

**ORDINANCE AMENDING ARTICLE 9, CHAPTER 20
OF THE VILLAGE CODE**

WHEREAS, on March 20, 1989 the Village became one of a handful of municipalities to have enacted smoking regulations by enacting Ordinance 1989-0-14 which regulated smoking in public places and places of employment primarily by creating designated smoking areas and establishing requirements for the maintenance of such areas; and

WHEREAS, since that time there has been a great deal of new research as to the effects of secondhand smoke; and

WHEREAS, because of increasing evidence of the dangers of secondhand smoke, both the City of Chicago and Cook County have enacted increasingly more stringent ordinances regulating smoking; and

WHEREAS, secondhand smoke contains over 4,000 chemical compounds, of which 200 are known poisons including carbon monoxide, arsenic, cyanide, benzene and formaldehyde; and

WHEREAS, the U.S. Environmental Protection Agency classifies secondhand smoke as a “Class A Carcinogen”; and

WHEREAS, secondhand smoke is the third leading cause of preventable death in America and causes cancer, stroke, and heart disease, and has also been linked to Sudden Infant Death Syndrome (SIDS) and the exacerbation of asthma symptoms, including triggering asthma attacks; and

WHEREAS, there is no known safe level of exposure to secondhand smoke; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand

smoke; and

WHEREAS, the U.S. Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation; and

WHEREAS, ASHRAE (American Society of Heating, Refrigerating and Air Conditioning Engineers) bases its ventilation standards on totally smoke free environments because it cannot determine a safe level of exposure to secondhand smoke, which contains cancer-causing chemicals, and ASHRAE acknowledges that the technology does not exist that can remove chemicals from the air that cause cancer; and

WHEREAS, employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function; and

WHEREAS, providing a healthful and safe environment for all employees and member of the public using Places of Employment and Public Places should be given priority over providing a convenient place for persons to smoke; and

WHEREAS, it is in the best interests of the public health, safety and welfare of the Village of Oak Park and its citizens that smoking in Public Places and Places of Employment be prohibited.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Oak Park, County of Cook, State of Illinois, pursuant to its Home Rule Powers as set forth in Article VII, Section 6 of the Illinois Constitution (1970), as amended, as follows:

That Article 9 of Chapter 20 of the Village Code entitled “Smoking Regulations in Public Places, Restaurants and Places of Employment” is

hereby amended to read as follows:

“VILLAGE INDOOR CLEAN AIR ORDINANCE”

20-9-1: DEFINITIONS: For the purpose of this Article, the following words or combination of words are defined as follows:

~~ASSEMBLY HALL:~~ Any room, chamber, place of public meeting or assembly, including in any school, park or library building under the control of any board, council, commission, committee, including joint committees or agencies of the Village or any political subdivision of the State, during such time as a public meeting or public assembly is in progress, to the extent such place is subject to the jurisdiction of the Village.

~~BAR AREA:~~ An enclosed area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. A restaurant may contain a bar which is not

~~physically separated from the dining area.~~
~~"Bar Area," therefore, shall also mean an~~
~~area containing a bar which is not physically~~
~~separated from the dining area but is limited~~
~~to the area immediately adjacent to the bar~~
~~adequate to accommodate persons either~~
~~seated or standing at the bar. Tables around~~
~~or near a bar will not be considered as being~~
~~a part of the "bar area."~~

EMPLOYEE:

Any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.

EMPLOYER:

Any person, partnership, corporation, including a Municipal corporation, or nonprofit entity, who employs the services of one or more individual persons or supervises volunteers.

ENCLOSED AREA:

All space between a floor and ceiling which is enclosed on all sides by solid walls or

windows (exclusive of door or passage ways) which extend from the floor to the ceiling, even though such space may be internally divided by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structures.

~~HEALTH AND CHILD CARE FACILITIES: All patient bed areas, wards, semi-private rooms, hallways and waiting rooms of all health institutions, including, but not limited to, hospitals, clinics, physical therapy facilities, doctor offices, dentist offices, and nursing homes and all enclosed areas of child care facilities to which children are permitted access.~~

PLACE OF EMPLOYMENT: Any eEnclosed aArea under the control of a public or private employer which employees are normally required or permitted by the employer to frequent during the course of employment, including, but not limited to, common work areas, private offices, employee lounges and restrooms, conference

areas, ~~and~~ employee cafeterias, ~~and~~
elevators, stairways and hallways.

