

**Chapter 8.44
Public Smoking**

8.44.010 Adoption of State Law.

8.44.020 Definitions.

8.44.030 Smoking Prohibited.

8.44.040 Exceptions.

8.44.050 Penalties.

8.44.010 Adoption of State Law.

The Town of Burlington adopts the provisions of state statute 101.123, regulating smoking except as otherwise provided in this Code, not in conflict with state statute 101.123, or other statutes or administrative rules.

8.44.020 Definitions.

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

a. *Town Building*: as referenced in section 101.123 (2) (a) 8r, Wisconsin Statutes, including the buildings, porches, exterior stairway if any, patios, entrances/exits, landings, buildings owned or leased by the Town.

b. *Enclosed place*: means all space between a floor and ceiling that is bounded by walls, door, or windows, whether open or closed, covering more than 50 percent of the combined surface area of vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier whether temporary or permanent.

c. *Place of Employment*: means any indoor place that employees enter and carry out their work duties, such as office, work area, employee lounge, restroom, conference room, meeting room, classroom, elevator, stairway, lobby, common area, cafeteria, or hallway.

d. *Smoking*: a cigar, cigarette, pipe or other lighted smoking equipment. (note: E-cigarettes are not included.)

8.44.030 Smoking Prohibited

1. Smoking is prohibited in any and all Town owned or leased buildings and enclosures, and all enclosed places, including taverns, restaurants, private clubs or retail establishments, as defined in 8.44.020 (subject to the exceptions in 8.44.040). Smoking is further prohibited in direct proximity to any point of access or entrance to these buildings or enclosures for the purpose of protecting and preserving the health and comfort of the public.

2. State signage requirements.

Signs setting forth the prohibition against smoking shall be placed in a conspicuous location in all buildings and enclosures subject to this Chapter, and shall comply with requirements established by the State of Wisconsin Department of Commerce, if any, and shall include information reasonably sufficient to inform individuals of the physical area within which smoking shall not be permitted. It is a violation of this section for an individual, following warning by any town employee or by a member of the public, to continue smoking within the posted area.

3. Designation of outside smoking areas. Notwithstanding any other provision of this section, 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 that property may smoke as provided in section 101.123(4m), of the Wisconsin State Statutes governing local authority to regulate smoking on public property. Any person in charge of

a restaurant, tavern, private club or retail establishment that designates an area for smoking which is a reasonable distance from any entrance to that property, shall assure that the designated area is kept free of litter including cigarette butts or other tobacco products.

8.44.040 Exceptions.

Prohibitions against smoking shall not apply to any of 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 that assisted living facility to be placed in a room where smoking is allowed.
- d. A retail tobacco store that has been in existence since June 3 2009 and in which the smoking of cigars and pipes have been allowed.

8.44.050 Penalties.

- a. Any person violating the state prohibition against smoking in enclosed places or upon those unenclosed spaces identified in section 101.123(d) and (e), Wisconsin Statutes, shall be subject to a forfeiture of not less than \$100 nor more than \$250, and upon failure to pay the forfeiture, may be subject to not less than 2, nor more than 5 days confinement in the county jail.
- b. Any person in charge of property as defined in section 101.123(1)(d), Wisconsin Statutes, who violates the provisions of section 101.123(2m) (b) to (d) Wisconsin Statutes, shall be subject to a forfeiture of \$100 and upon failure to pay the forfeiture may be confined in the county jail for a period of 2 days. No person may be held subject to more than \$100 total forfeiture for violations

occurring on the same calendar day. For violations subject to the forfeiture provided in this paragraph, no citation shall be issued to a person who has not received a prior written warning notice.