

4-2-12: SMOKE FREE AIR REGULATIONS:

A. Background: Smoking creates serious hazards to the personal health and safety of people near the smoking and serious threats of damage to property that may result from the incendiary nature of smoking. It has been determined that breathing ambient smoke is a health hazard to both smokers and nonsmokers. Smoking produces substances considered hazardous to health including carbon monoxide, hydrogen cyanide, nitrous oxide, and formaldehyde. Secondhand smoke (68 percent of the total smoke produced by a cigarette) affects the health of the bystander, interferes with respiratory tract defenses, and often causes nonsmokers to have allergic or irritating reactions. Secondhand smoke is a known cause of lung cancer.

Because smoking has potentially harmful effects, material and direct, on the public health, safety, welfare, and comfort, and on property of residents of the village, it is necessary and desirable to establish regulations that prohibit smoking in all enclosed public places, in all enclosed places of employment, near entrances to all such public places and places of employment, in and near open air public dining areas, and within certain unenclosed public places including school grounds, parks and recreation areas, and outdoor venues.

B. Purpose: This section may be cited as the "Hinsdale smoke free air act", the purpose of which is to protect the public health and comfort and the environment by prohibiting smoking in enclosed public places and places of employment, within twenty five feet (25') of all certain public entrances to such places, in open air public dining areas and within twenty five feet (25') of such areas, and within certain unenclosed public places including school grounds, park and recreation areas, and outdoor areas to ensure that nonsmokers may breathe air free from the hazardous effects of secondhand smoke.

C. Definitions: For purposes of this section, the following terms shall have the following meanings:

AREA OF RESTRICTION: 1. All areas within the village classified in any business district, any office district, the institutional buildings district, the open space district, or the health services district pursuant to the Hinsdale zoning code and zoning map, and

2. All multiple-family residential buildings wherever located.

BUSINESS: Any sole proprietorship, partnership, joint venture, corporation, association, or other business entity within the village, whether formed for profit or nonprofit purposes. "Business" includes a "club" as defined herein.

CLUB: A private not for profit association, corporation, or other entity within the village that consists of paying members and that owns, leases, or uses a building or portion thereof, the use of which is restricted primarily to those members and their guests.

EMPLOYEE: Any person who is employed or retained by a business within the village, including, without limitation, the owner or operator of a sole proprietorship or other, similar business entity.

EMPLOYER: Any business within the village that employs one or more employees.

ENCLOSED AREA: All space in any structure or building within the village that is enclosed on all sides by any combination of walls, windows, or doorways, extending from floor to the ceiling.

OPEN AIR DINING AREA: A seating area within the village open to the air that is accessory to a restaurant, hotel, cafeteria, club, or other public place engaged in purveying commercial food or beverage service where members of the public, members, or guests are invited to sit and receive food and beverage service for a consideration.

OUTDOOR EVENT: A scheduled outdoor musical, dance, theatrical, dramatic, entertainment, or similar performance or event or a scheduled outdoor community fair, event, or market within the village to which the public is invited, but excluding parades and picnics.

OUTDOOR VENUE: An outdoor theater, amphitheater, plaza, street, or other improved area that is used as a public venue or forum to which members of the general public are invited to listen, view, or otherwise participate in an outdoor event within the village.

PARK: A public park or recreation area within the village that is open to and used by the general public.

PLACE OF EMPLOYMENT: An area within the village under the control of a public or private employer whose employees normally frequent during the course of employment and includes, without limitation, common work areas, private offices, auditoriums, classrooms, conference and meeting rooms, cafeterias, elevators, employee lounges, staircases, hallways, restrooms, medical facilities, private clubs, and the interior of a vehicle of public conveyance. "Place of employment" does not include a private dwelling unless the dwelling also is used as a daycare facility for children or adults; provided that rooms in nursing homes or long term care facilities occupied by one or more persons who have requested in writing a room where smoking is permitted shall be considered private dwelling units.

PUBLIC ENTRANCE: The doorway or other entrance to a public place within the village that is open to and intended for use by the general public for ingress and egress to the public place. "Public entrance" also means a doorway or other entrance for pedestrian ingress and egress to a place of employment: 1) that is open to and intended for use by the general public or business invitees as ingress and egress to the place of employment or 2) where employees are required or permitted to enter or exit the place of employment.