A. A private ~~residence~~ dwelling unit is not a "place of employment" unless it is used as a ~~child daycare or health-care~~ facility for children or adults; provided that rooms in nursing homes or long-term care facilities, occupied only by a person or persons who have requested in writing a room where smoking is permitted, shall be considered private dwelling units.

~~B. The dining area of a restaurant is not a "place of employment".~~

PUBLIC PLACE:

~~Any enclosed facility to which the public is invited or in which the public is permitted, including but not limited to, assembly halls, banks, educational facilities, health and child care facilities, libraries, polling places, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service~~

~~establishments, retail stores (except tobacco stores covered below), service lines, theatres and waiting rooms. Reception areas in places of employment, retail stores and "business establishments" are specifically included herein as "public places." Any area contained within any of the above listed facilities to which the public is not normally or regularly invited or in which the public is not permitted is not a "public place" even though the nonpublic area itself may not be enclosed and separate from the public area. Any employee work area to which the employee may invite specific members of the public, but in which the public is not otherwise permitted, is not a "public place." A private residence is not a "public place."~~

“Public Place” means any Enclosed Area that is open to and used by the general public, or any Enclosed Area to which the public is invited or in which the public is permitted, including without limitation:

- A. Vehicles of public conveyance;
- B. Common or public areas (including without limitation lobbies, hallways, reception areas, public restrooms, and elevators) of apartment buildings, condominiums, dormitory buildings, nursing home care facilities, and other multiple family residential structures;
- C. Common or public areas (including without limitation lobbies, hallways, reception areas, public restrooms, and elevators) 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, health care facilities such as hospitals, clinics and doctors' offices, museums, libraries, bowling alleys, laundromats, sport arenas, restaurants, polling places, government and Village owned buildings, food stores, cafeterias, theaters,

auditoriums, public transportation facilities, hotels, motels, retail stores (except tobacco stores), service establishments, service lines and waiting rooms; and

- D. 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.

“Public Place” shall not include:

- A. A private dwelling unit, unless said dwelling is also used as a daycare facility for children or adults; provided that rooms in nursing homes or long-term care facilities, occupied only by a person or persons who have requested in writing a

room where smoking is permitted, shall be considered private dwelling units;

- B. Hotel or motel rooms designated as smoking rooms, provided that no more than 20% of the available rooms for rent in any single building shall be designated as smoking rooms; or
- C. An established smoking area incidental to the sale of tobacco in a Retail Tobacco Store, provided such smoking area is in existence on the date of approval of this Ordinance.

**PUBLIC
TRANSPORTATION
FACILITIES:**

~~Buses, taxicabs, and other means of public transit under the authority of the Village of Oak Park and Ticket,~~ boarding and waiting areas of all public transit depots.

RESTAURANT:

Any eating establishment including, but not limited to, Any coffee shop, cafeteria, luncheonette, sandwich stand, soda fountain, private and public school cafeteria or dining areas contained within any organization, club, boardinghouse, bed and breakfast or

guesthouse, which gives or offers for sale food to the public, guests, patrons or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities; **except that the term "restaurant" shall not include a "bar area" as defined herein.**

**RETAIL TOBACCO
STORE:**

A retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental **and which does not possess and is not required to possess a restaurant and/or liquor license.**

SERVICE LINE:

Any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

SMOKE OR SMOKING: Inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, reed, plant or other **lighted** combustible substance in any manner or in any form.

THEATRE: Any building not open to the sky which is primarily designated for the purpose of exhibiting any motion pictures, stage, drama, lecture, musical recital or other similar performance.

20-9-2: SMOKING PROHIBITED IN PUBLIC PLACES: Smoking shall be prohibited in ~~all any pPublic pPlaces as defined in Section 20-9-1. except as set forth in subsection 20-9-2A below:~~

~~A. The following areas shall not be subject to the smoking restrictions of this Section:~~

- ~~1. Bars and bar areas in restaurants.~~
- ~~2. Restaurants with less than forty (40) seats.~~
- ~~3. The permitted smoking areas in restaurants with more than forty (40) seats which designate and enforce a nonsmoking area in accordance with Section 20-9-3 of this Article.~~
- ~~4. Restaurants, banquet halls, hotel and motel conference or meeting rooms and public and private assembly halls while these places are being used for private functions.~~

