into question the contractor's capacity or competence to faithfully and responsibly comply with the terms of a public works contract, that information shall be considered in determining whether the contractor is a responsible bidder.

5) Affidavit of Compliance. The general or prime contractor bidding on a public works project must include in its sealed bid;

a) its own affidavit swearing compliance with the criteria set forth in subsection 3) on the form required by the [city/ village/town]; and

b) an affidavit swearing compliance with the criteria set forth in subsection 3) on the form required by the [city/ village/town] from every subcontractor at any tier who will perform work on the project.

ORDINANCE REQUEST FORM

NAME OF REQUESTER: ___Heidi Murphy_(Topic from Melissa Ratcliff)_____

The Village of Cottage Grove Ordinance Review Committee (Committee) reviews requests to revise current or create new Ordinances for the Village.

The Committee must analyze the “Who, What, When , Where, Why and How” when deciding whether to pursue a request. This involves a variety of factors including (but not limited to) whether this is a matter affecting the entire Village, number(s) of individuals affected, how the proposal solves the problem, time and expense related to drafting the proposed language, the cost/benefit involved with the enforcement of the Ordinance.

To assist the Committee, please provide as much background as possible:

WHO (is affected by the proposal)

WHAT (is the actual issue involved, specific sections you want revised, proposed language?)

WHEN (has this been a problem?)

WHERE (have problems occurred?)

WHY (are there existing ordinances, state statutes that could be used as an alternative?)

HOW (does this proposal solve the issue? How have other municipalities dealt with this issue (examples of ordinances from other local jurisdictions are helpful.)

The State Health Officer has issued a Public Health Advisory regarding the use of vaping devices, particularly among youth. The State wide smoking ban has been in place since 2009’s Act 10. However this legislation has not been changed to include electronic smoking devices also known as vaping.

The Wisconsin Department of Health Services has a multi-level approach regarding this epidemic. Here are a few recommendations they have for those in Public Office (<https://www.dhs.wisconsin.gov/tobacco/advisory.htm>):

Community and State Leaders

- Update definitions in local smoke-free workplace ordinances to include e-cigarettes and other nicotine smoking devices.
- Implement strategies to curb e-cigarette advertising and marketing that appeal to youth.
- Implement strategies to reduce youth access to flavored tobacco products.

I have attached an example of an Ordinance from the City of Middleton.

Thank you for your interest in the Village of Cottage Grove.

THE SMOKING BAN

A WISCONSIN DEPARTMENT OF JUSTICE ADVISORY MEMORANDUM ON 2009 WI ACT 12 (July 2, 2010)

I. INTRODUCTION

This Wisconsin Department of Justice (DOJ) memorandum (the “Advisory”) is intended to assist law enforcement and other groups in addressing the new requirements established by 2009 Wisconsin Act 12 that relate to smoking in public places. The Advisory summarizes the requirements of Act 12 and how the Act is enforced. Finally, the Advisory concludes with some frequently asked questions about the Act.

II. SUMMARY OF THE LAW

Act 12, which takes effect July 5, 2010, amends the current law restricting smoking under Wis. Stat. § 101.123. Act 12 expands the breadth of the prohibition against smoking and limits the exceptions where smoking is prohibited. In particular, Act 12 lists fifteen specific enclosed places where smoking is prohibited and then includes a catch-all provision that prohibits smoking in all other “enclosed places” that are “places of employment” or that are “public places.” Act 12 removes the general exception for designated smoking areas. It also retains from current law the four specific outdoor areas where smoking is prohibited. Additionally, Act 12 specifically prohibits smoking in sports arenas, bus shelters and public conveyances, even if those places don’t meet the definition of “enclosed place.”

Act 12 provides that any local ordinance regulating or prohibiting outside smoking must comply with Act 12, applies only to public property under the municipality’s jurisdiction, and must allow a “person in charge” of restaurants, taverns, private clubs, or retail establishments to designate an outside smoking area within a reasonable distance from any entrance to the establishment.

