

Title 6 Chapter 2 Nuisances:

Smoking Ban – Public Places

Exhibit A

March 14, 2011

Development Services Department

6-2-2-12: SMOKING BAN - PUBLIC PLACES:

1. Definitions:

Main Entrance: Any public entryway into or out of an enclosed indoor area used by the general public and/or to which the general public is invited or permitted or which serves as a place of employment. A Main Entrance does not include an entryway to or from an outdoor dining area, a delivery/storage entrance or an entryway limited only to employees working within the enclosed indoor area.

Open Air Dining Area: Any 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 Venue: Any 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: Any public park or recreation area within the Village that is open to and used by the general public.

Public Place: Park (as defined herein), outdoor venue (as defined herein), or enclosed indoor area used by the general public and/or to which the general public is invited or permitted, or which serves as a place of employment, including but not limited to:

- (1) Health care facilities, nursing homes (except as hereinafter provided), food service establishments, restaurants, taverns/bars, retail food stores, banquet halls, commercial establishments, indoor theatres, libraries, museums, concert halls, public conveyances, educational facilities, auditoriums, arenas, common or public areas of condominium buildings and health care facilities (including nursing home care facilities, except as hereinafter provided), laundromats, public transportation facilities, marketing establishments, educational facilities, retail stores, convention facilities, bingo facilities, galleries, shopping malls, arenas and meeting rooms, polling places, school, Village of Orland Park or other government buildings, offices and office buildings, factories, warehouses and other places of work.
- (2) Restrooms, lobbies, reception areas, hallways, offices, elevators, and other common areas.
- (3) Meeting places, meeting or conference rooms, cafeterias, room chambers, places of public assembly, offices used by more than one employee, residences used as a licensed child care facility, adult day care facility, health care facility or a home-based business of any kind open to the public.
- (4) Taxis, vehicles of public conveyance and vehicles owned, leased or operated by the Village of Orland Park.

- (5) Facilities used for exhibiting a motion picture, stage, drama, lecture, musical recital or other similar performance.

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A Public Place does NOT include:

- (1) Private residences, except when used as a licensed childcare facility, adult day care facility, health care facility or a home-based business of any kind open to the public.
- (2) Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms provided, however, that not more than twenty-five percent (25%) of the rooms rented to guests in a hotel or motel may be so designated.
- (3) 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.
- (4) A temporary outdoor smoking shelter ("shelter") erected by the owner or other person in control of a Public Place on the premises of the Public Place and which outdoor smoking shelter meets the following criteria:

Place;

- a. Not more than one (1) shelter shall be erected on or upon a Public
- b. The shelter shall be permitted only from November 1 through and including April 30 in any year;
- c. The shelter shall not exceed one hundred (100) square feet (except as provided in below) and shall not be located within fifteen (15') feet of any Main Entrance to a Public Place;
- d. No food or beverage service shall be provided to or permitted within
- e. An Open Air Dining Area designated for smoking may be converted to a shelter provided all other requirements for shelters set forth herein are met, except that such shelter may exceed one hundred (100) square feet but if the shelter uses Tent, Canopy or Membrane type Material, it may not exceed 200 square feet; and (Ord. 4231, 3/19/07)
- f. Plans for any shelter shall be submitted in advance of erection to the Village's Department of Development Services for review and approval and, upon such approval, the issuance of a permit. No fee shall be charged for such review or permit.

the shelter;

(Ord. 4228, 3/5/07)

Retail Tobacco Store: A commercial retail establishment that derives more than 80% of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental.

This does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food or restaurant license.

Smoke or Smoking: The carrying or holding of a lighted pipe, cigar or cigarette of any kind or any other lighted smoking equipment or the lighting or emitting or exhaling of the smoke of a pipe, cigar or cigarette of any kind. "Smoke" also means the gaseous products and particles created by the use of a lighted pipe, cigar or cigarette of any kind or any other lighted smoking equipment.

2. PROHIBITION OF SMOKING IN PUBLIC PLACES:

Except as provided in 3, below, smoking shall be prohibited in all Public Places within the Village of Orland Park. The owner or other person in control of a Public Place shall post a clear and conspicuous sign, in form and content approved by the Village, at every Main Entrance to the

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Public Place stating that smoking therein is prohibited. Such owner or other person in control shall also remove all ashtrays and other smoking paraphernalia from within the Public Place.

