

ORDINANCE NO. F-1207

AN ORDINANCE AMENDING THE CITY CODE  
OF THE CITY OF WHEATON TO REGULATE SMOKING  
IN PUBLIC PLACES AND WORK PLACES

WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease and lung cancer; and

WHEREAS, secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

WHEREAS, children exposed to secondhand smoke have an increased risk of asthma, respiratory infections and cancer; and

WHEREAS, smoking is a potential cause of fires; and

WHEREAS, the Mayor and City Council of the City of Wheaton have determined that smoking should be prohibited in public places, in places of employment, at the public entrances to such places, in and near open air dining areas and at certain unenclosed public places in the City of Wheaton to protect the public health and welfare and to protect the right of nonsmokers to avoid breathing secondhand smoke;

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of Wheaton, Illinois, in the exercise of its home rule powers, as follows:

**SECTION 1: RECITALS.** The foregoing recitals are incorporated herein as the findings of the Mayor and City Council of the City of Wheaton.

**SECTION 2: SMOKING REGULATIONS.** That Chapter 43 of the City Code of the City of Wheaton is hereby created and shall read as follows:

“Chapter 43. Smoke Free Air Regulations.

- Sec. 43-1. Findings
- Sec. 43-2. Purpose
- Sec. 43-3. Definitions
- Sec. 43-4. Prohibition in Enclosed Public Places
- Sec. 43-5. Prohibition in Unenclosed Public Places and Outdoor Venues
- Sec. 43-6. Prohibition in Places of Employment

- Sec. 43-7. Prohibition in Open Air Dining Areas
- Sec. 43-8. Prohibition at Public Entrances
- Sec. 43-9. Designation of Other No-Smoking Areas
- Sec. 43-10. Signs
- Sec. 43-11. Exemptions
- Sec. 43-12. Penalties
- Sec. 43-13. Severability
- Sec. 43-14. Effective Date

### **Sec. 43-1. Findings**

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 also produces several substances that are considered hazardous to health including carbon monoxide, hydrogen cyanide, nitrous oxide and formaldehyde. Secondhand smoke (68% of the total smoke produced by a cigarette) 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 City, 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. The Corporate Authorities of the City of Wheaton adopt the findings, conclusions and reports of the Surgeon General of the United States regarding the effects of second hand smoke as further support for this Ordinance.

### **Sec. 43-2. Purpose.**

This Ordinance shall be cited as the “Wheaton Smoke Free Air Ordinance,” the purpose of which is to protect the public health, comfort and environment by prohibiting smoking in all enclosed public places and places of employment, within 25 feet of all public entrances to such places, in open air public dining areas and within 25 feet of such areas, and within certain unenclosed public places in order to ensure that nonsmokers may breathe air free from the hazardous effects of secondhand smoke.

### **Sec. 43-3. Definitions.**

For purposes of this Article, the following terms shall have the following

meanings:

(A) "Business" means any sole proprietorship, partnership, joint venture, corporation, association or other business entity, whether formed for profit or non-profit purposes and religious corporations.

(B) "Club" means 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 which is restricted primarily to members and their guests.

(C) "City" means the City of Wheaton.

(D) "Employee" means 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.

(E) "Employer" means any business that employs one or more employees.

(F) "Enclosed area" means 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.

(G) "Enclosed Public Place" means an enclosed 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 residential structures;

(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, health care facilities such as hospitals, clinics and doctor's offices, museums, libraries, restaurants, polling places, government and City-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 City of Wheaton where there is in progress any public meeting.

"Enclosed Public Place" shall not include:

(1) a private dwelling unit, unless said dwelling is also used as a day care 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; or

(2) hotel or motel rooms designated as smoking, provided that no more than 20% of the available rooms for rent in any single building shall be designated as smoking rooms.

(3) smoking areas designated by other units of local government having control over the property containing a smoking area established in conformance with 410 ILCS 80/5.

(H) "Open Air Dining Area" means a seating area open to the air that is accessory to a restaurant, hotel, cafeteria, private 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.

(I) "Outdoor Event" means a scheduled outdoor musical, dance, theatrical, dramatic, entertainment or performance event, or a scheduled outdoor community fair, event or market, that is organized, licensed or permitted by the owner of an outdoor venue and to which the public is invited.

(J) "Outdoor Venue" means 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 that is organized, licensed or permitted by the owner of the venue.

(K) "Place of Employment" means an area under the control of a public or private employer within the City 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, private 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 a private dwelling unit, unless the dwelling is also used as a day care 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.

Place of Employment does not include that part of a private dwelling used as a home office

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by a single employee only who resides in that dwelling.

(L) "Public Entrance" means 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: (i) that is open to and intended for use by the general public or business invitee's ingress and egress to the place of employment; (ii) where employees are required or permitted to enter or exit the place of employment.

(M) "Smoke" or "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form.

