

## Chapter 223 SMOKING

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[HISTORY: Adopted by the Village Board of the Village of Iola as indicated in article histories. Amendments noted where applicable.]

#### GENERAL REFERENCES

Cigarettes — See Ch. 109.

Public health nuisances — See Ch. 186, Art. I.

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### ARTICLE I Regulation of Smoking [Adopted 2-12-1996 as Title 6, Ch. 1, Sec. 6-1-8, of the 1996 Code]

#### § 223-1. Definitions.

In this article, the following terms shall have the meanings indicated:

**EDUCATIONAL FACILITY** — 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.

**INPATIENT HEALTH CARE FACILITY** — Has the meaning provided under Sec. 50.135(1), Wis. Stats., except that it does include community-based residential facilities as defined under Sec. 50.01(1g), Wis. Stats.<sup>1</sup>

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<sup>1</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

**OFFICE** — Any area, whether publicly or privately owned or occupied, that serves as a place of work at which the principal activities consist of professional, clerical or administrative services.<sup>2</sup>

**PERSON IN CHARGE** — The person who ultimately controls, governs or directs the activities aboard a public conveyance or within a place where smoking is regulated under this article, regardless of the person's status as owner or lessee.

**PUBLIC CONVEYANCE** — Mass transit vehicles as defined by Sec. 340.01(28m), Wis. Stats., and school buses as defined by Sec. 340.01(56), Wis. Stats.<sup>3</sup>

**RESTAURANT** — An establishment defined in Sec. 254.61(5), Wis. Stats., with a seating capacity of more than 50 persons.<sup>4</sup>

**RETAIL ESTABLISHMENT** — Any store or shop in which retail sales is the principal business conducted, except a tavern operating under a "Class B" intoxicating liquor license or Class "B" fermented malt beverage license, and except bowling alleys.

**SMOKING** — Carrying a lighted cigar, cigarette, pipe or any other lighted smoking equipment.

**§ 223-2. Regulation of smoking.**

A. Except as provided in § 223-3, no person may smoke in the following places:

- (1) Public conveyances.
- (2) Educational facilities.
- (3) Inpatient health care facilities.
- (4) Indoor movie theaters.
- (5) Offices.
- (6) Passenger elevators.
- (7) Restaurants.
- (8) Retail establishments.
- (9) Public waiting rooms.
- (10) Any enclosed, indoor area of a state, county, city, village or town building.

B. The prohibition in Subsection A above applies only to enclosed, indoor areas.

<sup>2</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>3</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

<sup>4</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

**§ 223-3. Exceptions.**

The regulation of smoking in § 223-2 does not apply to the following places:

- A. Areas designated smoking areas under § 223-4.
- B. Offices occupied exclusively by smokers.
- C. Entire rooms or halls used for private functions, if the arrangements for the function are under the control of the sponsor of the function.
- D. Restaurants holding a "Class B" intoxicating liquor or Class "B" fermented malt beverage license if the sale of intoxicating liquors or fermented malt beverages or both accounts for more than 50% of the restaurant's receipts.
- E. Offices that are privately owned and occupied.
- F. Any area of a facility used principally to manufacture or assemble goods, products or merchandise for sale.
- G. Prisons, secured correctional facilities, secure detention facilities, jails and lockup facilities.

**§ 223-4. Designation of smoking areas.**

- A. A person in charge or his or her agent may designate smoking areas in the places where smoking is regulated under § 223-2 unless a fire marshal, law, ordinance or resolution prohibits smoking. Entire rooms and buildings may be designated smoking areas.
- B. If an entire room is designated a smoking area, the person in charge or his or her agent shall post notice of the designation conspicuously on or near all entrances to the room normally used by the public. If an entire building is designated a smoking area, notice of the designation shall be posted on or near all entrances to the building normally used by the public, but posting notice of the designation on or near entrances to rooms within the building is not required.
- C. The person in charge or his or her agent shall utilize, if possible, existing physical barriers and ventilation systems when designating smoking areas. This subsection requires no new construction of physical barriers or ventilation systems in any building.
- D. This article requires the posting of signs only in areas where smoking is permitted.

