

ORDINANCES

SUBJECT: LA CROSSE COUNTY SMOKE FREE AIR ACT

COMMITTEE: HEALTH & HUMAN SERVICES BOARD

FIRST CONSIDERATION: August 19, 2010

FINAL CONSIDERATION: September 16, 2010

ORDINANCE # 83 - 9/10 **PUBLICATION DATE** 10-1-10

The County Board of Supervisors of La Crosse County does ordain as follows:

**AN ORDINANCE TO REPEAL & RECREATE S. 11.45
ENTITLED "LA CROSSE COUNTY SMOKE FREE AIR ACT,"
AMEND S. 11.50(1), AND REPEAL S. 11.53 ENTITLED "SMOKE FREE DINING"
OF THE GENERAL CODE OF LA CROSSE COUNTY, WISCONSIN**

ANALYSIS

Summary of the Law

The passage of this Ordinance repeals s. 11.53 which is the "Smoke Free Dining" Ordinance and repeals and recreates s. 11.45 to be entitled "La Crosse County Smoke Free Air Act" and amends the penalty provision of s.11.50(1) for violations of the Smoke Free Air. This ordinance also incorporates by reference 2009 Wisconsin Act 12 which took effect July 5, 2010. Act 12 amends the law restricting smoking under Wis. Stat. s. 101.123.

By passage of the ordinance, La Crosse County declares that the purpose of the La Crosse County Smoke Free Air Act is to protect the health and welfare of the public and county employees by regulating smoking in public places and places of employment. This ordinance applies to all public places and places of employment that are located within the unincorporated areas of La Crosse County.

The Ordinance also applies to all buildings and vehicles that are owned, leased or operated by La Crosse County. Smoking shall be prohibited in all such buildings and vehicles and within 20 feet of a public entrance to any county owned, rented or leased building.

According to a Wisconsin Department of Justice (DOJ) memorandum on 2009 WI Act 12, this Act lists 15 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.

The DOJ memo states that 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, and private clubs to designate an outside smoking area within a reasonable distance from any entrance to the establishment.

Also, the DOJ states that 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, which is incorporated into the county ordinance, 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.

Smoking is not regulated in the following areas:

- A private residence.
- A room used by only one person in an assisted living facility as his or her residence.
- A tobacco bar that is in existence on June 3, 2009 and in which only the smoking of cigars and pipes is allowed.

Enforcement:

- The person in charge of a facility is responsible for making reasonable efforts to prohibit persons from illegally smoking.
- Both local law enforcement personnel and the DOJ have authority to enforce Act 12. Prosecution of forfeiture actions rests with the District Attorney.
- This ordinance may also be enforced by the La Crosse County Health Department Director or an authorized designee.
- Any citizen who desires to register a complaint under this section may initiate enforcement with the County Sheriff's Department or the Health Department.
- Any person affected by the failure of an owner, operator, etc. in control of a public place or place of employment may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
- Counties may enact local ordinances such as s. 11.45 that vests enforcement authority in an agency other than law enforcement. However, no local ordinance may regulate subject matter preempted by state law.
- Section 11.45 provides for enforcement through the use of a municipal citation. Without the authority granted by this ordinance to enforce violations by the use of citations, the District Attorney will have to use a civil complaint when bringing forfeiture actions to enforce Act 12.

Violations & Penalties:

- A person smoking in a prohibited area is subject to a forfeiture of not less than \$100 nor more than \$250 for each violation.
- A person in charge of a public place or place of employment who fails to comply with this ordinance shall be subject to a forfeiture not exceeding \$100 for each violation, but not more than one penalty per day.
- If the person in charge has not previously received a warning notice, then the Sheriff's Department or Health Department must issue a warning for the first violation in lieu of a citation.
- The County citations will go to La Crosse County Circuit Court where costs, fees and surcharges as provided by state law will be added to the amount of the forfeiture.
- A person issued a citation for violation of the ordinance may stipulate to guilt or no contest and avoid the court appearance by paying a bond to the Clerk of Courts. The amount of a bond is currently \$263.50 that includes a forfeiture of \$100 plus the costs, fees and surcharges of \$163.50.

INFORMATION:

County Board Rules: Governing Body s. 2.02(8) states, in part: Ordinances are drafted by the Corporation Counsel. After the ordinance has been reviewed by a standing committee, each Supervisor will be given a copy of the ordinance showing the deleted language (grayed) and the new language (underlined) and an analysis of the intent of the ordinance. After introduction to the County Board, the ordinance shall be referred to the next monthly meeting unless waived by a 2/3 vote of the Supervisors present and a public hearing may be held if requested by a Supervisor. An amendment may be introduced and debated at either the original or the referred meeting.

Copies of the ordinances of the County of La Crosse in their entirety are available with Corporation Counsel, County Clerk, or www.co.la-crosse.wi.us/code/.

(rev. 3/03)

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OF THE GENERAL CODE OF LA CROSSE COUNTY, WISCONSIN**

The County Board of Supervisors of the County of La Crosse does hereby ordain as follows:

Section 1. Section 11.45 is repealed and recreated to read:

11.45 LA CROSSE COUNTY SMOKE FREE AIR ACT.

(1) PURPOSE. The purpose of this section is to promote and protect the health and comfort of the public and county employees through the regulation of smoking, according to the authority granted this County by Wis. Stats. s. 101.123 and Wis. Stats., Chapter 59.

(2) DEFINITION.

