

ORDINANCE NO. 18-018

VILLAGE OF WESTON, MARATHON COUNTY, WISCONSIN AN ORDINANCE
AMENDING ARTICLE III, TOBACCO, SMOKING AND PROHIBITED
SUBSTANCES, SEC. 54.300 SMOKING PROHIBITED IN CERTAIN AREAS,
54.301 PROHIBITION CONCERNING CHILDREN, 54.302 RESTRICTION ON
SALE OR GIFT OF THE MUNICIPAL CODE FOR THE VILLAGE OF WESTON,
MARATHON COUNTY, WISCONSIN

The Village Board of the Village of Weston, Marathon County, Wisconsin, do ordain as follows:

SECTION 1: Article III, Tobacco, Smoking and Prohibited Substances, Sec. 54.300 Smoking Prohibited in Certain Areas, 54.301 Prohibition Concerning Children, 54.302 Restriction on Sale or Gift of the Village of Weston Municipal Code is hereby created as follows:

ARTICLE III TOBACCO, SMOKING AND PROHIBITED SUBSTANCES.

Sec. 54.300. Smoking or electronic delivery devices prohibited in certain areas.

(a) *Definitions.*

Bed and breakfast means establishment is an owner-occupied private home where the business of paying guests is secondary to its use as a private residence.

Childcare facility means any state licensed or county certified child care facility including, but not limited to, licensed family day care or licensed group day care centers, licensed day camps, certified school-age programs and pre-school programs.

Common areas of buildings means all areas not part of a tenant's leased premises, including, but not limited to, lobbies, community rooms, hallways, laundry rooms, stairwells, elevators, enclosed parking facilities, pool areas and restrooms contiguous thereto.

Common areas of malls means those areas within a mall customarily accessible to patrons.

Educational facility means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a state agency or board.

Electronic delivery device means any product containing or delivering nicotine or other similar substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. Electronic delivery device includes any device manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under

any other product name or description, or any component part of such product whether or not sold separately. Electronic delivery device does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for such an approved purpose.

Employee means any person who is employed by any employer for direct or indirect monetary wages or profit, including those full time, part time, temporary or contracted for from a third party; employee also means any person who serves as a volunteer for a business or nonprofit entity.

* **Cross References**--Health and Sanitation, Chapter 38.

Employer means any person, partnership, limited liability company, corporation, or other entity, including a public or non-profit entity who employs the services of one (1) or more individual persons.

Enclosed area means 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 floor or ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "other landscaping" or similar structures.

Entrance means a doorway and adjacent area which gives direct access to a building from a contiguous street, plaza, sidewalk or parking lot.

Health care facility has the meaning set forth in Wis.Stat. § [155.01\(6\)](#).

Hotel and motel has the meaning set forth in the Village of Weston Municipal Code Chapter 94 Sec. 94.4.05(16).

Incidental means so minor in significance and non-essential to the primary use, purpose or operation that if the incidental use is discontinued, the primary purpose would continue without harm.

Mall means an enclosed, indoor area containing common areas and discrete businesses primarily devoted to the retail sale of goods and services.

Medical services has the meaning set forth in Wis. Stat. § [647.01\(6\)](#).

Non-smoking means smoking is prohibited.

Outdoors smoking area means a cordoned off outside area of a restaurant or tavern, like a deck or patio, that is separate from the main entrance of the restaurant and tavern and allows public access only from the inside.

Person in charge means the person who ultimately controls, governs or directs the activities aboard a public conveyance or within or at a place where smoking is regulated under this section, regardless of the person's status as owner or lessee.

Place of employment means an enclosed area controlled by the employer, which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference and classrooms, employee cafeterias and hallways. A private residence is not a 'place of employment' within the meaning of this ordinance unless used as a childcare facility.

Private residence means premises owned, rented or leased by temporary or permanent habitation.

Public Building means any structure, including exterior parts of such a building, such building, such as a porch, exterior platform, or steps providing means of ingress or egress, used in whole or in part as a place of resort, assemblage, lodging, trade, traffic, occupancy, or use by the public or by three or more tenants.

Restaurant means an establishment defined in the Village of Weston Municipal Code Sec. 94.4.05(10).

Retail tobacco store means a business whose primary purpose is the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

Room means a space within a building completely enclosed with walls, partitions, floor and ceiling, except for openings for light, ventilation, ingress and egress.