Finally, Act 12 requires a “person in charge” of a place subject to Act 12 to take the necessary steps to ensure compliance with the Act. Act 12 creates a legal obligation on smokers and persons in charge of places where smoking is prohibited and increases the penalty for violations of the Act. The Wisconsin Department of Justice and local law enforcement are authorized to enforce Act 12.

III. IMPORTANT DEFINITIONS

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

- A lighted cigar.
- A lighted cigarette.
- A lighted pipe.
- Any other lighted smoking equipment.

Wis. Stat. §101.123(1)(h)

“Enclosed place” – a structure or area that has all of the following:

- A roof.
- More than 2 substantial walls.

Wis. Stat. §101.123(1)(ak)

“Place of employment” – any enclosed place that employees normally frequent during the course of employment, including

- an office;
- a work area;
- 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; or
- an employee cafeteria.

Wis. Stat. §101.123(1)(dj)

“Public place” – 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.

Wis. Stat. §101.123(1)(eg)

“Person in charge” – the person, or his or her agent, who ultimately controls, governs or directs the activities aboard a public conveyance or at a location where smoking is prohibited or regulated under this section.

Wis. Stat. §101.123(1)(d)

“Substantial wall” – a wall with no opening or with an opening that either does not allow air in from outside or is less than 25 percent of the wall’s surface area.¹

Wis. Stat. § 101.123(1)(id)

IV. THE PROHIBITION ON SMOKING

Starting July 5, 2010, smoking is not permitted in “enclosed places” that are “places of employment” or “public places.” Wis. Stat. § 101.123(2)(a)(9). Additionally, smoking is specifically prohibited in the following enclosed places and outdoor areas:

- State Capitol and immediate vicinity;
- Residence halls of colleges and universities (including any location 25 feet or less from a residence hall or dormitory owned or operated by the Board of Regents of the University of Wisconsin System);
- Day care centers (including outdoor premises when children are present);
- Educational facilities;
- Correctional facilities (and anywhere on the grounds of a Type 1 juvenile correctional facility);
- State institutions (mental health, developmentally disabled persons);
- All restaurants and taverns;
- All retail establishments;
- Private clubs (any facility used by an organization that limits membership and is organized for recreational, social, political etc. purposes);
- Common areas of multi unit residential properties;
- Hotels, motels, bed & breakfasts, and tourist rooming houses;
- All municipal buildings;
- Sports Arenas of all kinds including Lambeau Field, Miller Park, stadiums, pavilions, gymnasiums, swimming pools, or other buildings where spectator sporting events are held (whether or not they fit the definition of an enclosed space);
- Health and medical centers including hospitals, physician’s offices, treatment centers;
- Inpatient health care facilities (county home, nursing homes, hospice, veteran’s home); and
- Theaters.

¹ Originally the Act defined “substantial wall” as “a wall with an opening that may be used to allow air in from the outside that is less than 25 percent of the wall’s surface area.” However, this definition was revised on May 11, 2010, by 2009 Wis. Act 276.

Additionally, no person may smoke in any of the following, regardless of whether they constitute an “enclosed place:”

- Sports arenas (defined as any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held);
- Bus shelters, public transit.

V. EXEMPTIONS

Act 12 has limited the exemptions to the smoking ban. Smoking is allowed in private residences and certain residence rooms in assisted living facilities. There is a limited exemption for retail tobacco stores or tobacco bars that were in existence prior to June 3, 2009, and only the smoking of cigars or pipes is allowed in such establishments.

Notably, Wisconsin law previously provided exemptions to bowling centers, taverns, halls used for private functions, certain restaurants, rooms where the main occupants are smokers, and areas of facilities used for manufacturing or assembly. Now, all of these types of businesses must be smoke-free under Act 12. Furthermore, Act 12 eliminates the general exception for designated smoking areas and the ability to designate smoking areas in enclosed indoor locations.