PUBLIC PLACE: An area within the village that is open to and used by the general public or any area to which the public is invited or in which the public is permitted, including, without limitation:

1. Vehicles of public conveyance; and
2. Common or public areas (including, without limitation, lobbies, hallways, reception areas, public restrooms, elevators, and staircases) of apartment buildings, condominiums, dormitory buildings, nursing home care facilities, and other multiple-family residential structures; and
3. Common or public areas (including, without limitation, lobbies, hallways, reception

areas, public restrooms, elevators, and staircases) of any building or structure that is accessible to the public including, without limitation, office, commercial, and industrial buildings, banks and financial institutions, educational institutions, healthcare facilities such as hospitals, clinics, and doctors' offices, museums, libraries, restaurants, polling places, government and village owned buildings, food stores, cafeterias, theaters, auditoriums, train and bus stations, hotels, motels, and retail and service establishments; and

4. Rooms, chambers, halls, or other locations within which meetings, hearings, or gatherings are held, to which the public is invited or in which the public is permitted, including specifically, but without limitation, any enclosed area under the control of the village where there is in progress any public meeting.

The term "public place" shall not include a private single-family dwelling, unless that dwelling also is used as a daycare facility for children or adults; provided that rooms in nursing homes or long term care facilities occupied by one or more persons who have requested in writing a room where smoking is permitted shall be considered private dwelling units. The term "public place" also shall not include hotel or motel rooms designated as smoking provided that no more than twenty percent (20%) of the available rooms for rent in any single building shall be designated as smoking rooms.

SCHOOL GROUNDS: All public or private outdoor school grounds within the village, but excluding any open areas specifically designated and permitted by the school administration for smoking by adults who are invited to use such area for smoking.

SMOKE OR SMOKING: Inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

D. Prohibition In Enclosed Public Places:

1. It is unlawful to smoke in any enclosed area of any public place located in any area of restriction.
2. It is unlawful for the owner or other person in control of a public place located in any area of restriction to knowingly permit smoking in any enclosed area of that public place.

E. Prohibition In Unenclosed Public Places And Outdoor Venues:

1. It is unlawful to smoke in the following unenclosed public places:
 - a. The seating areas of all outdoor arenas, stadiums, and amphitheaters.
 - b. Public parks and recreation areas within twenty five feet (25') of any play area, any playground, or any scheduled activity group of any kind including, but not limited to, a game, show, party, event, or similar activity, but excluding parades and picnics.
 - c. School grounds.
 - d. Public sidewalks within twenty five feet (25') of a public entrance, but excluding: 1) any person who is temporarily in such area for the purpose of walking or traversing through

such area and 2) area classified in the B-2 central business district pursuant to the Hinsdale zoning code and zoning map except as provided in subsection E2 of this section.

e. Public sidewalks within twenty five feet (25') of an open air dining area, but excluding any person who is temporarily in such area for the purpose of walking or traversing through such area.

2. It is unlawful to smoke in or within twenty five feet (25') of an outdoor venue during the time that an outdoor event is taking place.

F.Prohibition In Places Of Employment:

1. It is unlawful to smoke in any enclosed area of any place of employment located in any area of restriction.

2. It is unlawful for any employer or other person in control of a place of employment located in any area of restriction to knowingly permit smoking in any enclosed area of that place of employment.

G.Prohibition In Open Air Dining Areas:

1. It is unlawful to smoke in any open air dining area.

2. It is unlawful for the owner or other person in control of an open air dining area knowingly to permit smoking in that open air dining area.

3. It is unlawful to smoke within twenty five feet (25') of an open air dining area.

H.Prohibition At Public Entrances:

1. It is unlawful to smoke within twenty five feet (25') of a public entrance to a public place or to a place of employment in any area of restriction, but excluding any person who is temporarily in such area for the purpose of walking or traversing through such area and excluding area classified in the B-2 central business district pursuant to the Hinsdale zoning code and zoning map.

2. It is unlawful for any person or persons to gather or congregate for the purpose of smoking within twenty five feet (25') of a public entrance.

