
**VILLAGE OF HARWOOD HEIGHTS
COOK COUNTY, ILLINOIS**

ORDINANCE NO. 19 - 20

**AN ORDINANCE AMENDING TITLE 12, CHAPTER 12.28, OF THE VILLAGE OF
HARWOOD HEIGHTS CODE TO PROHIBIT VAPING IN PUBLIC PLACES AND
PLACES OF EMPLOYMENT**

Passed by the Board of Trustees, November 14, 2019

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By Authority of the Village Board of Trustees

VILLAGE OF HARWOOD HEIGHTS
COOK COUNTY, ILLINOIS

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Village Clerk

VILLAGE OF HARWOOD HEIGHTS

ORDINANCE NO. 19 - 20

AN ORDINANCE AMENDING TITLE 12, CHAPTER 12.28, OF THE VILLAGE OF HARWOOD HEIGHTS CODE TO PROHIBIT VAPING IN PUBLIC PLACES

WHEREAS, the Village of Harwood Heights (the “Village”) is an Illinois municipal corporation organized and operating pursuant to authority granted by the Constitution and Laws of the State of Illinois;

WHEREAS, the Village is a home rule unit of government pursuant to Section 6(a), Article VII of the 1970 Illinois Constitution;

WHEREAS, pursuant to its home rule power, the Village may exercise any power and perform any function relating to its government and affairs;

WHEREAS, on September 8, 2011, the Village enacted Ordinance No. 11-36, An Ordinance Implementing the Smoke Free Illinois Act, creating Title 12, Chapter 12.28 (“Smoking In Public Places”);

WHEREAS, Section 65 of the Smoke Free Illinois Act, 40 ILCS 82/65, authorizes the Village to regulate smoking in public places more strictly than provided in the Act;

WHEREAS, clinical studies about the safety and efficacy of electronic smoking devices for their intended use have not been submitted to the U.S. Food and Drug Administration (FDA) and consumers therefore have no way of knowing whether Alternative Nicotine Products and Electronic Cigarettes are safe for their intended use, what types or concentrations of chemicals the products contain, and what dosage of nicotine the products deliver;

WHEREAS, alternative nicotine products and electronic cigarettes are gaining popularity and being used by persons under eighteen (18) years of age;

WHEREAS, the DFA has raised concerns that Alternative Nicotine Products and Electronic Cigarettes are marketed and sold to minors and can increase nicotine addiction and may increase the risk of trying conventional tobacco products;

WHEREAS, the Village seeks to protect the right of its workers to breathe clean air and to work in a safe environment; and

WHEREAS, the Corporate Authorities of the Village hereby find it to be in the best interest of the Village and in furtherance of the public health, safety and welfare of residents and visitors by expanding the prohibition on smoking in public places and places of employment to include a prohibition on the use of Alternative Nicotine Products and Electronic Cigarettes in such places in order to promote safe and uncontaminated air, reinforce social norms that smoking is not permitted in public places and places of employment, and discourage nicotine addiction.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Harwood Heights, County of Cook, Illinois, as follows:

SECTION 1. Recitals. The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

SECTION 2. Amendments.

Title 12 (“Streets, Sidewalks and Public Places”), Chapter 12.28 (“Smoking in Public Places”), of the Harwood Heights Village Code of Ordinances, shall be, and hereby is, amended as follows (additions **underlined in bold font**, deletions marked with **~~bold strikethrough~~**):

Title 12 - STREETS, SIDEWALKS AND PUBLIC PLACES

Chapter 12.28 - SMOKING IN PUBLIC PLACES

12.28.010 - Definitions.

As used in this section, the below terms shall have the following ascribed meanings:

"Alternative nicotine product" means any product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. Alternative nicotine products specifically include electronic cigarettes. The term "alternative nicotine product" excludes any product approved by the United States Food and Drug Administration as a non-tobacco product for sale as a tobacco use cessation product or for other medical purposes, and is being marketed and sold solely for that approved purpose.

"Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and that derives no more than ten (10) percent of its gross revenue from the sale of food consumed on the premises. "Bar" includes, but is not limited to, taverns, nightclubs, cocktail lounges, adult entertainment facilities, and cabarets.

"Electronic cigarette" or "e-cigarette" means:

- (1) Any device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;**
- (2) Any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device; or**
- (3) Any solution or substance, whether or not it contains nicotine intended for use in the device.**

The term "electronic cigarette" or "e-cigarette" includes, without limitation, any electronic nicotine delivery system, vapes, vaporizers, vape pens, vapor cigarettes, alternative vapor transmission modalities, e-cigars, hookah pens, electronic hookahs, electronic pipes, electronic cigars, and electronic cigarillos and any similar product or device, and any components or parts that can be used to build the product or device.

"E-liquid" shall mean any liquid product composed either in whole or part of nicotine, propylene glycol, polyethylene glycol, glycerin and/or other similar substances and manufactured for use with an electronic cigarette to be converted into gas for inhaling.

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

"Employer" means a person, business, partnership, association, or corporation, including a municipal corporation, trust, or non-profit entity, that employs the services of one (1) or more individual persons.

"Enclosed area" means all space between a floor and a ceiling that is enclosed or partially enclosed with (i) solid walls or windows, exclusive of doorways, or (ii) solid walls with partitions and no windows, exclusive of doorways, that extend from the floor to the ceiling, including, without limitation, lobbies and corridors.

"Enclosed or partially enclosed sports arena" means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller rink, ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise or participate in athletic competitions or recreational activities or to witness sports, cultural, recreational, or other events.

"Gaming equipment or supplies" means gaming equipment/supplies as defined in the Illinois Gaming Board Rules of the Illinois Administrative Code.

"Gaming facility" means an establishment utilized primarily for the purposes of gaming and where gaming equipment or supplies are operated for the purposes of accruing business revenue.

"Healthcare 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, weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. "Healthcare facility" includes all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within healthcare facilities.

"Place of employment" means any area under the control of a public or private employer that employees are required to enter, leave, or pass through during the course of employment, including, but not limited to entrances and exits to places of employment, including a minimum distance of fifteen (15) feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited; offices and work areas; restrooms; conference and classrooms; break rooms and cafeterias; and other common areas. A private residence or home-based business, unless used to provide licensed child care, foster care, adult care, or other similar social service care on the premises, is not a "place of employment."

"Private club" means a not-for-profit association that (1) has been in active and continuous existence for at least three years prior to the effective date of this amendatory

Act of the 95th General Assembly, whether incorporated or not, (2) is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, (3) is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and (4) only sells alcoholic beverages incidental to its operation. For purposes of this definition, "private club" means an organization that is managed by a board of directors, executive committee, or similar body chosen by the members at an annual meeting, has established bylaws, a constitution, or both to govern its activities, and has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. 501.

"Private residence" means the part of a structure used as a dwelling, including, without limitation: a private home, townhouse, condominium, apartment, mobile home, vacation home, cabin, or cottage. For the purposes of this definition, a hotel, motel, inn, resort, lodge, bed and breakfast or other similar public accommodation, hospital, nursing home, or assisted living facility shall not be considered a private residence.

"Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the State of Illinois, the Village of Harwood Heights, or any other public entity and regardless of whether a fee is charged for admission, including a minimum distance of fifteen (15) feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking is prohibited. A "public place" does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises. A "public place" includes, but is not limited to, hospitals, restaurants, retail stores, offices, commercial establishments, elevators, indoor theaters, libraries, museums, concert halls, public conveyances, educational facilities, nursing homes, auditoriums, enclosed or partially enclosed sports arenas, meeting rooms, schools, exhibition halls, convention facilities, polling places, private clubs, gaming facilities, all government-owned vehicles and facilities, healthcare facilities or clinics, enclosed shopping centers, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, public restrooms, waiting areas, lobbies, bars, taverns, bowling alleys, skating rinks, reception areas, and no less than seventy-five (75) percent of the sleeping quarters within a hotel, motel, resort, inn, lodge, bed and breakfast, or other similar public accommodation that are rented to guests, but excludes private residences.

