

**ORDINANCE 547**  
**VILLAGE OF ELKHART LAKE**

**WHEREAS**, the legislature of the State of Wisconsin has enacted 2009 Wisconsin Act 12, which amends Wisconsin Statutes §101.123, with an effective date of July 5, 2010 which prohibits smoking in enclosed indoor areas that are public places or places of employment; and

**WHEREAS**, the Wisconsin Statute §101.123, as amended grants authority to the Village to enact an ordinance to protect the health and comfort of the public from the effects of second-hand smoke;

**NOW, THEREFORE**, the Board of Trustees of the Village of Elkhart Lake does hereby ordain as follows:

**25.00 Smoking Prohibited in Certain Areas**

(1) Intent and purpose. It is recognized that smoking is not only hazardous to the health of those who smoke, but also to the health of non-smokers when in the presence of those who are smoking. Therefore, in accordance with the 2009 State of Wisconsin Act 12, and the adoption of Wisconsin Statute § 101.123 hereto, the purpose of this ordinance is to protect the public health, comfort, safety and welfare by prohibiting smoking in certain places.

(2) Definitions. For purposes of this section, the following terms have the meaning indicated:

**Bar** means an establishment that 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 those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

**Business** means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

**Employee** means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity..

**Employer** means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services

of one or more individual persons.

**Enclosed Area** means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling.

**Health Care Facility** means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

**Place of Employment** means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, elevators and hallways. A private residence (including, without limitation, an apartment) is not a "place of employment" unless it is used as a child care, adult day care, or health care facility. An outside area, or a structure which may include a roof, and may include walls which cover up to 50% of the perimeter of the structure, is not a "place of employment," providing that the structure and its location permit natural air flow to rapidly dissipate second hand smoke.

**Public Place** means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gaming facilities, health care facilities, hotels and motels, laundromats, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private club is a "public place" whether or not open to the public. A private residence (including, without limitation, an apartment) is not a "public place" unless it is used as a child care, adult day care, or health care facility.

**Shopping Mall** means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

**Smoking** means inhaling, exhaling, burning, or carrying any lighted or heated - cigar, cigarette, pipe or any other lighted tobacco smoking equipment in any manner or in any form.

**Sports Arena** means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, or other buildings where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

(3) Prohibition of Smoking in Village Owned or Operated Areas. Smoking is prohibited in enclosed areas of all buildings and facilities owned or operated by the Village, in all Village owned or operated vehicles. Every Village owned or operated building shall have at least one (1) entrance which is smoke free.

(4) Prohibition of Smoking in Public Places. Smoking is prohibited in all public places within the Village, and every building which is a public place shall have at least one (1) entrance which is smoke free.

(5) Prohibition of Smoking in Places of Employment.

(a) Smoking is prohibited in all places of employment within the Village, and every building which is a place of employment shall have at least one (1) entrance which is smoke free.

(b) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Ordinance and to all prospective employees upon their application for employment.

(6) Declaration of Establishment as Nonsmoking. Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section (7)(a) is posted

(7) Posting of Signs.

(a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every place where smoking is prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place.

(b) Every place where smoking is prohibited by this Ordinance shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

(c) It shall be unlawful for any person to remove, deface, or destroy any sign required by this Ordinance

(d) All ashtrays shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.

(8) Enforcement. (a) This Ordinance shall be enforced by the Police Department or an authorized designee.

(b) Notice of the provisions of this Ordinance shall be given to all applicants for a business license in the Village at the time of application and annually thereafter.

(c) Any citizen who desires to register a complaint under this Ordinance may do so with the Police Department.

(d) The Police Department or their designees shall have the power,

under law, to enter upon the premises named in this Ordinance to ascertain whether the premises are in compliance with this ordinance.

(e) An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.

#### (9) Violations and Penalties

(a) A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by:

1. A forfeiture not exceeding one hundred dollars (\$100) for a first violation.

(b) A person who removes, defaces, or destroys any sign required by this Ordinance shall be guilty of an infraction, punishable by a forfeiture not exceeding fifty dollars (\$50).

(c) Except as otherwise provided in Section (9)(a), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Ordinance shall be guilty of an infraction, punishable by:

2. A forfeiture not exceeding one hundred dollars (\$100) for a first violation.

3. A forfeiture not exceeding two hundred dollars (\$200) for a second violation within twelve (12) months of one (1) previous violation.

4. A forfeiture not exceeding three hundred dollars (\$300) for each additional violation within twelve (12) months of two (2) or more previous violations.

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

(10) Other Applicable Laws This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws

(11) Severability. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Adopted and Approved this

\_\_\_\_\_ day of September, 2010

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Alan S. Rudnick, President

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Jeanette L. Moioffer, Clerk

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Rola Ann Klahn, Trustee