

## Village gives smoking ban teeth

Written by Mark Jaeger

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### Ordinance sets \$114 fine for first violation, bypassing circuit courts

Village of Fredonia officials realize there isn't much they can do about the statewide ban on smoking in public places that went into effect last summer, but they now have an ordinance making local enforcement easier.

The Village Board adopted the ordinance last week allowing village marshals to issue tickets for violating the ban. They are the first community in the area to adopt such a localized ordinance.

That initial ticket will cost \$114.10 plus court costs. The second-offense fine would be \$145.50 and a third-offense would cost \$208.50.

Officials supported the ordinance when it was first suggested, but there was considerable discussion about what would be an appropriate fine.

Village Marshal Mike Davel requested the village adopt the ordinance so his officers could issue municipal citations to patrons who are caught smoking inside bars, restaurants and other places of business.

To address the issue, the Village Board considered a draft ordinance patterned after one adopted last year by the City of Cedarburg.

"The state is the one that instituted the smoking ban this summer, and now we are stuck with enforcing it," Davel told trustees last fall. He was not present at last week's board meeting.

Previously, Davel warned that state inspectors are checking businesses at random to make sure the restriction is being followed.

"As the weather gets colder, we are going to encounter more people smoking inside bars," Davel said. "This ordinance allows us a municipal tool to enforce the state law, akin to the ability to issue speeding tickets without having to elevate the matter to the state level."

In Fredonia, municipal citations are handled through the Mid-Moraine Municipal Court while state offenses go through the Ozaukee County district attorney's office.

"Without an ordinance, if the DA refuses to prosecute a case, the issue can't be addressed with a municipal citation," Davel said.

"I just want to be able to deal with this on our level. People will still have the opportunity to contest the citation."

Davel said he did not anticipate a rash of tickets.

"If we do have an incident where a ticket is issued, I don't think there will be too many more. Word travels pretty fast," he said.

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The department has already received complaints about local smoking violations.

Davel said bar and restaurant owners could also be issued citations under the ordinance if they knowingly allow patrons to smoke inside their business.

At an earlier meeting, Trustee Mark Edbauer Sr. said allowing officers to issue multiple citations against an owner if several patrons are found smoking at the same time is appealing.

“A lot of times, behavior only changes when it comes out of the pocket,” Edbauer said.

To get the discussion moving forward, he suggested the base fine of \$210 used by the municipal court.

Such a stiff penalty did not sit well with Trustee Fritz Buchholtz, who owns the Fredonia Avenue bar Mr. Fritz’s. He addressed the ordinance from an economic and philosophical level.

In an earlier discussion, Buchholtz, who is not a smoker, said the ordinance puts business owners in a difficult position.

“I think we are in too much of a hurry to take away people’s rights. I don’t smoke and I never have, but I don’t see the point of making criminals out those who do smoke,” he said.

“When it is six degrees out and the wind is howling, it is hard to tell people they have to go outside to smoke. I feel people should make their own choices.”

Buchholtz said his business is already suffering because of the smoking ban, with customers choosing to go to bars in unincorporated areas where the state law is seldom enforced.

Trustee Don Dohrwardt said the smoking ban is an example of unnecessary government interference in private lives. He suggested the law is likely to be repealed by the newly elected Legislature.

While the law stands, Village President Joe Short said he would prefer officers issue written warnings for first offenses.

“It all comes down to circumstances. If an individual is approached by an officer and becomes belligerent, a ticket should be issued. Otherwise, I would like to see a warning issued first. We are not adopting this ordinance just to collect fines,” Short said.

Buchholtz was the only board member to vote against the ordinance.