

12-23 SMOKING REGULATIONS IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

12-23.1 DEFINITIONS.

For the purpose of this Section 12-23 and subsections thereof, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(a) **Business:** Any sole proprietorship, partnership, joint venture, corporation, whether for-profit or not-for-profit, or any other business entity, including but not limited to, retail businesses and service businesses where goods or services are sold to the public; and professional corporations, partnerships or other business entities wherein legal, medical, dental, engineering, architectural or other professional services are provided. A Business shall include a club, as defined in this section.

(b) **Club:** A private not-for-profit association, corporation or other entity consisting of persons who are bona fide paying members, and which owns, leases or uses a building or portion thereof, the use of such premises being restricted primarily to members and their guests.

(c) **Employee:** Any person who is employed by a business, and shall include the owner or operator of a sole proprietorship or other similar business entity.

(d) **Employer:** Any business that employs one or more employees.

(e) **Enclosed Area:** All space in any structure, or portion thereof, located between a floor and ceiling that is enclosed on all sides by walls, windows, doorways or combinations thereof that extend from the floor to the ceiling.

(f) **Knowingly or Knowing:** Shall have the same meaning as set forth in Article 4, Section 4-5, of the Illinois Criminal Code of 1961 (ILCS, Ch. 720, Act 5, 4-5), now or hereafter amended.

(g) **A Public Place means:**

(1) Any enclosed area in a building or structure within the village which members of the public are invited or permitted to visit or use, including lobbies, hallways and other common areas of businesses or apartment buildings, condominiums, cooperatives, congregate housing, and other multiple-unit residential structures; provided that a Public Place shall not include:

(A) A private dwelling place, unless such dwelling is also used for a day care home or day care center, whether for children or adults. Private Dwelling Place includes private and semi-private rooms in nursing homes and long-term care facilities that are

occupied by one or more persons, all of whom are smokers and have requested in writing to be placed or to remain, as the case may be, in a room where smoking is permitted.

(B) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that no more than 20 percent of all the rooms available to be rented to guests in a hotel or motel may be designated as smoking rooms.

(2) The interior of any mode of public transit or conveyance, including but not limited to, a bus, train, taxi or livery.

(h) Place of Employment: Any enclosed area of a business within the village where one or more employees are required or permitted by an employer to work in the course of their employment, including without limitation the generality of the foregoing work areas: private offices, auditoriums, classrooms, conference and meeting rooms, cafeterias, employee lounges, stairs, hallways, restrooms, and the interior of a motor vehicle or public conveyance. A Place of Employment does not include a private dwelling place which is the site of a lawful home occupation, unless such dwelling is also used for a day care home or day care center, whether for children or adults. Private Dwelling Place includes private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed or to remain, as the case may be, in a room where smoking is permitted. A Place of Employment shall include a club, as defined in this section.

(i) Smoke or Smoking: Inhaling, exhaling, burning or otherwise consuming through combustion any tobacco, including, without limiting the generality of the foregoing, the carrying of any lighted or burning cigarette, cigar, pipe or tobacco in any of its forms.

(j) Tobacco: Any substance containing tobacco leaf, including but not limited to, any cigar, cigarette, leaf tobacco, pipe tobacco, or tobacco in any of its forms.

(k) Tobacco Dealer: Shall have the meaning set forth in Chapter 5, Section 5-1.1 of this Code. (2003-O-75, 11/11/03)

12-23.2 SMOKING PROHIBITED IN PUBLIC PLACES AND PLACES OF EMPLOYMENT.

(a) It shall be unlawful for any person to smoke in any public place or place of employment.

(b) It shall be unlawful for any person to smoke in any place designated as a "No Smoking Area," as provided in Section 12-23.4 of this chapter.

(c) It shall be unlawful for any employer to knowingly permit smoking in any enclosed area in any place of employment.

(d) 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 enclosed area in said public place.

(e) It shall be unlawful for an employer or for the owner, occupant or lessee, as the case may be, in control of a public place to fail to post signage or remove ash trays, as provided in Section 12-23.5 of this chapter. (2003-O-75, 11/11/03)

12-23.3 EXEMPTIONS.

