



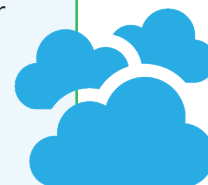
Local Smoke-Free Air Assessment Guide



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Wisconsin’s Smoke-Free Air Law (2009 Wisconsin Act 12) was enacted on July 5, 2010.

This law prohibited smoking indoors in public places, with a few exceptions. As of the writing of this document, Wisconsin has not amended the law to include electronic smoking devices or cannabis. Local municipalities can update their local ordinances to include electronic smoking devices and cannabis products to offer greater health protections against secondhand aerosol and smoke.



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Overview of Current State Law

[\(find the full law here\)](#)

Wisconsin's smoke-free air law is state statute 101.123.

Below is a breakdown of what is included in the statute:

1. Definitions: Notable definitions are included below, but are not limited to:



Enclosed place: Structure or area that has a roof and more than two substantial walls.



Place of employment: 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.



Public Place: 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.



Smoking: 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.



Substantial wall: A wall with no opening or with an opening that either does not allow air in from the outside or is less than 25 percent of the wall's surface area.



Tobacco bar: 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: Any form of tobacco prepared in a manner suitable for smoking but not including a cigarette.

2. Where smoking indoors is not allowed (prohibition against smoking).

Includes: the state capitol, residence halls/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; all enclosed places other than those listed that are places of employment or public places.

It also includes outdoor and other areas where smoking is not allowed: in the immediate vicinity of the state capitol, 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, within 25 feet of a UW-Systemic residence hall/dormitory, a sports arena, a bus shelter, [a public conveyance](#) (transit vehicles such as taxis, etc.).



2m. The responsibilities of a person in charge of an establishment/workplace, including:

- Posting signs
- Refusing to serve a person smoking in a restaurant, tavern, or private club; and
- Asking a person who is smoking to refrain and, if the person refuses to do so, asking the person to leave.

3. Exceptions, which include:

- Private residences
- A room used by only one person in an assisted living facility as their residence
- A room in an assisted living facility in which two 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 or tobacco bar in existence prior to **6/3/2009** in which the smoking of cigars and pipes is allowed

4m. Local authority

- Law does not limit the authority of any county, city, village, town, or school district to adopt policies that protect the health and comfort of the public
- Ordinances only apply to public property under that jurisdiction
- Restaurants, taverns, private clubs, or retail establishments can designate an outdoor area where people can smoke a reasonable distance from the establishment. The jurisdiction cannot define "a reasonable distance."

6 & 7. Signage requirements and what the Wisconsin Department of Administration needs to have available for state agencies for use in state facilities.

8. Penalties

- Those who violate the law shall be subject to a forfeiture (fine) of **\$100-\$250**
- If a person in charge fails to meet his/her responsibilities under Act 12, the person in charge must receive a warning notice for the first offense; however, subsequent offenses shall receive a citation and forfeiture of **\$100** for each violation. No person in charge may be required to forfeit more than **\$100** in total for all violations occurring on a single day.

9. A statement on injunction (court order requiring a person to do or cease doing a specific action)



A Note on Preemption: Local authority is outlined in 4m of the state law.

The only preemptive language that is included in the smoke-free air law applies to reasonable distances. Local ordinances cannot define or specify a distance for a "reasonable distance" for private businesses.

For example, local ordinances cannot require that customers smoke at least 25 feet from a bar.

Best Practice Ordinance

[\(see here for the full ordinance\)](#)

The best practice ordinance uses most of the language included in the state law, but provides the following additions that strengthen the law to include indoor smoking or vaping of a wide range of products.

- **Comprehensive definition of smoking:** The best practice definition includes broad language that includes products beyond conventional cigarettes or cigars. In addition to cigars, cigarettes, and pipes, it includes hookahs, nicotine products, cannabis (referred to as marijuana), any plant products, and any natural or synthetic products. It also includes electronic smoking devices.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated, cigar, cigarette, or pipe, or any other lighted or heated tobacco, nicotine, or plant product intended for inhalation, including hookah and marijuana, whether natural or synthetic. “Smoking” also includes the use of an electronic smoking device.

- **Definition of electronic smoking device:** Includes devices that deliver aerosolized or vaporized substances to an individual using the device. Electronic smoking devices include, **but are not limited to**, e-cigarettes, e-cigars, e-pipes, vape pens, or e-hookah.

“Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

- **Local enforcement:** Note that the enforcement section of an ordinance may be in other portions of the municipal code, so you may have to look in other sections. The state law does not include much on local enforcement, therefore, this section provides more detail for local governments on:
 - Who has the authority to enforce the law (other than law enforcement). Local governments can give health officers and other officials authority to enforce the law.