I.Designation Of Other No Smoking Areas: Nothing in this section shall be deemed to limit the owner or other person in control of a public place or a place of employment from further prohibiting smoking by designating outdoor areas not subject to the restrictions in this section as a place where smoking is prohibited, provided that the owner or such other person shall cause signs to be posted at appropriate locations advising persons that smoking is prohibited within the designated outdoor area.

J.No Retaliation: No person, business, or employer shall discharge, refuse to hire, or in any manner retaliate against an employee or customer because that employee or customer reports a violation of this section or exercises or asserts any rights afforded by this section.

K.No Smoking Notices And Signs:

1. Each owner or other person in control of a public place shall post conspicuous "No Smoking" notices in the enclosed area of any public place where smoking is prohibited. Such owner or person may obtain such notices from the office of the village clerk or may use equivalent notices from other sources. It shall be unlawful for any person to remove, deface, or obscure any notice posted pursuant to the provisions of this section.
2. Each owner or other person in control of a public park, a public recreation area, or a school ground shall cause signs or notices to be posted at appropriate locations advising persons where smoking is prohibited within the park, recreation area, or school ground.
3. Each owner, management company, or other person in control of an outdoor venue shall cause signs or notices to be posted at appropriate locations advising persons where smoking is prohibited within the outdoor venue during outdoor events.

L.Exceptions:

1. The prohibitions on smoking set forth in subsections D and F of this section shall not apply to:
 - a. A public place or place of employment of a tobacco dealer that permits customers to sample tobacco products on the premises of the tobacco dealer, provided that smoke generated by smoking on the premises of the tobacco dealer does not infiltrate any other enclosed public place or place of employment. For purposes of this exemption, a "tobacco dealer" is a retailer whose principal business is the sale at retail of tobacco and tobacco related products.
 - b. The establishment classified in a residential district pursuant to the Hinsdale zoning code and commonly known as Belloumini's at 5425 South Madison Street, for so long as that establishment remains in existence, but not for any other business at that property.
2. Notwithstanding the definition of "area of restriction" or any other provision of this section to the contrary, the prohibitions on smoking set forth in subsections D and F of this section shall apply to the nonconforming businesses, and any successor businesses, classified in residential districts pursuant to the Hinsdale zoning code and commonly known as: a) Vern Goers Greenhouse, 5620 South Oak Street, b) Hinsdale Animal Hospital, 218 West Ogden Avenue, and c) Amlings Flowerland, Amlings Exterior, and Cassim Rug Imports, all at 540 West Ogden Avenue.

M.Penalties:

1. Any person who smokes in an area where smoking is prohibited under the provisions of this section shall be guilty of an offense punishable by:
 - a. A fine of not less than twenty five dollars (\$25.00) for a first violation.
 - b. A fine of not less than fifty dollars (\$50.00) for a second violation.
 - c. A fine of not less than one hundred dollars (\$100.00) and not more than five hundred

dollars (\$500.00) for a third and each subsequent violation.

A person may avoid prosecution by making the payments indicated to the village within the times indicated:

	<u>Within 30 Days</u>	<u>31 To 60 Days</u>
First violation	\$15.00	\$25.00
Second violation	35.00	50.00
Third and subsequent violations	75% of fine	100% of fine

2. Any person who owns, manages, operates, or otherwise controls a public place, a place of employment, or an open air dining area that permits smoking in an area where smoking is prohibited under the provisions of this section shall be guilty of an offense punishable by a fine of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00).

3. Each day that any violation of this section shall continue shall constitute a separate offense.

N. Severability: If any provision of this section, or the application of any provision of this section to any person or circumstance, is held to be invalid by a court of competent jurisdiction, then the remainder of this section or the application of the provision or part thereof to any other person or circumstance shall not be affected thereby.

O. Effective Date: The prohibitions stated in this section shall be effective beginning July 1, 2006. All premises affected by this section that were in existence on July 1, 2006, shall cause such signs to be posted in a conspicuous location within the public place or place of employment on or before July 1, 2006. All premises affected by this section that were established after July 1, 2006, shall cause such signs to be so posted as a condition to obtaining its business license or certificate of occupancy, as appropriate. (Ord. O2006-29, 4-25-2006)