(a) "Smoking" means burning or holding, or inhaling or exhaling smoke from any of the following items containing tobacco:

1. A lighted cigar
2. A lighted cigarette
3. A lighted pipe
4. Any other lighted smoking equipment.

(3) REGULATION OF SMOKING.

(a) No person may smoke indoors at any time in any county-owned, rented or leased building.

(b) No person may smoke within twenty (20) feet of a public entrance to any county owned, rented or leased building.

(c) No person may smoke on county property outside a designated smoking area if such property has a posted notice of this regulation and designated smoking areas.

(d) Smoking shall not be allowed in park shelters or bathrooms, or maintenance buildings.

(e) No person may smoke at any time inside of any county-owned, rented or leased vehicle.

(f) In the event of conflict between the provisions of this ordinance and Wis. Stats. s. 101.123, the more restrictive regulation shall apply.

(4) INCORPORATED STATUTORY PROVISIONS. This ordinance shall incorporate the provisions of Wis. Stats. s. 101.123, as amended by 2009 Act 12, effective July 5, 2010. Any act required or prohibited by said statutory section shall be required or prohibited by this ordinance.

(5) PENALTIES.

(a) Any person who violates this ordinance or any part of this ordinance shall be subject to a forfeiture of not less than \$100 nor more than \$250 for each violation, together with the costs of prosecution, fees and surcharges imposed under Wis. Stats. Chapter 814.

(b) Except as provided in Wis. Stats., s. 101.123(8)(dm) or (em), any person in charge who violates incorporated s. 101.123(2m) (b) to (d) shall be subject to a forfeiture of \$100 for each violation.

1. For violations subject to the forfeiture under par. (5)(b) of this ordinance, if the person in charge has not previously received a warning notice for a violation of incorporated s. 101.123(2m)(b) to (d), the law enforcement officer shall issue to the person in charge a warning notice and may not issue a citation.

2. No person in charge may be required under par. 5(b) to forfeit more than \$100 plus applicable costs, fees, and surcharges, in a total for all violations of incorporated s. 101.123(2m)(b) to (d) occurring on a single day.

(c) Any person, firm or corporation violating any of the subsections of this ordinance may stipulate to guilt or no contest and pay to the Clerk of Court a bond established by this ordinance. Such stipulation will make it unnecessary for the subject charged to appear in court, and will act as a basis for the court to enter judgment and order forfeiture of the bond.

(d) Schedule of Deposits. Deposits shall be made in cash, money order, check, or credit card to the Clerk of La Crosse County. The amount of the bond is hereby affixed at \$100 plus applicable costs, fees and surcharges.

(e) Adoption of this ordinance does not preclude the County Board from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or any other matter. The issuance of a citation hereunder shall not preclude the County or any authorized officer from proceeding under any other ordinance or law relating to the same or any other matter.

(6) NOTIFICATION TO THE PUBLIC.

(a) The person in charge of county buildings or his or her designees shall cause to be posted at the entryway of each county building, signs notifying the public of the fact that the building is a smoke-free building. Absence of such a sign shall not be a defense to the violation of this ordinance.

(b) The person in charge of county buildings or his or her designees shall cause to be posted signs notifying the public of the prohibition against smoking within twenty (20) feet of a public entrance to a county building.

(c) The person in charge of county buildings or his or her designees shall cause to be posted on the property around such buildings notices to the public limiting smoking to designated areas, if the Facilities Director or County Administrator has established designated smoking areas applicable to the grounds of that specific building.

(7) ENFORCEMENT.

(a) All law enforcement officials of the La Crosse County Sheriff's Department and the La Crosse County Health Director or his or her designees are hereby

authorized in the name of the County of La Crosse to issue citations for prosecution of violations occurring under this ordinance.

(b) Prosecutions under this ordinance shall be made by issuance of citations and the procedure to be followed shall be governed by Wis. Stats. s. 66.0113. The District Attorney shall, upon receipt of a complaint from the Sheriff's Department, the Health Department, or other authorized individuals, institute appropriate legal proceedings against the alleged offender.

Section 2. Section 11.50(1) is amended to read:

11.50. PENALTY.

(1) Any person who shall violate any provision of this chapter, or any regulation, rule or order made hereunder, shall be subject to a penalty pursuant to s. 25.04 of this Code, except any person violating s. 11.45 of this Code, shall be subject to a forfeiture of not less than \$100 nor more than \$250 for each violation.

Section 3. Section 11.53 "Smoke Free Dining" is hereby repealed.

Section 4. This ordinance shall take effect the day after passage and publication as required by law.

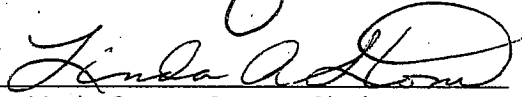
Dated this 16TH day of SEPTEMBER, 2010.

LA CROSSE COUNTY

By: _____


Steve Doyle, County Board Chair

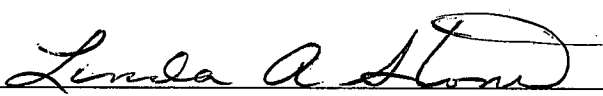
By: _____


Linda Stone, County Clerk

PASSED: 9-16-10
PUBLISHED: 10-1-10

STATE OF WISCONSIN
COUNTY OF LA CROSSE

I, Linda A. Stone, County Clerk of La Crosse County do hereby certify that this document is a true and correct copy of the original ordinance required by law to be in my custody and which the County Board of Supervisors of La Crosse County adopted at a meeting held on the 16th day of September, 2010.


Linda A. Stone, La Crosse County Clerk