VI. RESPONSIBILITIES OF PERSONS IN CHARGE

Act 12 requires persons in charge of places where smoking is prohibited to take steps to ensure compliance with the Act. A person in charge of a location where smoking is prohibited under Wis. Stat. §102.123 may not allow any person to smoke at the location. Wis. Stat. §102.123(2m)(a). A person in charge may not provide matches, ashtrays, or other equipment for smoking at a location where smoking is prohibited. Wis. Stat. §102.123(2m)(b). And, a person in charge shall make “reasonable efforts” to prohibit persons from smoking by:

- Posting signs;
- Refusing to serve a person smoking in a restaurant, tavern, or private club; and
- Asking a person who is smoking to refrain and, if the person refuses to do so, asking the person to leave.

Wis. Stat. §102.123(2m)(c).

If the person who smokes refuses to leave, the person in charge shall immediately notify an appropriate law enforcement agency of the violation. Wis. Stat. §102.123(2m)(d). Finally, a person in charge may take measures other than those listed

in the statute to prevent persons from being exposed to smoking or to further ensure compliance with the law. Wis. Stat. §102.123(2m)(c).

Notably, Act 12 does not require that a person in charge be onsite; however, certain responsibilities created by Act 12 seem to apply to onsite actions of a person in charge. *See* Wis. Stat. § 101.123(2m)(b). For example, the Act sets forth minimum requirements for a person in charge to ensure compliance, including “Asking a person who is smoking to refrain and, if the person refuses to do so, asking the person to leave.” Other requirements, such as the signage provisions, appear to impose a statutory duty on a “person in charge,” regardless of the person’s presence onsite.

VII. PENALTIES

Individual smokers – A person smoking in a place where smoking is prohibited may be required to pay a forfeiture of \$100 to \$250. Wis. Stat. §101.123(8)(a).

Persons in charge – If a person in charge fails to meet his/her responsibilities under Act 12, the person in charge must receive a warning notice for the first offense; however, subsequent offenses shall receive a citation and forfeiture of \$100 for each violation. No person in charge may be required to forfeit more than \$100 in total for all violations occurring on a single day. Wis. Stat. § 101.123(8)(dm)-(d).

VIII. ENFORCEMENT

Pursuant to Wis. Stat. § 165.60, both the Wisconsin Department of Justice and local law enforcement are authorized to enforce the provisions of the smoking ban. The Wisconsin Department of Justice’s authority is to enforce, not prosecute, the Act. Wis. Stat. § 165.60 (providing that enforcement power is the same as those “powers conferred by law upon sheriffs and municipal police officers”). Primary enforcement authority lies with local law enforcement; and the Wisconsin Department of Justice will only lead enforcement efforts on violations that are statewide in nature, importance or influence.

District attorneys are responsible for prosecuting forfeiture actions for violations of the Act. Wis. Stat. § 778.12. In addition, state or local officials or any affected party may institute an action to enjoin repeated violations of the statute. Wis. Stat. § 101.123(9).

Act 12 does not authorize the use of citations by law enforcement as a mechanism to enforce the smoking ban. Citations are an exception to the general rule that civil complaints are used to enforce violations of civil duties where forfeitures are authorized. *See* Wis. Stat. §§ 778.02 and 778.25. Notably, Act 12 did not revise Wis. Stat. § 778.25, which authorizes the use of citations with regards to certain limited violations.

Since Act 12 does not preclude enactment of local ordinances that are consistent with state law, depending on the circumstances, a municipality can enact an ordinance incorporating the terms of the smoking ban and authorizing use of citations to enforce the local ordinance. *See* Wis. Stat. §101.123(4m). Such ordinances may be enforced and prosecuted consistent with the enforcement and prosecution of other local ordinances.

Finally, individuals wishing to report violations should be directed to local law enforcement for follow-up. A statewide complaint phone line (1-800-NO-SMOKE) and website (www.WIBetterSmokeFree.com) will also be available to collect and forward complaints to local law enforcement.

