1		RESOLUTION #52-2010/GENERAL CODE/OA
2 3 4 5		GENERAL CODE OF ONEIDA COUNTY, WISCONSIN ORDINANCE AMENDMENT #
6 7 8		ance Amendment offered by Supervisors of the Law Enforcement and ary Committee
9 10 11 12 13 14 15 16 17	and are	Whereas, the State of Wisconsin has adopted Wis. Stat. s. 101.123 recognizing as associated with smoking and second-hand smoke; and Whereas, the State of Wisconsin has also enacted restrictions on the locations eas where smoking may now occur; and Whereas, the Oneida County Sheriff department is charged with enforcing the ate regulations; Whereas, by adopting this ordinance the citizens of Oneida County will have a funderstanding of parameters surrounding prohibited smoking areas and possible es for violation of the no-smoking law.
18 19 20 21 22	conflict	NOW, THEREFORE, THE ONEIDA COUNTY BOARD OF SUPERVISORS ORDAIN AS FOLLOWS: Section 1. Any existing ordinances, codes, resolutions, or portions thereof in with this ordinance shall be and hereby are repealed as far as any conflict exists. Section 2. This ordinance shall take effect the day after passage and publication
23 24 25 26 27 28 29	uncons remain	uired by law. Section 3. If any claims, provisions or portions of this ordinance are adjudged stitutional or invalid by a court of competent jurisdiction, the der of this ordinance shall not be affected thereby. Section 4. Section 10.06 of the General Code of Oneida County, Wisconsin, ed and recreated as follows [additions noted by underline, deletions noted by prough]:
30 31 32	10.06	SMOKING PROHIBITED.
32 33 34 35 36 37 38 39 40 41	(1)	PURPOSE AND AUTHORITY. The County of Oneida finds that smoking contributes to health problems of its employees and of members of the public, both directly through deliberate use of smoking materials and indirectly, to non-smokers, through involuntary inhalation of smoke in the air. This section is enacted to reduce that risk as much as possible in enclosed places, places of employment, and public places as well as in County buildings and vehicles. This section is enacted under the authority of §\$59.07 and 101.123, Wis. Stats. and Federal Public Law 103-227.
42 43 44	(2)	DEFINITIONS. As used in this section, the following words have the meanings indicated:
45 46 47		Assisted living facility means a community-based residential facility, a residential care apartment complex, or an adult family home.
48 49		Correctional facility means a state prison, a juvenile detention facility, a juvenile correctional facility, or a jail.

50 County building means any building owned, leased, contracted or operated by the County. County building does include space leased to the County in a building 51 52 which has other tenants but the regulations set forth in this section shall apply 53 only to that part of the leased space which is partitioned off from the remaining 54 space, including common areas, by floor to ceiling walls. County building does 55 not include any building which is both owned by the County and completely 56 leased to another party. 57 58 County vehicle means all self-propelled vehicles owned or leased by Oneida 59 County. 60 61 Educational Facility means any building used principally for educational 62 purposes in which a school is located or course of instruction or training program 63 is offered that has been approved or licensed by a state agency or board. 64 65 Enclosed place means a structure or area that has all of the following: a roof and more than 2 substantial walls. The definition of substantial wall is a wall with no 66 opening or with an opening that either does allow air in from the outside or that is 67 less than 25% or more of the wall's surface area. 68 69 70 Inpatient health care facility means a hospital, a county home, a county infirmary, 71 a nursing home, a hospice, a Wisconsin veterans home, or a treatment facility. 72 73 Joint use building means a building which is owned by Oneida County, part of 74 which is leased to another party. 75 76 Lodging Establishment means a bed and breakfast establishment, a hotel, motel, 77 or a tourist rooming house, 78 79 Person in Charge means the person or his or her agent who ultimately controls, 80 governs, or directs the activities aboard a public conveyance or at a location 81 where smoking is prohibited or regulated 82 83 Place of employment means any enclosed place that employees normally frequent 84 during the course of employment including an office, work areas, employee 85 lounge, restroom, conference room, meeting room, classroom, elevator, stairway, 86 lobby, common area, vehicle, cafeteria, or hallway. 87 88 *Private Club* means a facility used by an organization that limits its membership 89 and is organized for a recreational, fraternal, social, patriotic, political, 90 benevolent, or athletic purpose. 91

Public Conveyance means a mass transit vehicle, a school bus, 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.