5. ~~The designated smoking area in lobbies in hotels and in buildings used for the purpose of exhibition of motion pictures, stage productions, lectures, music recitals, and other similar performances, which shall not exceed twenty five percent (25%) of the total lobby area.~~
6. ~~Bed space areas of health facilities, when all patients in the room are smokers, and request to be placed in a room where smoking is permitted.~~
7. ~~The designated smoking areas in hospital waiting areas which shall not exceed twenty five percent (25%) of the total waiting area.~~
8. ~~Enclosed rooms designated for smoking contained in public places which shall not constitute more than twenty five percent (25%) of the total space available in the facility for the activity designated therein.~~
9. ~~Hotel and motel rooms rented to guests.~~
10. ~~Taxicabs when unoccupied by paying customers.~~
11. ~~Retail tobacco stores.~~
12. ~~Bowling establishments.~~

~~13. — Billiard parlors and poolrooms.~~

~~14. — The designated smoking area in ticket, boarding and waiting areas of enclosed public transit depots which shall not exceed twenty five percent (25%) of the total area.~~

~~B. — When establishing a designated smoking area in accordance with subsections 20-9-2A5, 7, 8 or 14, the person establishing such area shall utilize existing physical barriers, ventilation systems and other physical elements of the premises to minimize the intrusion of smoke into areas where smoking is not permitted.~~

~~C. — In any public facility in which the public area is not enclosed and physically separate from other areas of the facility which do not normally or regularly permit public access, the owner, operator, manager or other person in control of such facility shall make every reasonable effort to minimize the intrusion of smoke from the "nonpublic" area into the public area.~~

~~D. — Any owner, operator, manager or other person in control of a public place may declare that entire facility or any portion thereof where smoking might otherwise be permitted under subsection 20-9-2A above, as a nonsmoking area.~~

~~20-9-3: REGULATION OF SMOKING IN RESTAURANTS:~~

- ~~A. In all restaurants, smoking shall be prohibited in lobbies, food processing and ordering areas, washrooms and cashier areas.~~
- ~~B. All restaurants with an indoor or enclosed seating capacity of forty (40) or more shall designate a contiguous dining area of not less than twenty five percent (25%) of the total seating capacity in the dining area of the restaurant as nonsmoking. This designation requirement shall not apply to the following:~~
- ~~1. Separate banquet room within a restaurant in use for a private party or function.~~
 - ~~2. The bar area of a restaurant.~~
- ~~C. The area designated for smoking must be separately ventilated, if feasible, and be situated so that air from the smoking area is not drawn in or across the nonsmoking area.~~
- ~~D. Separate rooms may be provided for smokers and nonsmokers, so long as the room designated for nonsmoking does not contain less than twenty five percent (25%) of the seating capacity of the restaurant.~~

~~E. — Smoking is prohibited in buffet service lines in restaurants, whether such buffets are located in smoking or nonsmoking areas.~~

~~F. — A nonsmoking area must be clearly designated by appropriate signs, visible to patrons within the area.~~

~~G. — Notwithstanding any other provisions of this Section, any owner, operator, manager or other person in control of a restaurant may prohibit smoking in the entire facility.~~

~~20-9-4 20-9-3: REGULATION OF SMOKING IN PLACES OF EMPLOYMENT:~~

~~Smoking shall be prohibited in any Place of Employment as defined in Section 20-9-1 above.~~

~~A. — Every employer shall adopt a smoking policy which shall be communicated to all employees. Such policy shall specifically designate the smoking and nonsmoking areas in the place of employment.~~

~~B. — Employers shall make reasonable efforts to accommodate employees' preferences, and separate smokers and nonsmokers to the greatest extent possible.~~

~~C. Employers have the right to designate their entire place of employment, or any portion thereof, a nonsmoking area.~~

20-9-4: SMOKING PROHIBITED AT ENTRANCES TO PUBLIC PLACES AND PLACES OF EMPLOYMENT

Except for persons seated at outdoor restaurant tables, smoking within fifteen (15) feet of a public and/or employee entrance to a Public Place and/or to a Place of Employment shall be prohibited.

20-9-5: DESIGNATION OF OTHER NO-SMOKING AREAS:

Any owner, occupant, lessee, operator, manager or other person in control of a Public Place or Place of Employment may designate the entire facility including outdoor areas where smoking might otherwise be permitted, as nonsmoking areas provided the owner, occupant, lessee, operator, manager or other person in control of the areas conspicuously posts signs wherever smoking is to be prohibited in accordance with Section 20-9-5 20-9-6.