IX. LOCAL AUTHORITY

Act 12 specifically preserves the authority of a county, city, village or town to enact ordinances, or of any school district to adopt policies, that protect the health and comfort of the public. Wis. Stat. §101.123(4m). Under Act 12, however, county, city, village, or town ordinances and school district policies regulating or prohibiting outside smoking may apply only to public property under the jurisdiction of the county, city, village, town, or school district and:

- Such ordinances shall allow a restaurant, tavern, private club, or retail establishment to designate an outside area that is a “reasonable distance” from any entrance for smoking; and
- The ordinance may not define the term “reasonable distance” or set any specified measured distance as being a “reasonable distance.”

Wis. Stat. §101.123(4m)

A municipality seeking to enact an ordinance regulating or prohibiting smoking, however, will also have to consider whether it has authority independent of Act 12 to enact such an ordinance and whether the ordinance is preempted by Act 12. Villages and cities have constitutional “home rule” powers pursuant to Article XI, Section 3 of the Wisconsin Constitution; and statutory home rule authority to act for the health, safety, and welfare of the public pursuant to Wis. Stat. §§ 61.34(1) and 62.11(5). Counties possess similar statutory home rule authority pursuant to Wis. Stat. §§ 59.03; and towns that have adopted village powers have home rule authority pursuant to Wis. Stat. § 61.34(1).

Even where a municipality has home rule authority to enact an ordinance, however, if an ordinance addresses a matter that is solely or chiefly of state-wide concern, a municipality’s regulatory powers are limited. *DeRosso Landfill Co. v. City of Oak Creek*, 200 Wis. 2d 642, 651, 547 N.W.2d 770, 773 (1996). In areas of state-wide concern municipalities may enact ordinances in the same field and on the same subject covered by state legislation only where such ordinances do not conflict with, but rather complement, the state legislation. *Id.* Factors to consider in analyzing preemption are: whether the legislature has expressly withdrawn the power of municipalities to act;

whether the ordinance logically conflicts with state legislation; whether the ordinance defeats the purpose of the state legislation; or whether the ordinance violates the spirit of state legislation. *Id.* at 651-652.

FREQUENTLY ASKED QUESTIONS:

Q1: *Can a municipality enact an ordinance that defines the term “enclosed place” or “substantial wall” in a manner that allows it to prohibit smoking in places that are not subject to the prohibitions in Act 12?*

A: A municipality may not restrict outside smoking except on public property under its jurisdiction and so long as such ordinances allow a restaurant, tavern, private club, or retail establishment to designate an outside smoking area that is a “reasonable distance” from any entrance. With respect to indoor smoking prohibitions, Act 12 does not limit a municipality’s authority to enact an ordinance that protects the health and comfort of the public. Wis. Stat. §101.123(4m). Act 12 does not expressly define “outside smoking” or “inside smoking.” To the extent a local ordinance defines “enclosed place” or “substantial wall” in a manner that is expressly preempted by the state law, logically conflicts with state law, defeats the purpose of the state law, or violates the spirit of the state law, it would be preempted.

Q2: *Does a wall with a window or door that makes up more than 25% of the surface area of the wall constitute a “substantial wall” if the window or door is closed?*

A: Yes. Act 12 defines “substantial wall” as “[1] a wall with no opening or [2] with an opening that either does not allow air in from outside or is less than 25 percent of the wall’s surface area.” Thus, the opening must be larger than 25% of the wall’s surface area *and* allow in air from the outside if the wall is not to be considered a substantial wall. Closing all openings or partially closing some or all openings, such that less than 25% of a wall’s surface area is allowing in air from the outside, makes the wall a “substantial wall” for purposes of the Act.

Q3: *Can a municipality regulate outside smoking?*

A: To a limited degree. Under Act 12, municipal ordinances regulating or prohibiting outside smoking would need to satisfy the following requirements:

- Comply with the purpose of Act 12 and protect the health and comfort of the public;
- Apply only to public property under the jurisdiction of the county, city, village, town, or school district;
- Allow a restaurant, tavern, private club, or retail establishment to designate an outside area that is a “reasonable distance” from any entrance for smoking; and

- Refrain from defining the term “reasonable distance” or setting any specified measured distance as being a “reasonable distance.”

