

**VILLAGE OF LITTLE CHUTE
ORDINANCE NO. 16, SERIES OF 2018**

**AN ORDINANCE AMENDING THE VILLAGE OF LITTLE CHUTE MUNICIPAL CODE – SECTIONS 10-19
THROUGH 10-26 – PURPOSE AND DEFINITIONS**

**Be it hereby ordained, by the Village Board of the Village of Little Chute, Outagamie County, Wisconsin,
that Village of Little Chute Ordinance Nos. 10-19 through 10-26 be amended as follows:**

Sec. 10-19. - Purpose.

The village board recognizes that smoking of cigarettes and other 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. Reliable scientific studies assessed by credible health officials have found that secondhand tobacco smoke is a significant health hazard for children, elderly people, and individuals with cardiovascular disease or impaired respiratory function. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort to nonsmokers. This article is adopted for the purpose of protecting the public health, safety, comfort and general welfare of the people of the Village of Little Chute, especially recognizing the health interests of nonsmokers, who constitute a majority of the population.

(Ord. No. 9(Ser. of 2010), § 1, 6-16-2010)

Sec. 10-20. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Assisted living facility means a community-based residential facility, as defined in Wis. Stats. § 50.01(1g), a residential care apartment complex, as defined in Wis. Stats. § 50.01(1d), or an adult family home, as defined in Wis. Stats. § 50.01(1)(b).

Day care center means a facility operated by a child care provider that provides care and supervision for four or more children under seven years of age for less than 24 hours a day. (Wis. Stats. § 49.136(1)(d)).

Employment means any trade, occupation, or process of manufacture or any method of carrying on such trade, occupation, or process of manufacture in which any person may be engaged.

Enclosed place enclosed space means a structure or area that has a roof and more than one wall. A wall includes any retractable or fixed divider, window, door, or other physical barrier, whether opened or closed, whether temporary or permanent. A 0.011 gauge screen with an 18 by 16 mesh count is not a wall.

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 any enclosed place that employees normally frequent during the course of employment, including an office, a work area, an elevator, an employee lounge, a restroom, a conference room, a meeting room, a classroom, a hallway, a stairway, a lobby, a common area, a vehicle, or an employee cafeteria.

Private club means a facility used by an organization that limits its membership and is organized for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose.

Public place means any enclosed place that is open to the public, regardless of whether a fee is charged or a place to which the public has lawful access or may be invited.

Restaurant means an establishment defined in Wis. Stats. § 254.61(5).

Retail establishment means any store or shop in which retail sales is the principal business conducted.

Smoking means burning or holding or inhaling or exhaling smoke, mist, or vapor from, any of the following items containing tobacco:

- (1) A lighted cigar.
- (2) A lighted cigarette.
- (3) A lighted pipe.
- (4) An electronic delivery device, meaning -any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of aerosol, mist, or vapor form the product. The term includes, but is not limited to, devices manufactured, distributed, marketed, or sold as electronic cigarettes or cigars, electronic pipes, personal vaporizers, electronic nicotine delivery systems, vape pens, or electronic hookahs.

An electronic cigarette (e-cig or e-cigarette), personal vaporizer (PV), or electronic nicotine delivery system (ENDS) is a battery-powered vaporizer which has the feel of tobacco smoking. They produce a mist rather than cigarette smoke. In general, a heating element vaporizes a liquid solution known as e-liquid. E-liquids usually contain a mixture of propylene glycol, glycerin, nicotine, and flavorings.

- (4) Any other lighted smoking equipment.

Sports arena means any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held.

Tavern means any establishment, other than a restaurant, that holds a "Class B" intoxication liquor license or Class "B" fermented malt beverages license.

Tobacco product means any form of tobacco prepared in a manner suitable for smoking but not including a cigarette.

(Ord. No. 9(Ser. of 2010), § 1, 6-16-2010)

Sec. 10-21. - Prohibition against smoking.

(a) Except as otherwise provided, no person may smoke in any of the following spaces:

- (1) Any enclosed space of a public place or place of employment.
- (2) Areas in village parks as posted and so designated by the parks and recreation department including the athletic field/bleachers and dugouts, aquatic center, skateboard park, dog park, playground and swing set areas, and park restrooms.
- (3) Sports arenas.
- (4) Within the outdoor premises of a day care center when children who are receiving a day care services are present.
- (5) Village-owned or leased motor vehicles.

- (6) Within 15 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. This fifteen foot minimum requirement does not apply to privately owned buildings under subsection 10-22(4).
- (7) Public forms of transportation, including, but not limited to, motor buses, taxicabs, or other public passenger vehicles.

