

TITLE 11
CHAPTER 9
SMOKING PROHIBITED

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11-9-1 Purpose.

This ordinance is adopted for the purposed of protecting the public health, safety, comfort and general welfare of the people of the City of Prescott, especially recognizing the health interest of nonsmokers.

11-9-2 Definitions.

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

- (a) **“Assisted living facility”** means a community-based residential facility, as defined in sec. 50.01 (1g), a residential care apartment complex, as defined in sec 50.01 (1d), or an adult family home, as defined in sec. 50.01 (1) (b)
- (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) **“Person in Charge”** means the person or his or her agent who ultimately controls, governs or directs the activities at a location where smoking is prohibited or regulated under this ordinance.

(n) **“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.

(o) **“Private residence”** shall mean a premise owned, rented, or leased for temporary or permanent habitation.

(p) **“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.

(q) **“Smoking”** shall mean to inhale, exhale, carry, possess, or control any lighted cigarette or any lighted tobacco product in any form or in any manner.

(r) **“Tobacco product”** has the meaning set forth in sec. 139.75(12), Wis. Stats.

11-9-3 Smoking prohibited in public places.

Except as provided in section 11-9-6 smoking in any public place shall be unlawful, including, but not limited to the following:

- (a) Theatres, libraries, museums, auditoriums, and convention halls which are used by or open to the public.
- (b) Child care facilities.
- (c) Assisted Living facilities.
- (d) Retail stores.
- (e) Health care facilities.
- (f) Waiting rooms, hallways, or rooms of health care laboratories.
- (g) Waiting rooms, hallways, and rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist, optician, or other medical service provider.
- (h) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, and other multiple-unit residential facilities.
- (i) Restrooms, lobbies, reception areas, hallways, and other common areas which are used by or open to the public.

- (j) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political, or social purposes.
- (k) Polling places.
- (l) Self-service laundry facilities.
- (m) Restaurants.
- (n) Bars, taverns, nightclubs, and cocktail lounges.
- (o) Common areas of malls, meaning those areas within a mall customarily accessible to patrons.
- (p) City facilities, meaning all city-owned and operated buildings and those portions of buildings leased and operated by the city.
- (q) Educational facilities, meaning 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.
- (r) Sports arenas, meaning sports pavilions, stadiums, gymnasiums, health spas, swimming pools, roller and indoor ice rinks, bowling centers, and other similar places where the public assembles to engage in physical exercise, participate in athletic event competition, or witness a sporting or other event.
- (s) Common areas in bed and breakfast establishments, hotels and motels, and rooms thereof that are rented to guests and designated as non-smoking rooms including lobbies, community rooms, hallways, laundry rooms, stairwells, elevators, enclosed parking facilities, pool areas, and restrooms within said facilities.

11-9-4 Smoking prohibited in places of employment.

- (a) Except as provided in section 11-9-6, smoking in any place of employment shall be unlawful.
- (b) This prohibition on smoking shall be communicated to all existing employees prior to the effective date of this ordinance and to all prospective employees upon their application for employment.

11-9-5 Smoking prohibited in specified outdoor areas.

Smoking shall be unlawful in the following areas:

- (a) Within a reasonable distance of all outside entrances to, operable windows of, or ventilation systems of public places or places of employment where smoking is prohibited pursuant to section 11-9-3 and 11-9-4 so as to prevent smoke from entering said enclosed areas in which smoking is prohibited.
- (b) In the seating areas of all outdoor arenas, stadiums, and amphitheaters, as well as in the bleachers and grandstands used by spectators at sporting and other public events, including, without limitation, softball, football and baseball fields.
- (c) Those portions of city parks temporarily posted as no smoking areas by the parks and public property committee when necessary for the public health or safety.
- (d) Those areas outside of city facilities that are posted as no smoking by the city administrator or his or her designee.

11-9-6 Exceptions.

The following shall not be subject to and are exempt from the smoking prohibitions of this chapter:

- (a) Use of tobacco by an enrolled member of an Indian tribe, as those terms are defined in sec. 139.30(4) and (5), Wis. Stats., as part of a traditional spiritual or cultural ceremony.
- (b) Bed and breakfast establishments and hotel and motel rooms that are rented to guests and are designated as smoking rooms, provided that not more than twenty-five percent (25%) of the rooms rented to guests are designated as smoking rooms. This exception does not include common areas as defined in s. 11-9-3 (s).
- (c) Private residences, except when used as a child care facility, adult day care facility, or health care facility.
- (d) Private clubs, except when used for a function to which the public is invited or permitted to enter. This exception shall not apply to any organization established to avoid compliance with the ordinance.

11-9-7 Signs required.

- (a) Signs prohibiting smoking shall be posted conspicuously at every entrance by the proprietor or other person in charge of each building or structure regulated by sections. 11-9-3 and 11-9-4. Signs in specified outdoor areas designated as non-smoking pursuant to section 11-9-5 shall be placed so that the general public has reasonable notice of the prohibition. Signs shall contain a reference that regulation is by ordinance, such as “No Smoking - City Ordinance.
- (b) It shall be unlawful for any person to remove, deface, or destroy any legally required “No Smoking” sign.

11-9-8 Responsibility of Persons in Charge.

- (a) No person in charge may allow any person to smoke at a location that is under the control or direction of the person in charge.
- (b) A person in charge may not provide matches, ashtrays, or other equipment for smoking at the location where smoking is prohibited.
- (c) A person in charge shall make reasonable efforts to prohibit person from smoking at a location where smoking is prohibited by doing all of the following:
 - 1. Posting signs setting forth the prohibition and providing other appropriate notification and information concerning the prohibition.
 - 2. Refusing to serve a person, if the person is smoking in a restaurant, tavern or private club.
 - 3. 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.
- (d) If a person refuses to leave a location after being requested to do so as provided in par. (c) 3, the person in charge shall immediately notify the Prescott Police Department of the violation.

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

11-9-9 Enforcement

(a) Any person who desires to register a complaint under this chapter may contact the Prescott Police Department

(b) No person shall retaliate against a person because that person exercises any rights afforded by this chapter.

(c) The city building inspector, fire department or police department, shall have the power, whenever it may deem necessary, to enter a building, structure, or property regulated under this chapter to ascertain whether the premises are in compliance with this chapter. The above-listed departments may issue compliance orders and citations pursuant to the provisions of this code.

11-9-10 Additional private prohibitions.

Nothing in this ordinance shall prevent a proprietor or other person in charge of any private place from prohibiting smoking in any indoor or outdoor area under their control.

11-9-11 Other applicable laws or regulations.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by any other law or regulation.

11-9-12 Penalty.

Any person who violates any provision of this chapter shall be required to forfeit not less than \$50 nor more than \$500. Each day of violation shall constitute a separate offense.

11-9-13 Severability.

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

11-9-14 Effective date.

The provisions of this chapter shall become effective July 5, 2010