



# CITY OF MANITOWOC

WISCONSIN, USA

[www.manitowoc.org](http://www.manitowoc.org)

November 1, 2024

TO: Members of the Public Safety Committee  
FROM: Eric Nycz, City Attorney  
Re: Smoking Ban Proposal

## Issue Presented

The Office of the City Attorney (“OCA”) was asked to address whether the City has the authority to enact a smoking and vaping ban along parade routes within the city, 30 minutes before through 30 minutes after the parade concludes.

## Findings

It is within the City’s authority to enact this type of prohibition, with some caveats. Wis. Stat. 101.123(4m) states, in part, as follows:

LOCAL AUTHORITY. This section does not limit the authority of any county, city, village or town to enact ordinances or of any school district to adopt policies that, complying with the purpose of this section, protect the health and comfort of the public. If a county, city, village, or town enacts an ordinance, or if a school district adopts a policy, regulating or prohibiting outside smoking in certain areas as authorized under this subsection, the ordinance may apply only to public property under the jurisdiction of the county, city, village, town, or school district....

**First**, any prohibition would only apply to public property. This includes the right-of-way (streets and sidewalk) under City control. The statute continues:

...Such ordinance shall provide that the person in charge of a restaurant, tavern, private club, or retail establishment located in an area subject to the ordinance 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 the restaurant, tavern, private club, or retail establishment may smoke. Such ordinance may not define the term “reasonable distance” or set any specified measured distance as being a “reasonable distance.”

**Second**, any prohibition must allow a designated smoking area to be established by any business along the parade route. This area would only be allowed for the business’s customers and employees.



## **Parade Routes**

Currently, there are three primary city parades in Manitowoc. City GIS Coordinator Jeremy DuChateau prepared the attached maps to show the areas that could be affected by a ban of smoking along the parade routes. The City would be allowed to ban any distance from the route itself, as long as the ban applies to public property. If you reference the 4<sup>th</sup> on the Shore Parade Map, you will note that most of the area east of Maritime drive could be affected by a ban. There is over 500 feet between the shore and Maritime Drive in some of these areas. The Common Council could restrict this area to any length. For example, the citizen who brought this issue to an Alderperson suggested a prohibition of up to 100 feet from the parade route would be sufficient.

## **Considerations from the City Attorney**

This issue is being brought to the Committee for discussion purposes. The OCA will draft any requested ordinance if the Committee finds it prudent. If the Committee does request an ordinance, we will need direction on the time range of the prohibition (30 minutes before through 30 minutes after each parade, for example) as well as the area to be affected by the prohibition (the parade route plus 100 feet, for example). As stated above, any ban would need to include the provision allowing a designated smoking area for each business that would be affected. No additional consideration is needed for that provision. We look forward to the discussion.