

ORDINANCE NO. 7386

ORDINANCE AMENDING CHAPTER 9.38 ENTITLED “SMOKING” AND OTHER VARIOUS ORDINANCES OF THE CITY OF EAU CLAIRE CODE OF ORDINANCES AS IT RELATES TO VAPING AND THE USE OF ELECTRONIC SMOKING DEVICES.

THE CITY COUNCIL OF THE CITY OF EAU CLAIRE DOES ORDAIN AS FOLLOWS

SECTION 1. That Title 8, Health and Safety and specifically section 8.05.020 entitled “Definitions” is amended as follows:

8.05.020 Definitions. For purposes of this chapter, the following terms have the meaning indicated:

- A. “Adult day care facility” has the meaning set forth in sec. 49.45(47)(a), Wis. Stats.
- B. “Bed and breakfast establishment” has the meaning set forth in sec. 254.61(1), Wis. Stats.
- C. “Child care facility” 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.
- D. “Cigarette” has the meaning set forth in sec. 139.30(1), Wis. Stats.
- E. “Enclosed area” shall mean 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.
- F. “Entrance” shall mean a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk, or parking lot.
- G. “Health care facility” has the meaning set forth in sec. 155.01(6), Wis. Stats.
- H. “Hotel and motel” have the meaning set forth in sec. 254.61(3), Wis. Stats.
- I. “Mall” shall mean an enclosed indoor area containing common areas and discrete businesses and stores primarily devoted to the retail sale of goods and services.
- J. “Medical services” has the meaning set forth in sec. 647.01(6), Wis. Stats.
- K. “Non-smoking” shall mean smoking is prohibited.
- L. “Place of employment” shall mean an enclosed area controlled by the employer which employees normally frequent during the course of employment, including, but not limited to common work areas, private offices, employee lounges, restrooms, conference and meeting rooms, classrooms, health care facilities, cafeterias, stairways, hallways, vehicles, and all other enclosed facilities. A private residence is not a “place of employment” within the meaning of this ordinance.
- M. “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.
- N. “Private residence” shall mean a premise owned, rented, or leased for temporary or permanent habitation.
- O. “Public place” shall mean any enclosed area to which the public is invited or in which the public is permitted. A private residence is not a public place unless it is used as a child care facility, adult day care facility, or health care facility.
- P. “Smoking” shall mean to inhale, exhale, carry, possess, or control any lighted or heated cigarette or any lighted or heated tobacco product in any form or in any manner. Smoking shall also include the use of an electronic smoking device, in any manner or in any form.
- Q. “Tobacco product” has the meaning set forth in sec. 139.75(12), Wis. Stats.

R. “Electronic smoking device” shall mean any product containing or delivering nicotine or any other substance that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. Electronic smoking device shall also include any device manufactured, distributed, marketed, used or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or description, or any component part of such product whether or not sold separately, and whether or not containing or delivering any nicotine.

SECTION 2. That Title 8, Health and Safety and specifically section 8.05.140 entitled “Effective Date” is deleted.

~~**8.05.140 Effective date.** The provisions of this chapter shall become effective July 1, 2008 or sixty days after the date of publication of the ordinance, whichever is later.~~

SECTION 3. That Chapter 9.38, “Smoking” is amended as follows:

9.38.010 Smoking prohibited.

9.38.012 City buildings.

9.38.015 Public school grounds and premises.

9.38.017 Restrictions on sale or gift of cigarettes or tobacco products.

9.38.020 Violation--Penalty.

9.38.010 Smoking prohibited. No person shall light a match or other flame-producing device, or smoke, use or inhale any substance produced by a tobacco substitute such as a nicotine containing inhalant, or carry a lighted cigar, cigarette or pipe, or use an electronic smoking device in any of the following places:

A. A city transit bus owned and operated under the auspices of the city. Any person engaging in any of such activities may be refused admittance to said bus or may be required to leave such bus by the person in charge at the time, or his agent, without reimbursement for any fee or charge which may have been paid for admittance to said bus;

B. The Hobbs Municipal Ice Center. Any person engaging in any of such activities may be refused admittance to the Ice Center or may be required to leave the Ice Center by the person in charge at the time, or his agent, without reimbursement for any fee or charge which may have been paid for admittance to the Ice Center;

C. Any public bus shelter of the city, whether or not such shelter is located on public or private property.

9.38.012 City buildings. A. No person shall smoke, use or inhale any substance produced by a tobacco substitute such as a nicotine containing inhalant or carry any lighted cigar, cigarette, pipe or any other lighted smoking equipment, including an electronic smoking device, in any enclosed, indoor areas in city buildings, ~~provided that such prohibition shall not apply to the Ray Wachs Civic Center.~~

9.38.015 Public school grounds and premises. It shall be unlawful for any person to commit the following acts on premises owned or rented by, or under the control of, a school board:

A. Smoke, use or inhale any substance produced by a tobacco substitute such as a nicotine containing inhalant or possess a lighted cigar, cigarette, pipe or any other instrument with which to smoke tobacco; or

B. Place any tobacco product in one's mouth; or

C. Use any electronic smoking device.

CD. The prohibitions detailed in this section shall not apply to areas exempted by school officials.

9.38.017 Restrictions on sale or gift of cigarettes or tobacco products. Section 134.66 of the Wisconsin Statutes is adopted by reference and made a part of this chapter as if fully set forth herein.

9.38.020 Violation--Penalty. Any person violating any of the provisions of Section 9.38.010 shall, upon conviction thereof, forfeit not more than 500 dollars and not less than sixty (60) dollars together with the costs of prosecution for each offense.

(SEAL) President Terry L. Weld
(SEAL) City Manager Dale Peters
(ATTESTED) City Clerk Carrie L. Riepl

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