

**CITY OF PLYMOUTH
ORDINANCE NO. 5 OF 2020**

An Ordinance Amending Section 8-1-1, Smoking Prohibited, of
the City of Plymouth Code of General Ordinances

WHEREAS, numerous scientific studies have shown that second-hand smoke has an adverse impact on human health and welfare; and

WHEREAS, the legislature of the State of Wisconsin has enacted 2009 Wisconsin Act 12, which amends Wisconsin Statutes § 101.123, with an effective date of July 5, 2010; and

WHEREAS, Wisconsin Statute § 101.123, as amended, prohibits smoking in enclosed indoor areas that are public places or places of employment; and

WHEREAS, Wisconsin Statute § 101.123 further grants authority to the City to enact an ordinance to protect the health and comfort of the public from the effects of second-hand smoke; and

WHEREAS, the Common Council recognizes that smoking cigarettes and other tobacco products such as electronic devices and vaping devices may affect the health of nonsmokers and smokers when they are involuntarily in the presence of using such devices; and

NOW, THEREFORE, the Common Council of the City of Plymouth does hereby amend Municipal Code Section 8-1-1 as indicated in bold print:

SECTION 1: Smoking Prohibited. Section 8-1-1 of the Municipal Code of the City of Plymouth is hereby created to read as follows:

Section 8-1-1 Smoking Prohibited

The following terms are defined for the purposes of this section:

(a) **Definitions.**

(1) “Assisted living facility” means a community – based residential facility, a residential care apartment complex, or an adult family home, as defined in Sec. 50.01, Wis. Stats.

(2) “Child care center” means a facility operated by a child care provider that provides care and supervision for four (4) or more children under seven (7) years of age for less than twenty-four (24) hours a day.

(3) “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.

(4) Notwithstanding Sec. 101.01(5), 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.

- (5) "Enclosed indoor area", means all space between a floor and a ceiling that is bounded by walls, doors, or windows, whether open or closed, covering more than 50 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.
- (6) "Inpatient health care facility" means a hospital, as defined in Sec. 50.33 (2), Wis. Stats., a county home established under Sec. 49.70, Wis. Stats., a county infirmary established under Sec. 49.72, Wis. Stats., a nursing home, as defined in Sec. 50.01 (3), Wis. Stats., a hospice, as defined in Sec. 50.90 (1), Wis. Stats., a Wisconsin veterans home under Sec. 45.50, Wis. Stats., or a treatment facility.
- (7) "Lodging establishment" means any of the following:
- a. A bed and breakfast establishment.
 - b. A hotel.
 - c. A tourist rooming house, including any lodging place or tourist cabin or cottage where sleeping accommodations are offered for pay to tourists or transients.
- (8) "Person in charge" means 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.
- (9) "Place of employment," notwithstanding Sec. 101.01 (11), Wis. Stats., means any enclosed indoor area 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.
- (10) "Private club" means a facility used by an organization that limits its membership and is organized for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose.
- (11) "Public conveyance" means a mass transit vehicle, either publically or privately owned, a school bus, or any other device by which persons are transported, for hire, on a highway or by rail, water, or air, but does not include such a device while providing transportation in interstate commerce.
- (12) "Public place" means any enclosed indoor area 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.
- (13) "Restaurant" means an establishment as defined in Sec. 254.61 (5), Wis. Stats.

(14) “Retail establishment” means any store or shop in which retail sales is the principal business conducted.

(15) “Smoke or Smoking” means burning or holding, or inhaling or exhaling smoke, **mist, or vapor** from, any of the following items containing tobacco:

- a. A lighted cigar.
- b. A lighted cigarette.
- c. A lighted pipe.
- d. Any other lighted smoking equipment.
- e. **An electronic delivery device, meaning any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of aerosol, mist, or vapor from the product. The term includes, but is not limited to, devices manufactured, distributed, marketed, or sold as electronic cigarettes or cigars, electronic pipes, personal vaporizers, electronic nicotine delivery systems, vape pens, or electronic hookahs.**

An electronic cigarette (e-cig or e-cigarette), personal vaporizer (PV), or electronic nicotine delivery system (ENDS) is a battery-powered vaporizer which has the feel of tobacco smoking. They produce a mist rather than cigarette smoke. In general, a heating element vaporizes a liquid solution known as e-liquid. E-liquids usually contain a mixture of propylene glycol, glycerin, nicotine, and flavorings.