(a) This ordinance shall be enforced by the _____ [Department of Health or City Manager or County Administrator] or an authorized designee.

- Notification of the local ordinance for business owners/rental property owners

(b) Notice of the provisions of this ordinance shall be given to all applicants for a business or rental property license in the _____ [City or County] of _____.



- Where complaints can be filed

(c) Any individual who desires to register a complaint under this ordinance may initiate enforcement with the _____ [**Department of Health or City Manager or County Administrator**].

- The authority of the fire department and health department to inspect for compliance when conducting other inspections

(d) The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this ordinance.

- Steps for persons in charge or their employees to take if someone is violating the local ordinance,

(e) A person in charge, or an employee if a person in charge is unavailable, of an area regulated by this ordinance shall direct a person who is smoking in violation of this ordinance to extinguish or turn off the product being smoked. If the person does not stop smoking, the person in charge or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the person in charge or employee shall contact the appropriate enforcement agent.

- Who can bring legal action forward to enforce the ordinance.

(f) Notwithstanding any other provision of this ordinance, an employee or private individual may bring legal action to enforce this ordinance.

(g) In addition to the remedies provided by the provisions of this Section, the [**Department of Health or City Manager or County Administrator**] or any person aggrieved by the failure of the owner, operator, manager, or other person in control of an area regulated by this ordinance to comply with the provisions of this ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

- **Penalties:** The state law outlines penalties of fines for individuals who break the law and warnings and fines for persons in charge who allow smoking in their establishment. The best practice ordinance provides more detail and options for local municipalities.

The best practice ordinance **separates penalties for those over 21 and those under 21**. It also lowers the fine amount to **\$50** for individuals and offers options besides monetary fines.

(a) A person age 21 or older who smokes in an area where smoking is prohibited by the provisions of this ordinance may be cited for an administrative violation, punishable by a fine not exceeding fifty dollars (**\$50**) or other non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another non-criminal, non-monetary penalty that the **[City/County]** determines to be appropriate.

(b) Notwithstanding other penalties in this chapter, code, or other law, persons under the age of 21 who smoke in violation of this ordinance may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another non-criminal, non-monetary penalty that the **[City/County]** determines to be appropriate. The **[City Council/County Board]** will consult with court personnel, educators, parents, children, the Department of Public Safety, and other interested parties to determine an appropriate non-criminal, non-monetary penalty for persons under the age of 21 in the **[City/County]**. The penalty may be established by ordinance and amended from time to time.



How to Assess a Local Ordinance

Use the [Smoke-Free Air Assessment Tool](#) (it will prompt you to make your own copy) to complete your review. For further guidance, refer to the “Example” tab of the spreadsheet. The example assesses the [City of Appleton’s ordinance](#), which can be found on page 161 of the Municipal Code.

How to use the SFA Assessment Tool:

- **Column A:** Review the listed best practice ordinance criteria
- **Column B:** Record whether the criteria from Column A is included in the ordinance
 - **Answer Y** for “yes it is included”
 - **Answer N** for “no it is not included,” or
 - **Answer O** for “other”
You may choose to put “O” if you find that the criteria is somewhat included or includes similar but different language.
- **Column C:** Record is to record any notes/explanation you’d like to document.

Please note that this tool was created for your use, so use it in the way that is most helpful to your work. If you’d like to document differently, feel free to do so.

Finding and assessing the ordinance takes approximately 30–60 minutes. If a municipality doesn’t have its ordinances online and you have to contact them to receive a copy, that can add more time to the process.

Finding the local ordinance

Go to the website of the municipality you’re assessing and find where they have their local ordinances. This will typically be under a heading such as “government, municipal code, ordinances.” The Wisconsin Law Library also has a page linking to all [Wisconsin Ordinances and Municipal Codes](#).

If the municipality uses Municode (or a similar system such as e-code), you can use the top search bar and type in “smoking.” If the municipality doesn’t use municode or another similar system and has them printed in PDFs, use “ctrl + f” to use the find function and type in “smoking.” If you need to select a chapter first, look for areas such as “health & safety,” “nuisances,” and/or “tobacco.”

If the municipality doesn’t have any of its ordinances available online, you may have to contact the municipal (town, village, city) clerk. [See page 14 for email templates/ phone scripts](#) for asking for an ordinance.