(b) The prohibition of smoking under subsection (a) does not apply to any of the following places:

- (1) A private residence.
- (2) A room used by only one person in an assisted living facility as his or her residence.
- (3) A room in an assisted living facility in which two or more people reside if every person who lives in that room smokes and each of those people has made a written request to the person in charge of the assisted living facility to be placed in a room where smoking is allowed.

(Ord. No. 9(Ser. of 2010), § 1, 6-16-2010)

Sec. 10-22. - Responsibility of person in charge.

No person in charge may allow any person to smoke in violation of sections 10-21 at a location that is under the control or direction of the person in charge.

- (1) A person in charge may not provide matches, ashtrays, or other equipment for smoking at the location where smoking is prohibited.
- (2) A person in charge shall make reasonable effort to prohibit persons from smoking at a location where smoking is prohibited by doing all of the following:
 - a. Posting signs setting forth the prohibition and providing other appropriate notification and information concerning the prohibition.
 - b. Refusing to serve a person, if the person is smoking in a restaurant, tavern, or private club.
 - c. Asking a person who is smoking to refrain from smoking and, if the person refuses to do so, asking the person to leave the location.
- (3) If a person refuses to leave a location after being requested to do so as provided in subparagraph (c), the person in charge shall immediately notify an appropriate law enforcement agency of the violation.
- (4) The person in charge of a restaurant, tavern, private club, or retail establishment may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club, or retail establishment where customers, employees, or persons associated with the restaurant, tavern, private club, or retail establishment may smoke.

(Ord. No. 9(Ser. of 2010), § 1, 6-16-2010)

Sec. 10-23. - Signs.

- (a) No smoking signs shall include the plainly visible "No Smoking" symbol, consisting of a burning cigarette enclosed in a red circle with a red bar across the cigarette.
- (b) Each sign and the language contained therein shall be clearly visible from a distance of at least ten feet and meet the uniform dimensional requirements specified by the Wisconsin Department of Commerce in accordance with Wis. Stats. § 101.123(6).

(Ord. No. 9(Ser. of 2010), § 1, 6-16-2010)

Sec. 10-24. - Enforcement.

- (a) 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 article.
- (b) 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:
 - (1) 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
 - (2) Refusing service to anyone smoking in a prohibited area.
- (c) Any person who desires to register a complaint under this section may contact the zoning administrator or the police department.

(Ord. No. 9(Ser. of 2010), § 1, 6-16-2010)

Sec. 10-25. - Violation and penalties.

- (a) Any person who violates section 10-21 shall be subject to a forfeiture of not less than \$100.00 nor more than \$250.00 for each violation.
- (b) Any person in charge who violates section 10-22 shall be subject to a forfeiture of \$100.00 for each violation.
 - (1) For violations subject to the forfeiture under subparagraph (b), if the person in charge has not previously received a warning notice for a violation of section 10-22, the law enforcement officer shall issue the person in charge a warning notice and may not issue a citation.
 - (2) No person in charge may be required under section 10-22, to forfeit more than \$100.00 in total for all violations of section 10-22, occurring on a single day.

(Ord. No. 9(Ser. of 2010), § 1, 6-16-2010)

Sec. 10-26. - Clean indoor air.

- (a) *Intent and construction.* The Village of Little Chute finds that it is in the interest of the health, safety and welfare of the community to adopt by reference Wis. Stats. § 101.123 and subsequent amendments, additions and recodifications. It is the intent of the village board that where there may be conflict between Wis. Stats. § 101.123 and article II, section 10-19 through section 10-25, that the most restrictive section shall apply. This article 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.
- (b) *Penalty.* The penalties provided by Wis. Stats. § 101.123 shall be in addition to the penalties provided for violation of article II when a person has violated both laws. In addition to the penalties provided by article II and Wis. Stats. § 101.123, any village employee who violates any provision of article II or Wis. Stats. § 101.123, may also be subject to progressive discipline by his or her employer.

(Ord. No. 9(Ser. of 2010), § 1, 6-16-2010)

Section 2. Effective Date. This Ordinance shall take effect upon the adoption and publication and enactment of the Ordinance by the Village Board of Trustees, Village of Little Chute.

Introduced: Dec. 5, 2018

Adopted this 5 day of December, 2018.

VILLAGE OF LITTLE CHUTE

BY: Michael Vanden Berg
Michael Vanden Berg, Village President

BY: Laurie Decker
Laurie Decker, Village Clerk

