



SUPERIOR

WISCONSIN

Living up to our name.

Parks, Recreation & Forestry

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TO: Parks and Recreation Commission Members

FROM: Linda M Cadotte, Director 

DATE: October 1, 2019

RE: **Special Parks and Recreation Commission Meeting Agenda
Wednesday, October 9, 2019 – 5:00 p.m.
Room 204, Government Center**

The Parks and Recreation Commission mission statement is: To fairly and equitably develop, maintain and improve its programs and entities.

Please make every effort to attend. Please call if you are unable to attend.

1. Tabled to a Special Parks & Rec Commission meeting from the September 26, 2019 regular meeting: Tobacco Free Parks – draft ordinance.

Next regular meeting date: October 24, 2019 at 5 p.m.

Notice is hereby given that a majority of the members of the Common Council may be present at the meeting, and although this may constitute a quorum of the Common Council, the council will not take any action at this meeting
The City of Superior complies with the Americans with Disabilities Act of 1990. If you are in need of an accommodation to participate in the public meeting process, please contact Parks and Recreation at (715) 395-7270 or by email: parks@ci.superior.wi.us by 4:30 p.m. on the day prior to the scheduled meeting. The City will attempt to accommodate any request depending on the amount of notice we receive.
In compliance with Wisconsin Open Meetings Law, this agenda was posted: Government Center, Court House, & Public Library,
Emailed to: Daily Telegram, Public Library, October 1, 2019.

ORDINANCE #O10-3741

AN ORDINANCE INTRODUCED BY THE LICENSE AND FEES COMMITTEE AMENDING THE CITY CODE BY REPEALING AND RECREATING CHAPTER 86, SECTION 16, SMOKING PROHIBITED

The Common Council of the City of Superior, Wisconsin, does ordain as follows:

SECTION 1. Chapter 86, Section 86-16 of the City Code of Ordinances are hereby amended to read as follows:

Sec. 86-16 Smoking prohibited.

(a) The following provisions of chapter 101.123 of the Wisconsin Statutes as amended by 2009 Wisconsin Act 12 relating to the prohibition of smoking in various enclosed places are hereby adopted and made part of this Code by reference.

(b) Definitions

Assisted living facility means a community based residential facility, as defined in s. 50.01 (1g), a residential care apartment complex, as defined in s. 50.01 (1d), or an adult family home, as defined in s. 50.01 (1) (b).

Child care center has the meaning given in s. 49.136 (1) (ad).

Correctional facility means any of the following:

A state prison, as defined or named in s. 302.01, except a correctional institution under s. 301.046 (1) or 301.048 (4) (b) if the institution is the prisoner's place of residence and no one is employed there to ensure the prisoner's incarceration.

A juvenile detention facility, as defined in s. 938.02 (10r), or a juvenile correctional facility, as defined in s. 938.02 (10p), except a juvenile correctional facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5) if the facility is a private residence in which the juvenile is placed and no one is employed there to ensure that the juvenile remains in custody.

A jail, as defined in s. 165.85 (2) (bg), a Huber facility under s. 303.09, a work camp under s. 303.10, a reforestation camp under s. 303.07, or a lockup facility under s. 302.30.

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.

Notwithstanding s. 101.01 (5), *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.

Enclosed place means all space between a floor and 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.

Inpatient health care facility means a hospital, as defined in s. 50.33 (2), a county home established under s. 49.70, a county infirmary established under s. 49.72, a nursing home, as defined in s. 50.01 (3), a hospice, as defined in s. 50.90 (1), a Wisconsin veterans home under s. 45.50, or a treatment facility.

Lodging establishment means any of the following:

A bed and breakfast establishment, as defined in s. 254.61

A hotel, as defined in s. 254.61 (3).

A tourist rooming house, as defined in s. 254.61 (6).

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.

Notwithstanding s. 101.01 (11), *place of employment* means 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.

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.

Public conveyance means a mass transit vehicle as defined in s. 340.01 (28m), a school bus as defined in s. 340.01 (56), or any other device by which persons are transported, for hire, on a highway or by rail, water, air, or guidewire within this state, but does not include such a device while providing transportation in interstate commerce.

Public place means 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.

Restaurant means an establishment as defined in s. 254.61 (5).

Retail establishment means any store or shop in which retail sales is the principal business conducted.

Retail tobacco store means a retail establishment that does not have a Class B” intoxicating liquor license or a Class “B” fermented malt beverages license and that generates 75 percent or more of its gross annual income from the retail sale of tobacco products and accessories.