You may find a number of areas where smoking comes up in the municipal code. Smoke-free indoor air laws can be titled in a number of ways:

- “Prohibition of smoking in public places and private workplaces”
- “Smoking regulated”
- “Smoking prohibited in certain areas”

You may have to read some of the ordinances to confirm that they are smoke-free indoor air ordinances.

Criteria

Does the ordinance adopt state law, SS 101.123?

- Some municipalities will use language such as “the provisions of Wis. Stats. §101.123 are hereby adopted” or will make reference to §101.123.
- Other municipalities will insert the state law language into their municipal code. (E.g., this will typically start with “definitions.”)
- If you see either of these, it means the municipality adopted the state law. If you don’t see it, the municipality still follows the state law, but they just don’t have it as part of their local municipal code.
- If the municipality **only** adopted the state law and added no other language to their ordinance, you can **put “Y” in Column B** and stop filling out the tool. [Refer to next steps on page 13.](#)

Does the ordinance define smoking?

This may be part of the definitions section or in another part of the ordinance. You will usually see language that says “smoking means.”

Smoking definition

- **Includes inhaling, exhaling, burning, or carrying lighted or heated [prior to listing products]:** The best practice definition includes this language to cover types and uses of products. You may find that the municipality has similar language or uses different terminology. If the municipality uses different terminology, **put “O” in Column B** and write what the ordinance says in the “notes” column.
- **Includes cigars, cigarettes, pipes, hookah, any other lighted/heated smoking equipment:** look for these specific products to be listed and reference to lighted/heated equipment (see more information on the next bullet point).
- **Includes any other lighted or heated tobacco, nicotine or plant product intended for inhalation:** The best practice definition includes this language to include a wide range of products. You may find that the municipality uses different terminology. If the municipality uses different terminology, **put “O” in Column B** and write what the ordinance says in the “notes” column.
- **Includes marijuana/cannabis:** While the above terminology would encompass marijuana, the best practice definition specifically includes the term marijuana (some communities use cannabis as it is the preferred term) to provide clarity and ensure that cannabis products are included as they become more available.





Smoking definition (*continued*)

- **Includes the terms natural and synthetic:** The best practice definition includes language to cover synthetic nicotine products as well as other plant products that may be smoked or vaped.
- **Includes electronic smoking devices:** For an indoor smoke-free air ordinance to include vaping, it must reference electronic smoking devices. Language can vary widely. If these devices are referred to in the ordinance, **put "Y" in Column B**. If the language is different than electronic smoking devices, write what they are referred to in the "notes" column.

Electronic Smoking Device Definition

- **Includes reference to any device used to deliver any aerosolized or vaporized substance to the person inhaling:** The best practice definition provides a description of the device so that new and future devices are covered without having to specifically be named.
- **Has language "including but not limited to":** Similar to above, the phrase "not limited to" is used to cover new and future devices or ones that aren't referred to as an e-cigarette, vape pen, etc.
- **Includes e-cigarettes, e-cigar, e-pipe, or e-hookah:** These are examples of products used in the definition. The municipality may name different products as examples.

Enforcement

The state law does not have an enforcement section. If there is an enforcement section, the municipality has added that. Adding an enforcement section can be helpful to a local municipality because it can outline elements such as who has authority to enforce the law, what steps should be taken for local business owners and government officials, or where complaints can be filed.

- **Does the ordinance include an enforcement section?** If there isn't a separate enforcement section, there might be enforcement language.
- **Does it specify who can enforce the ordinance?** A local ordinance may give authority to a health officer or other government official.
- **Does it require that business or rental applicants be given information about the ordinance?** The best practice ordinance states "notice of the provisions of this ordinance shall be given to all applicants for a business or rental property license." The municipality may have this language or adopted other language.
- **Does it specify where complaints can be filed?** The local ordinance may state where individuals and others can submit complaints of the ordinance being violated. (e.g., where individuals would report someone smoking or vaping indoors where it is prohibited).

- **Are fire and health departments given authority to inspect for compliance during otherwise mandated inspections?** The best practice definition gives entities such as the fire department or health department the ability to ensure compliance with the law during fire or restaurant inspections.
- **Does it provide a course of action for the person in charge or staff if someone is smoking?** Including asking them to extinguish/turn off the product, refuse service, ask to leave the premises, or contact law enforcement? The best practice definition outlines steps that the business owner or employee can take to address someone violating the ordinance. You may find that the steps vary depending on the municipality.
- **Can an employee, private individual, or local government bring legal action to enforce this ordinance?** The best practice definition includes the following language; it may vary depending on the municipality: Look for the words “**legal action, injunction, injunctive relief.**”

(f) Notwithstanding any other provision of this ordinance, an employee or private individual may bring legal action to enforce this ordinance.