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96 97 Public place means any enclosed place that is open to the public regardless of 98 whether a fee is charged or a place to which the public has lawful access or may 99 be invited. 100 101 Retail establishment means any store or shop in which retail sales is the principal 102 business conducted. 103 104 Retail tobacco store means a retail establishment that does not have a "Class B" 105 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 106 107 tobacco products and accessories. 108 109 Smoking has the meaning set forth in §101.123(1)(h), Wis. Stats. 110 111 Sports arena means any stadium, pavilion, gymnasium, swimming pool, skating 112 rink, bowling center, or other building where spectator sporting events are held. 113 114 Tavern means an establishment, other than a restaurant, that holds a "Class B" 115 intoxicating liquor license or "Class B" fermented malt beverages license. 116 117 *Tobacco Bar* means a tayern that generates 15 percent or more of its annual gross 118 income from the sale on the tavern premises, other than from a vending machine, 119 of cigars and tobacco for pipes. 120 121 122 PROHIBITED CONDUCT. (3) 123 124 It shall be unlawful and a violation of this section for any person, whether (a) 125 employed by Oneida County or a member of the public, to smoke in enclosed public places, places of employment, in any County building, 126 County vehicle or joint use building. Those areas specifically prohibited 127 128 in 101.123(2). No person may smoke in any of the following enclosed 129 places: 130 131 (1) The state capitol. 132 133 Residence halls or dormitories owned or operated by a college or (2) 134 university. 135 136 (3) Day care centers. 137 138 (4) Educational facilities. 139 140 (5) Inpatient health care facilities. 141

142		(6) Theaters.	
143			
144		(7) Correctional facilities.	
145			
146		(8) State institutions.	
147			
148		(9) Restaurants.	
149			
150		(10) Taverns.	
151		(44) B. 1.1	
152		(11) Private clubs.	
153		(10) P (1) 11/1	
154		(12) Retail establishments.	
155		(10) (1) (1) (1) (1)	
156		(13) Common areas of multiple-unit residential properties.	
157		(14) T 1 ' (11) 1	
158		(14) Lodging establishments.	
159		(15) 0, , , , , , , , , , , , , , , , , , ,	
160		(15) State, county, city, village, or town buildings.	
161		(16) All 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
162		(16) All enclosed places, other than those listed in subds. 1 to 15, that	
163		are public places.	
164			
165		No person may smoke at any of the following outdoor locations:	
166			
167		(a) In the immediate vicinity of the state capitol.	
168			
169		(b) Anywhere on the premises of a day care center when	
170		children who are receiving day care services are present.	
171			
172		(c) A location that is 25 feet or less from a residence hall or	
173		dormitory that is owned or operated by the Board of	
174		Regents of the University of Wisconsin System.	
175		NI	
176		No person may smoke in any of the following:	
177			
178		(a) a sports arena.	
179		(1-) - 11-1(
180		(b) a bus shelter.	
181			
182		(c) a public conveyance.	
183			
184	(b)	No nomen in charge may allow any marger to smalle in violation of (2) of	
185	<u>(b)</u>	No person in charge may allow any person to smoke in violation of (2) at	
186		a location that is under the control or direction of the person in charge. A	
187		person in charge may not provide matches, ashtrays, or other equipment	