(16) “Sports arena” means any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held.

(17) “State institution” means a mental health institute, as defined in Sec. 51.01 (12), Wis. Stats., a center for the developmentally disabled, as defined in Sec. 51.01 (3), Wis. Stats., or a secure mental health facility at which persons are committed under Sec. 980.06, Wis. Stats.

(18) “Tavern” means an establishment, other than a restaurant, that holds a “Class B” intoxicating liquor license or Class “B” fermented malt beverages license.

(19) “Tobacco product” means any form of tobacco prepared in a manner suitable for smoking but not including a cigarette.

(20) “Treatment facility” means a publically or privately operated inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill, or developmentally disabled persons.

(b) **Prohibition Against Smoking.**

(1) Except as provided in sub. (d) no person may smoke in any of the following enclosed indoor areas:

- a. Child care centers.

- b. Educational facilities.
- c. Inpatient health care facilities.
- d. Theaters.
- e. Restaurants.
- f. Taverns.
- g. Private clubs.
- h. Retail establishments.
- i. Common areas of multiple – unit residential properties.
- j. Lodging establishments.
- k. State, county, city, village, or town buildings.
- l. All enclosed indoor areas, other than those listed in subds. a. to k., that are places of employment or that are public places.

(2) No person may smoke anywhere on the premises of a child care center when children who are receiving child care services are present.

(3) No person may smoke in any of the following, regardless of whether it is an enclosed indoor area:

- a. A sports arena.
- b. A bus shelter.
- c. A public conveyance.

(bb) **Outdoor Smoking on City Property.** No person may smoke on property owned or operated by the City of Plymouth within twelve (12) feet from any entrance to any enclosed place owned by the City. Any person in charge of a restaurant, tavern, private club or retail establishment located in an area subject to this section 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.

(c) **Responsibility of Persons in Charge.**

(1) No person in charge may allow any person to smoke in violation of sub. (b) above, at a location that is under the control or direction of the person in charge.

(2) A person in charge may not provide matches, ashtrays, or other equipment for smoking at the location where smoking is prohibited.

(3) A person in charge shall make reasonable efforts to prohibit persons from smoking at a location where smoking is prohibited by doing all of the following:

- a. Posting signs as specified by the Wisconsin Department of Commerce, 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 refuses to do so, asking the person to leave the location.

(4) If a person refuses to leave a location after being requested to do so as provided in par. (3)c., the person in charge shall immediately notify an appropriate law enforcement agency of the violation.

(5) A person in charge may take measures in addition to those listed in pars (3) and (4) to prevent persons from being exposed to others who are smoking or to further ensure compliance with this section.

(d) **Exceptions.**

The prohibition against smoking in Subsection (b)(1) does not apply to the following:

- 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 persons reside if every person who lives in that room smokes and each of those persons 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.

(e) **Outdoor Smoking Areas.** Any 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.

(f) **Penalties.**

(1) Any person who violates sub. (b) shall be subject to a forfeiture of thirty dollars \$30.00 for the first offense and \$100.00 for any subsequent offenses committed within the same year.

(2) Any person in charge who violates sub. (c) shall be subject to a forfeiture of \$50.00 for the first offense and \$100 for any subsequent offenses committed within the same year.

(3) No person in charge may be required under par. (2) to forfeit more than \$100.00 in total for all violations of sub.(c) occurring on a single day.

(g) **Injunction.**

Notwithstanding Sec. 165.60, Wis. Stats., state or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of this section.

SECTION 2: This Ordinance shall be in full force and effect from and after its passage and publication as provided by law.

Enacted on February 25, 2020

CITY OF PLYMOUTH

DONALD O. POHLMAN, Mayor

CLERK'S CERTIFICATE OF ENACTMENT

I hereby certify that the foregoing Ordinance was duly enacted by the City of Plymouth Common Council and approved by the Mayor on the dates indicated above.

SABRINA DITTMAN, Clerk