School board means the school board in charge of the public schools, grades K-12, of a school district.

School property means any property owned and/or titled in the D.C. Everest School District or property under the direct control and authority of the D.C. Everest School District.

Smokefree means absence from the ambient air of the smoke by-product from the burning, inhaling, exhaling, or carry of a lighted cigarette, cigar, pipe, weed, or plant.

~~***Smoking*** means to consume by burning, inhaling, exhaling or carrying a lighted cigarette, cigar, pipe, weed, plant, or any other combustible substance in any manner in any form.~~

Smoke or Smoking means burning, holding, inhaling, exhaling or carrying any lighted or heated cigar, cigarette, pipe or heated tobacco or plant product intended for inhalation, whether natural, or synthetic, in any manner or form. Smoking includes the use of an electronic delivery device which creates an aerosol or vapor, in any manner or form, or the use of any oral smoking device.

Sports arena means sports pavilions, stadiums, gymnasiums, health spas, swimming pools, roller and indoor ice rinks, and bowling centers.

Tavern means any establishment whose primary purpose is the sale of fermented malt beverages or intoxicating liquors for consumption upon said premises and in which the sale of other products is merely incidental.

Tobacco product means a combustible cigarette, cigar, weed, plant or other combustible substance prepared in such a manner that is suitable for smoking. This section shall not include smoke-free tobacco products.

Village buildings means all Village-owned and operated buildings and those portions of buildings leased and operated by the Village.

(b) **Intent and purpose.**

(1) The Board of Trustees of the Village of Weston hereby finds that:

- a. It is recognized that smoking of cigarettes **and electronic cigarette devices containing nicotine** and tobacco products is hazardous to an individual's health and may affect the health of nonsmokers/smokers when they are involuntarily in the presence of smoking.
- b. Numerous scientific studies have found that tobacco smoke is a major contributor to indoor pollution.
- c. Reliable scientific studies, including studies conducted by the Surgeon General of the United States, have shown that breathing sidestream or secondhand smoke is a significant health hazard to nonsmokers; particularly to children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.
- d. Health hazards inducted by breathing sidestream or secondhand smoke include lung cancer, respiratory infection, decreased respiratory function, decreased exercise tolerance, bronchoconstriction and bronchospasm.
- e. Reliable scientific studies assessed by credible health officials have found that sidestream and secondhand tobacco smoke are a leading cause of premature death and disability among nonsmokers. Site specific local studies in Marathon and Wood Counties conducted in the summer of 2008 identified unsafe levels of small particulate matter in establishments where smoking was allowed. Secondhand tobacco smoke is a primary source of small particulate matter.
- f. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort to nonsmokers.

(2) This Ordinance is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the Village of Weston ,

especially recognizing the rights of nonsmokers who constitute a majority of the population; educating citizens affected by this ordinance; and assisting owners, operators; and managers in maintaining compliance.

- (3) This Ordinance is also adopted for the purpose of easing the potential economic loss and financial burden of Village restaurants and taverns where smoking is currently allowed (in 2008) through regulatory and economic relief as available for the construction of outdoors smoking areas.
 - (4) The Village of Weston Board of Trustees has twice endorsed the need for a state wide smoking ban to protect the public health and safety of its residents and to provide a level competitive playing field for all businesses especially those in the hospitality industry.
- (c) ***Prohibition of smoking in indoor public places.*** Except as otherwise provided, it shall be unlawful for any person to smoke tobacco products or **electronic delivery devices** in indoor public places as defined in subsection (a) and places of employment as defined in subsection (a), including, but not limited to, the following:
- (1) Elevators and enclosed stairwells, including those within Village buildings.
 - (2) Public forms of transportation, including, but not limited to, motor buses, taxicabs, or other public passenger vehicles.
 - (3) Theatres, libraries, museums, auditoriums, sports arenas, convention halls which are used by or open to the public.
 - (4) Any childcare facility. Incorporated herein by reference are the following Wisconsin statutory and administrative code sections and any amendments or renumbering thereof: Wis. Stat. § [101.123\(1\)\(abm\)](#) and ; Wis. Stat. § [49.136](#) .
 - (5) Retail stores.
 - (6) Health care facilities.
 - (7) Waiting rooms, hallways, rooms of health care laboratories.
 - (8) Waiting rooms, hallways, rooms in offices of any physician, dentist, psychologist, chiropractor, optometrist or optician, or other medical services provider.
 - (9) Meeting and conference rooms in which people gather for educational, business, professional, union, governmental, recreational, political or social purposes.
 - (10) Polling places.

