

TITLE 4

CHAPTER 4

SMOKING REGULATIONS

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4-4-1: **BACKGROUND; PURPOSE:**

- A. Smoking creates the hazard of injury to the personal health of those in the environment of such smoke as well as the potential of damage to property that may result from the incendiary nature of such activity. It has been determined that breathing ambient smoke is a health hazard to both smokers and nonsmokers. Cigarette smoking produces several substances that are considered hazardous to health including carbon monoxide, hydrogen cyanide, nitrous oxide and formaldehyde. Secondhand smoke affects the health of the bystander, interfering with respiratory tract defenses, often causing nonsmokers to have allergic or irritative reactions, and is a known cause of lung cancer. Because the hazards of smoking have a potentially harmful effect, material and direct, on the public health, safety, welfare, comfort, and property of residents of the Village, it is necessary and desirable to establish regulations that regulate smoking in enclosed Public Places, in enclosed Places of Employment, in Open Air Dining Areas and near entrances to such Public Places and Places of Employment.
- B. This Chapter may be cited as the LINCOLNSHIRE SMOKE FREE AIR ORDINANCE , the purpose of which is to protect the public health, comfort and environment by regulating smoking in enclosed Public Places, Places of Employment and Open Air Dining Areas.

4-4-2: DEFINITIONS: In the interpretation of this Chapter the following definitions shall apply:

BUSINESS: Any sole proprietorship, partnership, joint venture, corporation, association or other business entity, whether formed for profit or nonprofit purposes. "Business" includes a "Club" as defined in this section.

CLUB: A private not-for-profit association, corporation or other entity consisting of persons who are bona fide members and which owns, leases or uses a building or portion thereof, the use of which is restricted primarily to members and their guests.

DWELLING: A building, or portion thereof, designed or used exclusively for residential occupancy by an owner or tenant, including single-family dwellings, two-family dwellings and multiple-family dwellings, but not including hotels or motels.

EMPLOYEE: Any person who is employed or retained by a Business, and shall include the owner or operator of a sole proprietorship or other similar business entity.

EMPLOYER: Any Business that employs one or more Employees.

ENCLOSED AREA: All space in any structure or building 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 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 the public, members or guests are invited to sit and receive food and beverage service for a consideration.

OWNER: Any person, Business or Club who by reason of law or any written or oral arrangement or contract exercises exclusive rights of possession, exclusion and control over any Enclosed Area or Open Air Dining Area; provided that where there is a landlord-tenant relationship, there shall be a rebuttable presumption that both the landlord and tenant shall be jointly and severally responsible for complying with the terms of this Chapter.

An Owner may rebut said presumption by demonstrating by clear and convincing evidence that the Owner has taken reasonable steps to exercise all of its rights to compel the tenant to comply with this Chapter and the tenant has refused or failed to comply.

PLACE OF EMPLOYMENT:

An area under the control of a public or private Employer within the Village that 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, Clubs, and the interior of a vehicle of public conveyance.

Place of employment also includes the home office portion of a private Dwelling, but only if the home office is used by more than one Employee or is frequented by business invitees. Place of employment does not include that part of a private Dwelling used as a home office if it is used by a single Employee only who resides in that Dwelling.

Place of employment does include a private Dwelling used as a daycare facility.

PARK:

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

PUBLIC ENTRANCE:

The doorway or other entrance to a Public Place 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's or business invitee's ingress and egress to the Place of Employment; and/or 2) where Employees are required or permitted to enter or exit the Place of Employment.

PUBLIC ENTRANCE also means the area immediately above, below or aside and adjacent to any window or other means, whether electronic, mechanical or manual, by which a Public Place or Place of Employment may be ventilated for exposure to or gathering of ambient air.

PUBLIC PLACE:

An area 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;
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 Dwellings;

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 doctor's 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;
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 of Lincolnshire where there is in progress any public meeting.

Public place shall not include:

1. A private Dwelling which does not meet the criteria for a PLACE OF EMPLOYMENT; or
2. Hotel or motel rooms designated as smoking, provided that no more than fifteen percent (15%) of the available rooms for rent under common ownership or control shall be designated as smoking rooms.

**SCHOOL
GROUNDS:**

All public or private outdoor school grounds, 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.

VILLAGE: The Village of Lincolnshire.

4-4-3: ENCLOSED PUBLIC PLACES:

A. It is unlawful to smoke in any Enclosed Area of any Public Place.

- B. It shall be unlawful for the Owner in control or possession of a Public Place to knowingly permit smoking in any Enclosed Area in a Public Place.

4-4-4: PLACES OF EMPLOYMENT:

- A. It is unlawful to smoke in any Enclosed Area of any Place of Employment.
- B. It shall be unlawful for any Employer to knowingly permit smoking in any Enclosed Area of any Place of Employment.

4-4-5: PUBLIC ENTRANCES: It is unlawful to smoke within twenty feet (20') of a Public Entrance to a Public Place or to a Place of Employment.

4-4-6. OPEN AIR DINING AREAS:

- A. It is unlawful to smoke in any Open Air Dining Area.
- B. It shall be unlawful for the Owner of an Open Air Dining Area to knowingly permit smoking in an area available for open air dining.
- C. It is unlawful to smoke within twenty feet (20') of an Open Air Dining Area.