Q4: *Who has the authority to enforce the smoking ban pursuant to Act 12?*

A: Both local law enforcement personnel and the Wisconsin Department of Justice have authority to enforce Act 12. Prosecution of forfeiture actions rests with the district attorneys; though local officials may prosecute municipal ordinances that are not preempted. All affected individuals may bring a civil action to enjoin violations of the Act.

Q5: *Can a municipality adopt an ordinance giving authority to a person or agency other than the police department to enforce a smoking ban?*

A: Act 12 does not prohibit municipalities from enacting local ordinances that vest enforcement authority in an agency other than law enforcement. However, no ordinance may regulate subject matter preempted by state law.

Q6: *Who is a “person in charge” and does such a person include any employee of a bar or restaurant who is working at the time of the smoking incident?*

A: Act 12 defines “Person in charge” as the person, or his or her agent, who ultimately controls, governs or directs the activities aboard a form of public transportation or at a location where smoking is prohibited or regulated. Because an employee of a restaurant is an agent of the restaurant owner, an employee may be a “person in charge.” Enforcement authorities have discretion when determining who should be referred to a district attorney for a forfeiture action.

Q7: *Can enforcement be done through a citation?*

A: Act 12 does not authorize the use of citations by law enforcement as a mechanism to enforce the state smoking ban. District attorneys, therefore, will have to use a civil complaint when bringing forfeiture actions to enforce Act 12.

Citations may be used to enforce local ordinances that are not preempted by state law, should the ordinance provide for such an enforcement mechanism.

Q8: *Who provides the smoke-free signage required by Act 12?*

A: Persons in charge are obligated to comply with the signage provisions of Act 12. However, the Department of Commerce shall, by rule, specify uniform dimensions and other characteristics of the signs required under Act 12. Resources for businesses and employers, including signs, are already available at: www.WIBetterSmokeFree.com

Q9: *Are bleachers used for watching softball games and tournaments at village, city and county parks to be smoke-free?*

A: It will depend on the circumstances, but Act 12 does not prohibit smoking in such places unless the bleachers are in a sports arena or some enclosed place. Act 12 defines “sports arena” as any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held.

Q10: *Are there any guidelines as to how local law enforcement should deal with complaint calls and letters?*

A: No. Local law enforcement must use its discretion as to how to handle complaints and what resources and protocols it will establish to enforce Act 12. This is no different than enforcing laws (and often complementary ordinances) that provide for forfeitures in other circumstances.

Q11: *Will someone else (other than local law enforcement) be coming out to tell an operator if their structure is in compliance with the Act or not? Or will that be the role of local law enforcement?*

A: It is an operator’s responsibility to comply with state law. Nothing in Act 12 imposes a duty on law enforcement to inform an operator whether smoking is permitted at a facility, except that a forfeiture action for certain violations of the Act may not be initiated against a “person in charge” unless that person has received a prior warning notice.

Q12: *Where do complaints get collected?*

A: Individuals wishing to report violations shall be directed to local law enforcement for follow-up. A statewide complaint phone line (1-800-NO-SMOKE) and website (www.WIBetterSmokeFree.com) will also be available through the Department of Health Services to collect and forward complaints to local law enforcement. When a complaint is received through the phone line or through the website, a letter will be sent to local law enforcement with a copy going to the establishment about which the complaint was filed. Local law enforcement will have to use its discretion in responding to complaints.