20-9-5 20-9-6: SIGN REQUIREMENTS:

A. ~~In any area where smoking is prohibited or where it is specifically permitted, the~~ Each owner, occupant, lessee, operator, manager or person in charge of a Public Place or Place of Employment shall post conspicuously “No Smoking” signs in

~~Enclosed Areas the area must so designate with a sign or signs.~~

All such signs shall be prominently displayed and shall clearly recite the phrase "No Smoking" in red letters four inches in height with a one-half inch face on a white field and/or use the international no smoking symbol. ~~or clearly recite the phrase "Smoking Permitted". The lettering on each sign shall not be smaller than one inch (1") in height.~~

B. As an alternative to posting signs as required by ~~this~~ Section ~~20-9-56A~~ 20-9-6A above,

1. ~~Restaurants may place small signs containing the messages described above on each dining table.~~

2. Any building or business which does not allow smoking anywhere on its premises and which prominently displays that message at each entrance to such building or business, need not display signs inside the building or business. For purposes of this Section, any Hotel or Motel which prohibits smoking anywhere on its premises except for authorized smoking rooms, shall be considered to be a building which does not allow smoking anywhere on its premises.

- C. No person shall wilfully remove, obscure, mutilate, **deface** or destroy any sign ~~required by posted pursuant to~~ this Section.
- D. Every theatre, **auditorium or assembly hall** owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within ~~the such~~ theatre, ~~or~~ auditorium **or assembly hall**.

~~20-9-6~~ **20-9-7: VIOLATIONS AND PENALTIES:**

- A. **1.** It shall be unlawful for any person who owns, operates or otherwise controls any premises or facility subject to regulation under this Article to fail to comply with any of the requirements of Sections 20-9-1 through ~~20-9-5~~ **20-9-6**.
- 2.** **It shall be unlawful for the owner, occupant or lessee, as the case may be, in control of a public place to knowingly permit smoking in any Public Place.**
- 3.** The owner, operator or other person in control of such premises or facility shall at all times be responsible for the actions of his **or her** employees or agents within the facility as they relate to the requirements set forth in Sections 20-9-1 through ~~20-9-5~~ **20-9-6** of this Article.

~~The owner, operator or other person in control of any premises or facility subject to regulation under this Article shall be responsible for any violation of this Article by any member of the public within such premises or facility unless the premises or facility is properly posted with signs in accordance with Section 20-9-5 above and the owner or operator or his agents or employees informs any member of the public violating the Village smoking ordinance within such premises or facility that his actions violate the ordinance, when the owner or operator or his agents or employees either know or reasonably should know that the violation is taking place.~~

B. It shall be unlawful for any person to smoke in any area designated pursuant to ~~Sections 20-9-1 through 20-9-5~~ this Article as a nonsmoking area or to otherwise fail to comply with Sections 20-9-1 through ~~20-9-5~~ 20-9-6.

C. Any person who violates any provision of Sections 20-9-1 through ~~20-9-6~~ 20-9-8 shall be subject to a fine of not less than ~~twenty five dollars (\$25.00)~~ fifty dollars (\$50.00) and not more than five hundred dollars (\$500.00).

20-9-8: NON-RETALIATION:

No person or employer shall discharge, refuse to hire, or in any

manner retaliate against any employee, applicant for employment or customer because that employee, applicant or customer reports a violation of this Ordinance.

20-9-7-20-9-9: SEVERABILITY:

If any provision, clause, sentence or paragraph of this Article or the application thereof shall be held invalid, such invalidity shall not affect the **remaining** provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of the Article are declared to be severable.

20-9-10: EFFECTIVE DATE:

This Ordinance shall be in full force and effect on and after July 1, 2006 with regard to all Public Places and Places of Employment as defined herein, except for multi-floor restaurants which, on or before the adoption date of this Ordinance, provided for and continue to provide for the service of smoking patrons on an entire separate floor from all non-smoking areas in the restaurant; provided that such smoking area shall not comprise more than 25% of the total seating in the restaurant. All such multi-floor restaurants in existence as of the adoption date of this Ordinance shall have until March 1, 2007 to be in full compliance with this Ordinance which shall be in full force and effect as to such multi-floor restaurants on March 1, 2007.

All premises affected by this Ordinance, which are established subsequent to the approval date hereof, shall be required to comply with this Ordinance as a condition to obtaining a valid business license.

~~20-9-8~~ 20-9-11: OTHER APPLICABLE LAWS:

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

THIS ORDINANCE shall be in full force and effect from and after its adoption and publication in accordance with law.

ADOPTED this 5th day of June 2006, pursuant to a roll call vote as follows:

AYES:

NAYS:

ABSENT:

APPROVED by me this 5th day of June 2006.

David G. Pope
Village President

Sandra Sokol
Village Clerk