(g) In addition to the remedies provided by the provisions of this Section, the **[Department of Health or City Manager or County Administrator]** or any person aggrieved by the failure of the owner, operator, manager, or other person in control of an area regulated by this ordinance to comply with the provisions of this ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Penalties

State law has penalties for individuals violating the law and the business owner (person in charge). Penalties may differ depending on the municipality.

- **Does the ordinance include a penalties section?** If not, there may be penalty language.
- **Are penalties different for those over 21 and under 21?** Look for whether the ordinance specifies penalties based on age. If not, skip to the last question.
- **If yes, what are the penalties for those over 21? [Write notes in Column C]**
Write in the notes section what the penalties are for those over 21.
May include fines, warnings, education, community service, etc.
- **If yes, what are the penalties for those under 21? [Write notes in Column C]**
Write in the notes section what the penalties are for those under 21.
May include fines, warnings, education, community service, etc.





Penalties *(continued)*

- **If no, what are the penalties for those violating the ordinance? [Write notes in Column C]** If penalties are not different based on age, write in the notes section what the penalties are for those violating the ordinance. May include fines, warnings, education, community service, etc.

Additional Information

There is a section at the end of the tool to document the following details, if helpful:

- **Year the ordinance was updated or adopted:** You will often find that the date the ordinance was adopted or updated at the end of the ordinance or the end of a section stating, **"The provisions of this ordinance, in its entirety, shall become effective on [date]."** Or you'll see something like this example: (Ord. No. 719-O-18, § 1, 5-21-18)
 - You may find multiple dates within the ordinance if amendments were made at a later date. You can include all these dates on the tool.
- **If you spoke/emailed a municipality, name of the person you worked with:** Document the name of the person(s) you worked with at the municipality in case you need to reference that information later.
- **Link to the ordinance (if online):** You can include the link to an online ordinance to make it easier to find in the future.



Knowledge to Action

Now that you have this information, what should you focus on?

In order to have the most comprehensive protections in smoke-free ordinances, focus on the definitions of smoking and e-cigarettes [rows 3-14 in the tool].

- For a municipality to prohibit the use of e-cigarettes indoors, their ordinance must include electronic smoking devices in the definition of smoking. Additionally, it's important that electronic smoking devices are defined due to continuous changes in the types of products.
- To prohibit the use of cannabis and other cannabis derivatives indoors, the definition of smoking in the ordinance should also include marijuana/cannabis, plant products, and natural or synthetic products. The term "hemp" can also be included to provide additional clarity.
- The enforcement and penalties sections are helpful, but they are less of a priority than the definitions of smoking and electronic smoking devices. If the municipality does not have its own enforcement and penalties section, it would follow state law.
- The enforcement section is helpful if the municipality wants to give authority to other government officials to enforce the policy, and lessen ambiguity of the process for addressing complaints/violations.
- The penalties section is helpful if the municipality wants to address equity concerns about penalties for those under 21 or if it wants to have penalties that differ from state law.

Next steps

- If the municipality has adopted the state law, its next step would be to update its ordinance to add the best practice definition of smoking and electronic smoking devices.
- If the municipality has not adopted the state law, then they would need to adopt a local smoke-free indoor air ordinance using best practice language.

If you find a municipality with a smoke-free ordinance, [fill out the Google form](#).

- If you're unsure whether we have record of a policy, you can [review the tracking spreadsheet](#).
- If you need help with the next steps or analyzing an ordinance, the policy technical assistance providers are here to help. Contact Kayleigh Day at kayleigh.day@lung.org for assistance.

Appendix A

Scripts/templates for requesting ordinances not available online

Phone Script

"Hi, I'm **[Name]** with the _____ **Alliance** and we serve _____ **County/City** in commercial tobacco prevention and treatment efforts. I'm hoping to better understand the current ordinances in our area around tobacco products. Would it be possible to get a copy or be pointed in the direction of where they are at on the website?

OR

I'm unfortunately not finding your ordinances online, is there a way to have them emailed to me or a good time where I can stop in and look at them?"

E-mail Template

Dear **[municipal clerk name]**,

My name is **[Name]** with the _____ **Alliance** and we serve _____ **County/City** in commercial tobacco prevention and treatment efforts. I'm hoping to better understand the current ordinances in our area around tobacco products. Would it be possible to get a copy or be pointed in the direction of where they are on the website?

OR

I'm unfortunately not finding your ordinances online, is there a way to have them emailed to me or a good time where I can stop in and look at them?"

Sincerely,
[Name]