Prepared by:
Abigail C. S. Potts, Assistant Attorney General

6.08 DEFECACTION OF ANIMALS

(1) Public Property

No person owning or having custody or control of any animal shall suffer or permit such animal to defecate upon any public sidewalk, terrace, street, park or other public way without immediately causing such defecation to be removed therefrom by burial or flushing in a toilet. (O1461, 4/3/18)

(2) Private Property

No person owning or having custody or control of any animal shall suffer or permit such animal to defecate upon any private property of another. No violation shall be deemed to have occurred if, after such animal defecates upon property of another, the owner or person in the custody or control of such animal immediately causes such defecation to be removed therefrom by carrying it away followed by burial or flushing in a toilet, provided that such defecation or removal of defecation is not considered a trespass under Section 16.04(4) or Wis. Stats. §943.13. (O1461, 4/3/18)

(3) Penalty

Any person who violates any provision of this section is subject to a penalty as provided in s. 30.04 of this Code.

6.09 SMOKING PROHIBITED

(1) Purpose

The Common Council finds that smoking tobacco products is hazardous to the health of both smokers and nonsmokers who are exposed to smoking. Reliable scientific studies, including studies conducted by the Surgeon General of the United States, have shown that breathing side-stream or secondhand smoke is a significant health hazard to nonsmokers, particularly to children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Health hazards induced by breathing side-stream or secondhand smoke include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction, and bronchospasms. This Section is adopted for the purpose of protecting the public health, general welfare, safety and comfort of the people of the City of Middleton.

(2) Definitions

Except as otherwise provided herein, the definitions set forth in Wis. Stats. § 101.123 as in effect on July 5, 2010 are hereby adopted and incorporated by reference as if fully set forth herein.

"Electronic smoking device" means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. The term shall include such devices whether they are manufactured as electronic cigarettes, electronic cigars, electronic pipes or any other product name. (O1497, 08/20/19)

"Service line," means any area indoors or outdoors which is open to the public in which one (1) or more persons are waiting in line to purchase, order or otherwise receive a service or good of any kind, whether or not the service involves the exchange of money, including, but not limited to ATM lines, concert lines, food vendor lines, movie ticket lines and sporting event lines or waiting for public transportation. The term "service line" does not include lines in which people wait in their vehicle such as a line for drive-through service or car wash.

"Smoking" or "to smoke" in addition to the meaning set forth in Wis. Stats. §101.123, includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form or the use of any oral smoking device. (O1497, 08/20/19)

(3) Prohibition of Smoking in Public Buildings

No person may smoke in any of the following places:

- (a) Anyplace where smoking is prohibited by Wis. Stats. § 101.123(2) as in effect on July 5, 2010.
- (b) Within fifteen (15) feet of any service line.
- (c) Any outdoor seating area provided for outdoor theater, concerts or similar events. Where such events do not provide specific seating areas, designated smoking areas shall be provided in a location reasonably removed from the main observation area.
- (d) Persons in charge of a restaurant, tavern, private club, or retail establishment may establish outside smoking areas where customers, employees, or persons associated with the restaurant, tavern, private club, or retail establishment may smoke. Such places shall be established a reasonable distance from any entrance, open window or vent leading inside the restaurant, tavern, private club or retail establishment.

(4) Exceptions

The prohibitions in subsection (3) shall not apply to any place identified in Wis. Stats. § 101.123(3) as in effect on July 5, 2010.

(5) Posting of Signs

Every public building shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited. Every vehicle that constitutes a place of employment shall post a conspicuous sign likely to be seen by any occupant clearly stating that smoking is prohibited. Use of the international "No Smoking" symbol, a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across the cigarette, shall be construed as a clear statement that smoking is prohibited. The posting of signs is an affirmative duty upon the owner or operator of a public building, but failure of the owner or operator of a public building to post signs shall not be a defense to prosecution of a violation of this ordinance.

(6) Ashtrays

No ashtrays shall be present in any indoor area where smoking is prohibited by this Section except for ashtrays displayed for sale and not available for use on the premises.

(7) Retaliation; Waiver of Rights

- (a) No person or employer shall discharge, refuse to hire, refuse service to 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 Section, makes a complaint regarding any violation of this Section, or reports a violation of this Section to the City.
- (b) An employee who works in a setting where an employer allows smoking contrary to this Section does not waive or otherwise surrender any rights the employee may have against the employer or any other party.