The prohibitions on smoking set forth in Section 12-23.2 shall not apply to: any public place or place of employment that is a tobacco dealer, whose principal business is the sale at retail of tobacco and tobacco-related products; provided that smoke generated by smoking on the premises of the tobacco dealer does not infiltrate into enclosed areas where smoking is otherwise prohibited pursuant to Section 12-23.2. (2003-O-75, 11/11/03)

12-23.4 DESIGNATION OF OTHER NO SMOKING AREAS.

Nothing in this Section 12-23 shall be deemed to limit the authority of the owner, occupant or lessee of any public place or business to designate non-enclosed areas, including outdoor areas, of said public place or business as a place where smoking is also prohibited and, if said owner, lessee or occupant shall conspicuously post signs prohibiting smoking in the manner described in Section 12-23.5 of this chapter, then smoking shall be prohibited to the same extent as provided for enclosed areas in Section 12-23.2 of this chapter. (2003-O-75, 11/11/03)

12-23.5 POSTING OF SIGNS AND REMOVAL OF ASH TRAYS.

Each owner, lessee, employer or other person in control of a public place or a place of employment shall be responsible for the following:

(a) Post conspicuous signs in the enclosed area, or the entrance to the public place, place of employment or the building wherein they are located, as the case may be, bearing the text "No Smoking" or the international "No Smoking" symbol, which consists of a pictorial representation of a cigarette enclosed in a circle with a bar across it.

(b) Remove ash trays or other similar containers intended for the deposit of tobacco ash, cigarettes, cigars or other tobacco products from public places. (2003-O-75, 11/11/03)

12-23.6 VIOLATIONS AND PENALTIES.

(a) A violation of Section 12-23.2(a) or 12-23.2(b) of this chapter shall be punishable by a fine of \$50. Any person served with a citation or notice of violation of Section 12-23.2(a) or 12-23(b) of this chapter may avoid court prosecution for said violation, by surrendering the citation or notice of violation to the Violations Bureau of the Wilmette Police Department within ten days from the date appearing on said citation or notice of violation, along with payment of \$50. Any person making such payment shall receive a receipt for same from the Police Department.

(b) A violation of Section 12-23.2 (c) or 12-23.2(d) shall be punishable by a fine of:

(1) Not less than \$50 nor more than \$100 for a first violation or a violation that occurs more than one year after the date of a previous violation.

(2) Not less than \$100 nor more than \$200 for a second violation occurring within one year of the date of a previous violation that was adjudicated against the same defendant.

(3) Not less than \$200 nor more than \$500 for a third or subsequent violation within one year of the date of a first violation that was adjudicated against the same defendant.

(c) A violation of Section 12-23.2(e) shall be punishable by a fine of \$50. Any person served with a citation or notice of violation of Section 12-23.2(e) of this chapter may avoid court prosecution for said violation, by surrendering the citation or notice of violation to the Violations Bureau of the Wilmette Police Department within ten days from the date appearing on said citation or notice of violation, along with payment of \$50 and demonstration of compliance with the provisions of Section 12-23.5 of this chapter. Any person making such payment shall receive a receipt for same from the Police Department.

(d) Each day that any violation of Section 12-23.2(c), Section 12-23.2(d) or Section 12-23.2(e) of this chapter shall continue, shall constitute a separate offense.

(e) In addition to any other penalty provided in this Section 12-23.6, the village may apply to any court of competent jurisdiction for injunctive relief to require compliance with, or cease violations of, the provisions of this Section 12-23. (96-O-11, 4/9/96; 2003-O-75, 11/11/03)

12-23.7 INCONSISTENCY WITH FIRE PREVENTION CODE.

No portion of this Section 12-23 shall be deemed to supersede any portion of Chapter 9, Section, "Fire Prevention," of this Code, or the BOCA National Fire Prevention Code incorporated by reference therein. In the event of any inconsistency between the provisions of this Section 12-23 and any of the provisions of Section 9-6, the provisions of Section 9-6 shall control. (94-O-52, 10/11/94)