**§ 223-5. Responsibilities of person in charge.**

The person in charge or his or her agent shall:

- A. Post signs identifying designated smoking areas; and
- B. Arrange seating to accommodate nonsmokers if smoking areas are adjacent to nonsmoking areas.

**§ 223-6. Violations and penalties.**

- A. On and after April 1, 1985, any person in charge or his or her agent who willfully fails to comply with § 223-5 shall forfeit not more than \$50.<sup>5</sup>
- B. Sections 101.02(13)(a) and 939.61(1), Wis. Stats., do not apply to this article.
- C. A violation of this article does not constitute negligence as a matter of law.

**§ 223-7. Injunction.**

After July 1, 1985, state or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of this article.

**ARTICLE II****Smoking on Village Property**

[Adopted 2-12-1996 as Title 9, Ch. 3,  
Sec. 9-3-14, and Sec. 9-1-2, of the 1996 Code]

**§ 223-8. State statute adopted.**

The provisions of Chapter 101.123, Wis. Stats., relating to the regulation of smoking and clean indoor air, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made a part of this article as is fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this article. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this article.

**§ 223-9. Smoking prohibited within or upon all buildings and equipment owned, leased or rented by village.**

In recognition of a need to protect the health and comfort of the public and village employees from the detrimental effects of smoking, pursuant to the authority granted to the village by Sec. 101.123(2)(c), Wis. Stats., smoking as defined by Section 101.123(1)(h), Wis. Stats., is hereby prohibited by any person within or upon all buildings and enclosed equipment owned, leased or rented by the Village of Iola, except in designated areas.

**§ 223-10. Violations and penalties; attempt; parties to acts.**

- A. Penalty. In addition to the general penalty provisions of this Code in Chapter 1, General Provisions, § 1-17, or any other penalty imposed for violation of any section of this article, any person who shall cause physical damage to or destroy any public property shall be liable for the cost of replacing or repairing such damaged or destroyed property. The parent or parents of any unemancipated minor child who violates § 201-11 may also be held liable for the cost of replacing or repairing such damaged or destroyed property in accordance

<sup>5</sup> Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

with the Wisconsin Statutes. Nothing in this Code of Ordinances shall prevent the Police Department from referring violations of the provisions of this article to the District Attorney's office in the interest of justice.

B. Attempt.

- (1) Whoever attempts to commit an act prohibited by this article of the Code of Ordinances of the Village of Iola may be required to forfeit amounts not to exceed  $\frac{1}{2}$  the maximum penalty for the completed act.
- (2) An attempt to commit an act prohibited by the ordinances in this Code requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute a violation of these ordinances and that he or she does acts towards the commission of the violation which demonstrate unequivocally, under all the circumstances, that he or she formed that intent and would commit the violation except for the intervention of another person or some other extraneous factor.

C. Parties to acts prohibited in this article.

- (1) Whoever is concerned in the commission of an act prohibited by this article of this Code of Ordinances is a principal and may be charged with and convicted of the commission of said act although he or she did not directly commit it and although the person who directly committed it has not been convicted of some other act prohibited by these ordinances.
- (2) A person is concerned in the commission of an act prohibited by these ordinances if he:
  - (a) Directly commits the act; or
  - (b) Intentionally aids and abets the commission of it; or
  - (c) Is a party to a conspiracy with another to commit it or advises, hires, counsels, or otherwise procures another to commit it. Such party is also concerned in the commission of any other act which is committed in pursuance of the intended violation and which, under the circumstances, is the natural and probable consequence of the intended violation. This paragraph does not apply to a person who voluntarily changes his/her mind and no longer desires that the act be committed and notifies the other parties concerned of his/her withdrawal within a reasonable time before the commission of the violation so as to allow the others also to withdraw.