4-4-7: *RESERVED*

4-4-8: DESIGNATION OF OTHER NO SMOKING AREAS:

- A. Nothing in this Chapter shall be deemed to limit the Owner of a Public Place or a Place of Employment to further prohibit smoking by designating outdoor areas not subject to the restrictions in this chapter as a place where smoking is also prohibited, provided that the Owner shall cause signs to be posted at appropriate locations advising persons that smoking is prohibited within the designated outdoor area. Violations of such privately designated non-smoking areas shall not be construed a violations of this Chapter.
- B. Nothing in this Chapter shall be deemed to require any Owner of a Public Place or Place of Employment to allow smoking in areas authorized to be designated as smoking areas under this Chapter, provided that the Owner shall cause signs to be posted at appropriate locations advising persons that smoking is prohibited within the designated area. The exceptions and exemptions described herein shall be construed as permissive and not mandatory.

- C. This Chapter shall be cumulative with other laws applicable to smoking in Public Places, Places of Employment and Open Air Dining Areas and shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

4-4-9: 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 Chapter or exercises any rights afforded by this Chapter.

4-4-10: SIGNS:

- A, Any "No Smoking" sign required by this Chapter shall have a white field with the words "No Smoking" printed in red letters, four inches (4") high with a one-half inch (1/2") face, or shall bear the international "No Smoking" symbol, which consists of a pictorial representation of a cigarette enclosed in a circle with a bar across it. Stylized signs may be permitted so long as one of the foregoing designs is incorporated into the sign.
- B, Each Owner, Employer, or other person in control of a Public Place or Place of Employment shall post conspicuous "No Smoking" signs in the enclosed area of any Public Place or Place of Employment. Compliance with this requirement may be achieved by posting a conspicuous sign at all Public Entrances which declares smoking is prohibited in such Public Place or Place of Employment.
- C, Each Owner, licensee or other person in control of an Open Air Dining Area shall cause signs to be posted at appropriate locations advising persons that smoking is prohibited within the Open Air Dining Area.
- D, Each Owner, licensee or other person in control of any Enclosed Area within any Public Place or Place of Employment which is exempt from these regulations under Section 4-4-11 shall post conspicuous signs at all Public Entrances which indicate that smoking is permitted within such exempt area.
- E, It shall be unlawful for any person to remove, deface or obscure any sign posted pursuant to the provisions of this Chapter.

4-4-11: EXEMPTIONS: The prohibition on smoking set forth in sections 4-4-3 and 4-4-4 of this chapter shall not apply to:

- A. Any Enclosed Area of a Restaurant or Club otherwise subject to this Chapter comprising the Lounge Area, Patron Bar or Service Bar whose Owner or operator can demonstrate, to the

reasonable satisfaction of the Village Manager, that such “designated enclosed area” has been equipped with separate air filtration or purification devices or similar technologies as to isolate the secondhand smoke and its carcinogenic constituents from the remainder of such Restaurant or Club. Any doors or windows comprising any part of the walls of such “designated enclosed area” that are capable of being opened shall nonetheless remain closed at all times except for and to the extent necessary to be used by the public or Employees for active and imminent ingress and egress. The Owner or operator of any Restaurant or Club which has been granted authority to designate a limited enclosed smoking area within a Lounge Area, Patron Bar or Service Bar shall be required to demonstrate compliance with this paragraph no less frequently than annually. The designated enclosed area identified herein shall include no portion of the Dining Area of any establishment. The capitalized terms not otherwise defined herein shall have the meanings ascribed to them in Title 3, Chapter 3 of the Municipal Code, Liquor Control.

- B. The performers of any live musical, dance, theatrical or dramatic event, provided that such smoking is limited to that which is necessary for the portrayal of characters in the context of the plot or storyline of the musical, dance, theatrical or dramatic event.

4-4-12: PENALTIES:

- A. Any person who smokes in an area where smoking is prohibited under the provisions of this chapter shall be guilty of an offense punishable by a fine of not less than fifty dollars (\$50.00) and not more than seven hundred fifty dollars (\$750.00).
- B. Any person who owns, manages, operates or otherwise controls a Public Place, a Place of Employment or an Open Air Dining Area that knowingly permits smoking in an area where smoking is prohibited under the provisions of this chapter, shall be guilty of an offense punishable by a fine of not less than:
 - 1. One hundred dollars (\$100.00) for a first offense;
 - 2. Two Hundred Fifty Dollars (\$250.00) for a second offense; and
 - 3. One Thousand Dollars (\$1,000.00) for a third or subsequent offense.
- C. Any person who fails to post the signs required by this Chapter shall be guilty of an offense punishable by a fine of not less than Two Hundred Fifty Dollars (\$250.00).
- D. Each day that any violation of this Chapter shall continue shall constitute a separate offense.

4-4-13: SEVERABILITY: If any provision or part of this chapter or application thereof to any person or circumstance is held to be invalid, the remainder of the chapter and the application of the provision or part thereof to other persons not similarly situated or to other circumstances shall not be affected thereby.

4-4-14: EFFECTIVE DATE: The prohibitions stated in this Chapter shall be effective on August 1, 2006. All premises affected by this Chapter that are in existence on the approval date hereof shall cause such signs to be posted in a conspicuous location within the Public Place, Place of Employment or Open Air Dining Area on or before August 1, 2006. All premises affected by this Chapter that are established subsequent to the approval date hereof shall cause such signs to be so posted as a condition to obtaining applicable business licensing and certificates of occupancy.

(Ord. 06-2035-27, eff. 5/8/06)