(8) Enforcement and Penalties

- (a) Any person found in violation of subsection (3) shall be subject to a forfeiture not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00).
- (b) Any owner, operator, or manager of a place where smoking is prohibited who observes a violation of this Section, shall immediately direct the person committing the violation to cease smoking and extinguish all smoking materials. If the person does not stop

smoking, the owner, operator, or manager shall order the person to leave the premises. If the person fails to immediately leave the premises, the owner, operator, manager shall immediately call the City of Middleton Police Department. Any owner, operator, or manager or employee who fails to prevent violations of this ordinance as set forth in this paragraph or otherwise fails to comply with any provisions of this Section shall be subject to a forfeiture as follows:

1. Not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00) for the first violation within any twelve (12) month period.
 2. Not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00) for the second violation within any twelve (12) month period.
 3. Not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for the third violation within any twelve (12) month period.
- (c) Each day a violation exists or occurs shall constitute a separate violation.
- (d) Violation of this Section shall constitute grounds for the revocation or suspension of any license or permit issued under Chapter 7 of this Code of Ordinances related to the operation of the premises where smoking is prohibited.
- (e) Violations of this Section shall be considered public nuisances and may be enjoined pursuant to Chapter 17 of this Code of Ordinances, Wis. Stats. Chap. 823 or by any other means authorized by law.

(9) Severability

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

Village of Cottage Grove Ordinance Committee

DRAFT Minutes

Wednesday, October 30, 2019

1. Call to Order.

- a. Heidi called the meeting to order 5:30PM

2. Determination of quorum and that the agenda was properly posted.

Attendance: Alex Jushchyshyn, Jon Russell, Phyllis Jones-Morrison, Heidi Murphy, Jess Robinson

3. Public Appearances – Public's opportunity to speak about any subject that is not a specific agenda item.

- a. Alex reviewed, full document of Village Ordinances. Alex was able to sort with a full table of contents and listed revision dates. Lisa to send full doc to the committee.

4. Discuss any ordinance edits and changes recommended for the purpose of compiling a prioritized list of recommended Ordinance changes to submit to the village Board.

- a. Jess to pick ordinances to him review based on his expertise on Fire, EMS and building codes. any issues to be presented at next meeting.
- b. No discussion of additional prioritization's.

5. Discuss and Ordinance Request Forms Received.

- a. no submissions at this time

6. Discuss and Consider Ordinance Request From for alcohol licensees.

- a. Section A: Fix section a to match state code to add clarity
- b. Section b why close at 8 am? ask board if we want to open at 6 am?
- c. Section c why close at 1 am? ask board if we want to be open until 2pm?
- d. Motion Alex Jushchyshyn to table and ask board on direction on the above notes, 2nd Phyllis Jones-Morrison

Vote: 5-0

7. Discuss and Consider Ordinance Request From for Responsible Bidder Ordinance.

- a. what is the definition of public contract? should we also look at this?
- b. What is the level of insurance needed for projects?
- c. Discussion was held for creation of an ordinance vs guidance document. It was resolved at guidance document would service the Village better at this time.
- d. Jon Russell volunteered to create the first draft of the guidance document.
- e. Alex Jushchyshyn, Motion to create guidance document to be lead by Jon Russell. 2nd Jess Robinson
Vote: 5-0

8. Approve Minutes of August 28, 2019

- a. Phyllis Jones-Morrison to approve, 2nd Alex Jushchyshyn
Vote: 4-0-1

9. Future Agenda Items

- a. Jon Russell to present first draft of Responsible Bidder Document
- b. Review Recommendations from the board on item 6.

10. Set next meeting

January 29, 2020, 5:30 pm

11. Adjournment.

- a. motion by Phyllis Jones-Morrison , 2nd Jon Russell
Vote: 5-0