- (11) Services lobbies, waiting areas, and the common areas open to the public of financial institutions, business and professional offices, and multi-unit commercial facilities.
 - (12) Self-service laundry facilities.
 - (13) Enclosed, indoor areas of restaurants.
 - (14) Common areas of malls.
 - (15) Public bus and transfer point shelters.
 - (16) Common areas of building which contain three (3) or more rental units. Written Rental Agreements shall include reference to this subdivision.
 - (17) Village buildings.
 - (18) Village-owned or leased motor vehicles.
 - (19) Sports arenas & fieldhouses.
 - (20) Enclosed indoor areas of taverns.
 - (21) Enclosed areas in bed and breakfast establishments, hotels and motels.
- (d) ***Prohibition of smoking in outdoor areas.*** It shall be unlawful for any person to smoke or use tobacco products or electronic delivery devices in the following outdoor areas.
- (1) Within twenty (20) feet from all entry ways of Village-owned buildings and structures, including, but not limited to, parking ramps (if applicable) , park pavilions, etc., except open air facilities.
 - (2) Outside of the Weston Public Safety Building, on the sidewalk between the main entrance and public parking lot, extending from Sternberg Avenue to Corozalla Street;
 - (3) Areas in Village parks as posted and so designated by the Parks and Recreation Department including the athletic field/ bleachers & dugouts, aquatic center, skateboard park, dog park, playground and swing set areas, and park restrooms;
- (e) ***Smoking allowed outdoors.*** Restaurants & taverns may allow smoking outdoors if it is restricted to a designated area separate from the main entrance. Restaurants and taverns may serve alcohol in the outdoors smoking area if the area provides a barrier (fence or deck railing) that allows no access to public except from inside the restaurant or tavern and is constructed in compliance with Village building and zoning codes. Restaurants, taverns, hotels, and bed & breakfast facilities shall

include an endorsement on their Village liquor license that outdoor alcohol use is permitted.

- (1) The Village shall waive all building permit fees and plan review fees affiliated with the purpose of construction of an outdoor smoking area for restaurants, taverns, hotels and bed and breakfast facilities. This waiver is effective upon enactment and expires on 12/31/2009.
 - (2) The Village may waive certain property setbacks and zoning restrictions found under the Village of Weston Municipal Code Chapter 94 for the purpose of construction of an outdoors smoking area, provide such waiver does not encroach on a private residence or create a nuisance. This waiver is effective upon enactment and expires on 12/31/2009.
- (f) ***Prohibition of smoking in educational facilities.*** It shall be unlawful for any person to smoke **any cigarette** or otherwise use any tobacco products **or use any other smoking or electronic delivery devices:**
- (1) In all educational facilities and in or upon all other premises owned, rented by or under the control of a school board (see Sec. 54.300(a)).
- (g) ***Prohibition of smoking in places of employment.***
- (1) It shall be unlawful for any person to smoke any tobacco products in all places of employment.
 - (2) Every building which is a place of employment shall have at least one (1) entrance which is smokefree.
 - (3) Each employer, operator, manager, lessor or other person having control of the place of employment shall make reasonable efforts to ensure a smokefree workplace for all employees and frequenters.
 - (4) Upon implementation, each employer having a place of employment located within the Village of Weston shall adopt, implement and communicate written notice of the provisions of this ordinance to each employee.
- (h) ***Exceptions.*** There are no exceptions to this ordinance.
- (i) ***Enforcement.***
- (1) The Zoning Administrator or designee and the Chief of Police or designee shall have the power, whenever they may deem it necessary, to enter upon the premises named in this section to ascertain whether the premises are in compliance with this ordinance. A compliance time of not less than one (1) week shall be granted. Enforcement may be by citation, as permitted by Sec. 1.111