188			for smoking at the location where smoking is prohibited. A person in			
189			charge shall make reasonable efforts to prohibit persons from smoking at a			
190			location where smoking is prohibited by doing all of the following:			
191						
192			(1) Posting signs setting forth the prohibition and providing other			
193			appropriate notification and information concerning the			
194			prohibition.			
195			promotion.			
196			(2) Refusing to serve a person, if the person is smoking in a restaurant,			
197			tavern, or private club.			
197			tavern, or private club.			
			(2) Asking a narron who is smalting to refrain from smalting and if			
199			(3) Asking a person who is smoking to refrain from smoking and, if			
200			the person refuses to do so, asking the person to leave the location.			
201						
202			(a) If a person refuses to leave a location after being requested			
203			to do so as provided in par. (3)., the person in charge shall			
204			immediately notify an appropriate law enforcement agency			
205			of the violation			
206						
207						
208	(4)		EPTIONS. The prohibition against smoking in sub. (3)(a) does not apply to			
209		the fo	ollowing:			
210						
211		<u>(a)</u>	A private residence.			
212						
213		<u>(b)</u>	A room used by only one person in an assisted living facility as his or her			
214			residence.			
215						
216		(c)	A room in an assisted living facility in which 2 or more persons reside if			
217		- 	every person who lives in that room smokes and each of those persons has			
218			made a written request to the person in charge of the assisted living			
219			facility to be placed in a room where smoking is allowed.			
220			in the second in			
221		(d)	A retail tobacco store that is in existence on June 3, 2009, and in which			
222		<u>(u)</u>	only the smoking of cigars and pipes is allowed.			
223			only the smoking of eights and pipes is anowed.			
224		(e)	A tobacco bar that is in existence on June 3, 2009, and in which only the			
225		<u>(C)</u>	smoking of cigars and pipes is allowed.			
226			smoking of eigats and pipes is anowed.			
227						
228	(5)	DEN	ALTIES.			
228 229	<u>(5)</u>	FEIN	ALTIES.			
		(c)	Any parson who violates sub (2)(a) he subject to a forfaiture of not less			
230		<u>(a)</u>	Any person who violates sub. (3)(a) be subject to a forfeiture of not less			
231			than \$100 nor more than \$250 for each violation.			
232		(L)	A violation of this section does not constitute well-section (
233		<u>(b)</u>	A violation of this section does not constitute negligence as a matter of			

234			<u>law.</u>			
235						
236		(c)	Except as provided in par	(d) or (e) any po	erson in cha	arge who violates
237			sub. (3)(b) (1) to (3) sha	ll be subject to a	forfeiture	of \$100 for each
238			violation.	•		
239						
240		<u>(d)</u>	For violations subject to	the forfeiture und	er par. (c)	if the person in
241			charge has not previously	received a warning	notice for a	a violation of sub.
242			(3)(b) (1) to (3), the law	enforcement offic	cer shall iss	sue the person in
243			charge a warning notice an	d may not issue a	citation.	-
244				-		
245		(e)	No person in charge may	be required under	par. (c) to	forfeit more than
246			\$100 in total for all violation	ons of sub. (3)(b) (1) to (3) occ	urring on a single
247			day.			
248						
249		<u>(f)</u>	Second and subsequent vio	olations within one	year shall b	e subject to a
250			forfeiture of \$250 for each	violation.		
251						
252		<u>(g)</u>	Any County employee fou	nd in violation of t	this section	shall be subject to
253			the County's positive disci	plinary process.		
254						
255	(5)		NCTION. Not withstanding			
256			ffected party may institute		•	
257		<u>enjoin</u>	such conduct where a per	son has been sub	ject to pena	lties, as set forth
258		<u>above</u>	, on two or more occasions.			
259						
260	05.04	DENIA	TV DD 0./1010110			
261 262	25.04	PENA	LTY PROVISIONS.			
263	Table	Inset.				
264	Table	moct.				
265	10.06		Smoking in prohibited area	1	100.00	263.50
266			2 nd /Subsequent within 1 y		250.00	452.50
267						
268	[All ot	her sect	ions of 25.04 and the Table	Inset are to remai	n unchange	d
269						
270	Appro	ved by	the Law Enforcement and J	udiciary Committee	e this 2nd da	ay of June, 2010.
271					2/14:	•
272273	Vote F	Require	d: Majority = 2/3	Majority =	¾ Majo	rity =
274						
275	The C	County P	oard has the legal authority	to adont: Yes	No	28
276			he Corporation Counsel,			
277		ved by t				, Dato.
278						
279						
280	Offere	ed and p	assage moved by:			
281				Supervisor		

282		
283		Supervisor
284		Cuparioar
285 286		Supervisor
287		Supervisor
288		Supervisor
289		Supervisor
290		Caparvicor
291		
292		
293	Ayes	
294		
295	Nays	
296 297	Absent	
298 299 300	Abstain	
301 302 303	Enacted	
304 305	by the County Board of Supervisors this	day of, 2010.
306	Defeated	
307		
308 309		
310 311	Robert Bruso, Clerk	Ted Cushing, County Board Chair