(N) "Unenclosed Public Place shall mean those places described in Section 43-5 of this Ordinance.

**Sec. 43-4. Prohibition in Enclosed Public Places.**

(A) It shall be unlawful to smoke in any enclosed area of any public place.

(B) 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 a public place.

**Sec. 43-5. Prohibition in Unenclosed Public Places and Outdoor Venues.**

(A) It shall be unlawful to smoke in the following unenclosed public places:

- (1) All outdoor events and venues.
- (2) Adams and Memorial Parks.
- (3) Public sidewalks within twenty-five (25) feet of a public entrance.
- (4) Public sidewalks within twenty-five (25) feet of an open air dining area.

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

**Sec. 43-6. Prohibition in Places of Employment.**

(A) It shall be 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.

**Sec. 43-7. Prohibition in Open Air Dining Areas.**

(A) It shall be unlawful to smoke in any open air dining area.

(B) It shall be unlawful for the owner, occupant or lessee, as the case may be, in control of an open air dining area to knowingly permit smoking in the area available for open air dining.

(C) It shall be unlawful to smoke within twenty-five (25) feet of an open air dining area.

**Sec. 43-8. Prohibition at Public Entrances.**

(A) It shall be unlawful to smoke within twenty-five (25) feet of a public entrance to a public place or to a place of employment.

(B) It shall be unlawful for any person or persons to gather or congregate for the purpose of smoking within twenty-five (25) feet of a public entrance.

**Sec. 43-9. Designation of Other No-Smoking Areas.**

Nothing in this Chapter shall be deemed to limit the owner, occupant or lessee 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, occupant or lessee shall cause signs to be posted at appropriate locations advising persons that smoking is prohibited within the designated outdoor area.

**Sec. 43-10. Signs.**

(A) Each owner, lessor, lessee, employer, or other person in control of a public place shall post conspicuous "No Smoking" signs in the enclosed area of any public place where smoking is prohibited. Such "No Smoking" signs shall have a white field with the words "No Smoking" printed in red letters, four inches high with a one-half inch 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. It shall be unlawful for any person to remove, deface or obscure any sign posted pursuant to the provisions of this ordinance.

(B) Each owner, lessor, lessee, management company or other person in control of an outdoor venue shall cause signs to be posted at appropriate locations advising persons that smoking is prohibited within the outdoor venue during outdoor events.

**Sec. 43-11. Exemptions.**

The prohibition on smoking set forth in Sections 43-4 and 43-6 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

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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) "Clubs" as defined in Section 43.3 (B).

(C) Smoking Areas designated by other units of local government having control over property containing smoking areas established in conformance with 410 ILCS 80/5.

(D) Other than Memorial Park, all Park and Forest Preserve unenclosed public lands owned by the Wheaton Park District or the Forest Preserve District of Dupage County.

#### **Sec. 43-12. 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 seventy-five dollars (\$75.00).

(B) Any person who owns, manages, operates or otherwise controls a public place, a place of employment or an open air dining area that 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 one hundred fifty dollars (\$150.00) and such violation may result in the suspension or revocation of any City permit or license issued for the premises in which the violation occurred.

(C) Each day that any violation of this Chapter shall continue shall constitute a separate offense.

#### **Sec. 43-13. 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.

#### **Sec. 43-14. Effective Date.**

Except as to bowling alleys, this Ordinance shall be effective on January 2, 2007. This Ordinance shall become effective for bowling alleys on June 1, 2007. The Owners of all premises affected by this Ordinance that are in existence on the approval date hereof or anytime thereafter shall cause signs prohibiting smoking in conformance with the terms of this Ordinance to be posted in at least two conspicuous locations within the public place or place of employment no later than January 2, 2007 or in the case of bowling alleys no later than June 1, 2007.

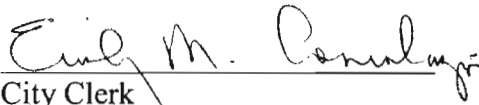
Sec. 43-14 through 43-20 are hereby reserved.

**SECTION 3:** This Ordinance shall be in full force and effect, in accordance with its terms, on January 2, 2007, from and after its passage, approval and publication in pamphlet form as provided by law.

**SECTION 4:** Any ordinance or any provision of any ordinance inconsistent with this Ordinance or provision of this Ordinance is repealed to the extent of such inconsistency.

**SECTION 5:** Any declaration of invalidity of any portion of this Ordinance by a Court of competent jurisdiction shall not effect or invalidate the otherwise valid provisions of this Ordinance.

ATTEST:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor

Ayes:

Roll Call Vote:  
Councilman Johnson  
Mayor Carr  
Councilman Levine  
Councilman Mouhelis  
Councilman Sues  
Councilman Bolds  
Councilwoman Corry

Nays:  
Absent:

None  
None

Motion Carried Unanimously

Passed: October 2, 2006  
Published: October 3, 2006