- (2) The proprietor, employer or other person in charge of premises regulated hereunder, upon either observing or being advised of a violation, shall make reasonable efforts to prevent smoking in prohibited areas by:
 - a. Approaching smokers who fail to voluntarily comply with this section and requesting that they extinguish their cigarette or tobacco product and refrain from smoking or
 - b. Refusing service to anyone smoking in a prohibited area.
 - (3) Any person who desires to register a complaint under this section may contact the Zoning Administrator or the Police Department.
 - (4) Ashtrays, cigarette vending machines and other smoking paraphernalia shall not be located in areas where smoking is prohibited.
 - (5) Marathon County Health Department will remind owners of this ordinance and monitor for signs of smoking during health inspection of licensed facilities. Any noted violation of this ordinance will be reported to the Zoning Administrator or the Police Department.
- (j) ***Retaliation prohibited.*** No person shall discharge, refuse to hire, refuse to serve or in any other manner retaliate against any employee, applicant for employment, customer, service user, business patron or any other person because that person exercises any rights afforded by this section.
- (k) ***Violations and penalties.***
- (1) General. Any person who violates any of the provisions of this section may be subject to a forfeiture of no more than one hundred twenty-five dollars (\$125) for the first offense and no more than (\$250) for the second and (\$500) for subsequent offenses. Each day that a violation occurs shall be considered a separate offense.
- (l) ***Clean indoor air.***
- (1) Intent and construction. The Village of Weston finds that it is in the interest of the health, safety and welfare of the community to adopt by reference Wis. Stat. § [101.123](#), and subsequent amendments, additions and recodifications. It is the intent of the Village Board that where there may be conflict between Wis. Stat. § [101.123](#) and Sec. 54.300, that the most restrictive section shall apply. This ordinance shall not be construed to mean that progressive discipline of Village employees for violations of laws, rules and regulations is only authorized where explicitly provided by ordinance.
 - (2) Penalty. The penalties provided by Wis. Stat. § [101.123](#) shall be in addition to the penalties provided for violation of Sec. 54.300 when a person has violated both laws. In addition to the penalties provided by Sec. 54.300 and Wis. Stat. § [101.123](#), any Village employee who violates any provision of

Sec. 54.107 or Wis. Stat. § [101.123](#) may also be subject to progressive discipline by his or her employer.

- (m) **Severability.** The provisions of this section are severable. If any provisions of this section is held to be invalid or unconstitutional or if the application of any provisions of this section to any person or circumstance is held to be invalid or unconstitutional, such holding shall not affect the other provisions or applications of this section which can be given effect without the invalid or unconstitutional provisions or applications. It is hereby declared to be the intent of the Village Board of Trustees that this section would have been adopted had any invalid or unconstitutional provision or applications not been included herein.
- (n) The provisions of this ordinance shall become effective on July 5, 2010.

(Code 1982, § 4.02, § 101.123; Ord. of 1-6-2009; Ord. of 7-6-2009; Ord. of 11-11-11)
[Amended via Ord. No 15-027, 11/18/2015]

Sec. 54.301. Prohibition concerning children.

- (a) **Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Nicotine product means a product that contains nicotine and is not any of the following:

1. A tobacco product
2. A cigarette
3. A product that has been approved by the U.S. food and drug administration for sale as a smoking cessation product or for another medical purpose and is being marketed and sold solely for such an approved purpose, as defined in Wis Stat § [134.66](#).

Cigarette has the meaning given in Wis. Stat. § [139.30\(1m\)](#).

Electronic delivery device means any product containing or delivering nicotine or other similar substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. Electronic delivery device includes any device manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or description, or any component part of such product whether or not sold separately. Electronic delivery device does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product and is being marketed and sold solely for such an approved purpose.

Law enforcement officer has the meaning given in Wis. Stat. § [30.50\(4s\)](#).

Smoke or Smoking means burning, holding, inhaling, exhaling or carrying any lighted or heated cigar, cigarette, pipe or heated tobacco or plant product intended for inhalation, whether natural, or synthetic, in any manner or form. Smoking includes the use of an electronic delivery device which creates an aerosol or vapor, in any manner or form, or the use of any oral smoking device.

Tobacco products means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, snuff flour, Cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco products” does not include cigarettes, as defined under Section 139.30(1) of the Wisconsin Statutes and has the meaning given in Wis. Stat. § [139.75\(12\)](#).