3. ~~EXCEPTION~~ EXEMPTION FOR EXISTING BUSINESS AND FREE STANDING BUILDINGS:

(1) Smoking shall be permitted within the enclosed business premises known as "BELICOSO CIGAR LOUNGE" located at 15443 S. 94th Avenue wherein only smoking products and smoking equipment is sold at retail, being the only such business in the Village, provided:

- (a) The current owner or other person in control of such business and who holds the tobacco dealer license issued by the Village keeps and maintains such license in good standing and continues to operate such business at its present location referred to above; and
- (b) No goods, products or services are sold or delivered within the said business premises by the said tobacco dealer licensee, or anyone under said licensee's supervision and control, except for smoking products and smoking equipment.

(2) Any retail tobacco store that begins operation after the effective date of Public Act 095-0017 (January 1, 2008) of the State of Illinois may only qualify for an exemption if located in a free standing structure occupied solely by the business registered for and authorized by a tobacco dealer license and smoke from the business does not migrate into an enclosed area where smoking is prohibited or into outdoor venues or areas where smoking is prohibited per the following sub-sections (4, 5 and 6).

4. PROHIBITION OF SMOKING IN OUTDOOR VENUES AND EVENTS:

- (1) It is unlawful to smoke in the following Outdoor Venues and/or events:
 - a. Public parks and recreation areas within 15 feet of any play area or any playground.
 - b. Public or private school grounds.
 - c. Public sidewalks within 15 feet of a Main Entrance to a Public Place, but

excluding any person who is temporarily in such area for the purpose of walking or traversing through such area.

- d. At any scheduled outdoor event to which the public is permitted or invited, which takes place within an outdoor theater, amphitheater, stadium, or other similar semi-enclosed facility.

(Ord. 4228, 3/5/07)

- (2) It is unlawful to smoke in or within 15 feet of an Outdoor Venue during the time that an outdoor event (as described in 4 (1) d, above) is taking place.

5. PROHIBITION OF SMOKING IN OPEN AIR DINING AREAS EXCEPT AS DESIGNATED:

- (1) It is unlawful to smoke in any Open Air Dining Area except such area, or portion thereof, designated for smoking by the owner or other person in control of the Open Air Dining Area.
- (2) It is unlawful for the owner or other person in control of an Open Air Dining Area to knowingly permit smoking in that Open Air Dining Area unless such area or portion thereof has been designated for smoking.
- (3) The owner or other person in control of an Open Air Dining Area who has designated all

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or a portion thereof for smoking must clearly display signage, in form and content approved by the Village, indicating the portion of the Open Air Dining Area where smoking is permitted.

6. REASONABLE DISTANCE:

Smoking is prohibited within fifteen feet (15') of any Main Entrance to a Public Place.

7. NON-RETALIATION:

No person or employer shall discharge, refuse to hire or in any manner retaliate against an employee, applicant for employment or customer because that employee, applicant or customer exercises any rights afforded by this Section or reports or attempts to prosecute a violation of this Section.

8. VIOLATIONS AND PENALTIES:

- (1) A person who smokes in an area where smoking is prohibited by this Section 2-12 shall be guilty of an infraction, punishable by a fine not more than one hundred dollars (\$100.00) for the first violation, one hundred fifty dollars (\$150.00) for the second violation and two hundred dollars (\$200.00) for each subsequent violation.
- (2) A person who owns, manages, operates or otherwise controls a Public Place and who fails to comply with the provisions of this Section shall be guilty of an infraction, punishable by:
 - a. A fine not exceeding one hundred dollars (\$100.00) for the first violation.

b. A fine not exceeding five hundred dollars (\$500.00) for the second violation occurring within one (1) year of the first violation.

c. A fine not exceeding two thousand five hundred dollars (\$2,500.00) for each additional violation occurring within one (1) year of a prior violation and a sixty (60) day suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(3) Each day on which a violation of this Section occurs shall be considered a separate and distinct violation.

9. **OTHER APPLICABLE LAWS:**

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

10. **SEVERABILITY:**

If any provision, clause, sentence or paragraph of this Section or the application thereof to any person or circumstances shall be held invalid by a court of competent jurisdiction, such invalidity shall not affect the other provisions of this Section which can be given effect without the invalid provision or application, and to this end the provisions of this Section are declared to be severable.

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(Ord. 1816, 9-19-88, eff. 1-1-89; Amd. Ord. 4192, 10-2-06, eff. 1-2-07; Amd. Ord. 4215, 1-19-07, eff. 3-14-07; Amd. Ord. 4228, 3-5-07; Amd. Ord. 4231, 3-19-07)