Smoking means 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.

E-cigarette, e-cigar, e-pipe, e-hookah, or vape pen.

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

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

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

Tobacco bar means a tavern that generates 15 percent or more of its annual gross income from the sale on the tavern premises, other than from a vending machine, of cigars and tobacco for pipes.

Tobacco product means any form of tobacco prepared in a manner suitable for smoking but not including a cigarette.

Treatment facility means a publicly or privately operated inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill, or developmentally disabled persons.

Type I juvenile correctional facility has the meaning given in s. 938.02 (19).

(c) *Prohibition against smoking*

(1) Except as provided in sub (e), no person may smoke in any of the following enclosed places:

- Residence halls or dormitories owned or operated by a college or university.
- Child care centers.
- Educational facilities.
- Inpatient health care facilities.
- Theaters.
- Correctional facilities.
- State institutions.
- Restaurants.
- Taverns.
- Private clubs.
- Retail establishments.
- Common areas of multiple unit residential properties.
- Lodging establishments.
- State, county, city, village, or town buildings.

(2) No person may smoke at any of the following outdoor locations:

Anywhere on the premises of a child care center when children who are receiving child care services are present.

Anywhere on the grounds of a Type 1 juvenile correctional facility.

A location that is 25 feet or less from a residence hall or dormitory that is owned or operated by the Board of Regents of the University of Wisconsin System.

Parks, trails, and outdoor recreational areas.

Any festival or event permitted by the City.

(3) No person may smoke in any of the following:

A sports arena.

A bus shelter.

A public conveyance.

(d) *Responsibility of Persons in Charge*

(1) No person in charge may allow any person to smoke in violation of sub. (c) 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 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. (2) and (3) to prevent persons from being exposed to others who are smoking or to further ensure compliance with this section.

(e) *Exceptions* The prohibition against smoking in sub. (c) does not apply to the following:

It shall not be a violation of this policy for a person to possess or provide tobacco or tobacco-related devices to any other person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice

A private residence.

A room used by only one person in an assisted living facility as his or her residence.

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.

A retail tobacco store that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.

A tobacco bar that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.

During city permitted events or pavilion park rental, with prior approval from the Parks & Recreation director, a smoking area, no larger than 20'x20', can be created with snow fence, and signed 'smoking area.'

Any permanent designated smoking area. Current places with approved smoking areas:
-Billings Park Civic Center

(f) *Penalties*

(1) Any person who violates sub. (c) shall be subject to a forfeiture of not less than \$100 nor more than ~~\$250~~ \$500 for each violation, exclusive of court costs.

(2) Except as provided in par (3) or (4), any person in charge who violates sub. (d) (1) to (5) shall be subject to a forfeiture of \$100 for each violation, exclusive of court costs.

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

(4) No person in charge may be required under par. (2) to forfeit more than ~~\$100~~, \$500 exclusive of court costs, in total for all violations of sub. (d) (1) to (5) occurring on a single day.

(g) *Injunction* Notwithstanding s. 165.60, 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. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence or clause or phrase or portion thereof.

SECTION 4. This ordinance shall take effect and be in force from and after its passage and publication, as provided by law.

Passed and adopted this

Mayor

Attest:

City Clerk

- **ARTICLE II. - SPECIFIC RECREATIONAL AREAS**
- **DIVISION 1. - GENERALLY**
- **Sec. 90-21. - Loitering in city parks.**

Except for the Superior Skate Park, which shall close at 10:00 p.m., no person, besides authorized employees of the city parks, recreation and forestry department or the police department shall stand, sit, loiter in or occupy any city park area between the hours of 10:30 p.m. and 5:30 a.m. This section shall not apply in the following areas:

- (1) Club house and parking area for Nemadji Municipal Golf Course.
- (2) Wisconsin Point.

Secs. 90-22 Smoking Prohibited

No person shall smoke or hold a lighted cigarette, cigar or pipe within any park, trail or outdoor recreational area, or portion thereof, where notices prohibiting smoking are posted. The Park and Recreation Commission is authorized to designate the park, trail or outdoor recreational areas, or portions thereof, where smoking is prohibited and to implement the installation of appropriate notices. The term "smoke" includes the use of any electronic delivery device containing or delivering nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. This includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or any other product name or descriptor. Electronic delivery device does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for such an approved purpose.