- (b) **Prohibited acts.** Except as provided in subsection (c), no child may do any of the following:
- (1) Buy or attempt to buy any cigarette, nicotine products, ~~or~~ tobacco product, ~~or other smoking or electronic delivery device.~~
 - (2) Falsely represent his/her age for the purpose of receiving any cigarette, nicotine products or tobacco product, ~~or other smoking or electronic delivery device.~~
 - (3) Possess any cigarette or tobacco product, ~~or other smoking or electronic delivery device,~~ or nicotine product.
- (c) **Exception, children employed.** A child may purchase or possess cigarettes, nicotine products, or tobacco products ~~or other smoking or electronic delivery device~~ for the sole purpose of resale in the course of employment during his working hours if employed by a retailer licensed under Wis. Stat. § [134.65\(1\)](#).
- (d) **Confiscation by law enforcement officer.** A law enforcement officer shall seize any cigarette, nicotine products, or tobacco product, ~~or other smoking or electronic delivery device~~ involved in any violation of subsection (b) committed in his presence.

Adopting Wis. Stat. § [254.92 \(2\)](#)

(Ord. of 5-4-1992(1), § 1; Ord. of 11-11-11; Ord. of 12-20-13; Ord. of 06-15-15) [Amended via Ord. No 15-027, 11/18/2015]

Sec. 54.302. Restrictions on sale or gift.

- (a) **Definitions.** The definitions contained in Wis. Stat. § [134.66](#) are adopted by reference and made a part of this section as if fully set forth in this subsection.
- (b) **Restrictions.**
- (1) No retailer may sell or give cigarettes, **electronic cigarette devices containing nicotine**, tobacco products or **other** nicotine products to any person under the age of 18 years, except as provided in Wis. Stat. § [48.983\(3\)](#). A vending machine operator is not liable under this subsection for the purchase of cigarettes, tobacco products or nicotine products from his vending machine by a person under the age of 18 years if the vending machine operator was unaware of the purchase.
- (2)
- a. A retailer shall post a sign in areas within his premises where cigarettes, tobacco products, **electronic cigarette devices containing nicotine**, or nicotine products are sold to consumers stating that the sale of any cigarette, tobacco product, or nicotine product to a person under the age of 18 years is unlawful under this section and under Wis. Stat. § [254.92](#).
- b. A vending machine operator shall attach a notice in a conspicuous place on the front of his vending machines stating that the purchase of any cigarette, tobacco product, **electronic cigarette devices containing nicotine**, or nicotine product by a person under the age of 18 years is unlawful under this section and under Wis. Stat. § [254.92](#) and that the purchaser is subject to a forfeiture of not to exceed \$25.00.
- (3) Notwithstanding subsection (b)(4) of this section, no retailer may place a vending machine within 500 feet of a school.
- (4)
- a. Except as provided in subsection (b)(3) of this section, no retailer may keep a vending machine in any public place that is open to persons under the age of 18 years unless all of the following apply:
1. The vending machine is in a place where it is ordinarily in the immediate vicinity, plain view and control of an employee.
 2. The vending machine is in a place where it is inaccessible to the public when the premises are closed.
- b. The person who ultimately controls, governs or directs the activities within the premises where the vending machine is located shall ensure that an employee of the retailer remains in the immediate vicinity, plain view and control of the vending machine whenever the premises are open.

(c) ***Defense of retailer.*** Proof of all of the following facts by a retailer who sells cigarettes or tobacco products to a person under the age of 18 years is a defense to any prosecution for a violation of subsection (b)(1) of this section:

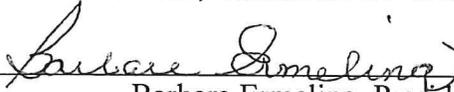
- (1) That the purchaser falsely represented that he had attained the age of 18 years and presented an identification card.
- (2) That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of 18 years.

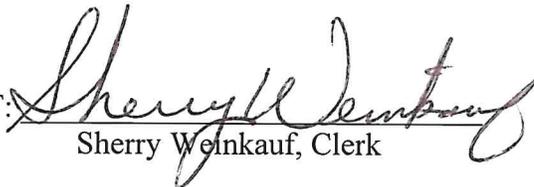
SECTION 2: SEVERABILITY. If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

SECTION 3: SECTION 4: EFFECTIVE DATE. This ordinance shall take effect upon approval and publication.

Dated the 18th day of June 2018

VILLAGE BOARD, VILLAGE OF WESTON

By: 
Barbara Ermeling, President

ATTEST: 
Sherry Weinlauf, Clerk

APPROVED: 6-18-18

ADOPTED: 6-18-18

PUBLISHED: 6-27-18