"Restaurant" means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, that gives or offers for sale food to the public, guests, or employees, and a kitchen or catering facility in which food is prepared on the premises for serving elsewhere. "Restaurant" includes a bar area within the restaurant.

"Retail tobacco store" means a retail establishment that derives more than eighty (80) percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, electronic cigarettes, e-liquid, pipes, and other smoking devices for burning tobacco and related smoking or vaping accessories and in which the sale of other

products is merely incidental. "Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license. "Smoke" or "smoking" means the carrying, smoking, burning, inhaling, or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted smoking equipment.

"Smoke" or "smoking" means inhaling, exhaling, burning, vaping, using or carrying any lighted or burning cigarette, Tobacco Product, Alternative Nicotine Product, Electronic Cigarette, cigar, pipe, hookah pipe, pipe weed, E-liquid, Vape, Vaporizer, Vape Pen, Vapor Cigarettes, or Alternative Vapor Transmission Modalities in any manner or in any form.

"Tobacco products" means any product containing or made from tobacco leaf that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, and any other smokeless tobacco product which contains tobacco that is finely cut, ground, powdered, or leaf and intended to be placed in the oral cavity. "Tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product.

"Vape" or "Vaping" means the use of an alternative nicotine product to inhale and/or exhale any smoke, vapor, or other substance other than those produced by unenhanced human exhalation.

"Vapes," "Vaporizers," "Vape Pens," "Vapor Cigarettes," and "Alternative Vapor Transmission Modalities" are electronically-operated devices which contain a cartridge or open space filled with nicotine and/or other chemicals which are turned into vapor or steam that is inhaled and exhaled by the user.

12.28.020 - Smoking prohibited in public places and places of employment.

- A. It shall be unlawful for any person to smoke in any public place or place of employment within the Village of Harwood Heights.
- B. It shall be unlawful for any person to smoke in any place designated as a "No Smoking Area," as provided in Section 12.28.040.
- C. It shall be unlawful for an employer to knowingly permit smoking in any enclosed area in any place of employment.
- D. It shall be unlawful for an employer, owner, occupant or lessee in control of a public place to knowingly permit smoking in any enclosed area in said public place.

E. It shall be unlawful for an employer, owner, occupant or lessee in control of a public place to fail to post signage or remove ash trays, as provided in Section 12.28.050(1).

12.28.030 - Exceptions.

The prohibitions on smoking set forth in this section shall not apply to:

- A. Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms; provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited under the provisions of this section. Not more than twenty-five (25) percent of the rooms rented to guests in a hotel or motel may be designated as rooms where smoking is permitted. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms.

B. Private vehicles, not including public transportation facilities or government vehicles.

C. Private residences or dwelling places except when used as a child care, adult day care, health care facility, or any other home-based business open to the public.

D. Private and semi-private rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted.

E. Any public place or place of employment that is a ~~tobacco-dealer retail tobacco store~~, whose principal business is the sale of retail of tobacco and tobacco-related products or alternative nicotine products; provided that smoke generated by smoking on the premises of the tobacco dealer does not infiltrate into enclosed areas where smoking is otherwise prohibited; and no food or liquor license has been granted.

12.28.040 - Designation of other no-smoking areas.

Notwithstanding any other provision of this section, any employer, owner, occupant, lessee, operator, manager, or other person in control of any public place or place of employment, including outdoor areas, as an area where smoking is also prohibited, provided that such employer, owner, lessee or occupant shall conspicuously post signs prohibiting smoking in the manner described in Section 12.28.050(1).

12.28.050 - Responsibilities of proprietors.

Each owner, lessee, occupant, employer or other person in control of a public place or a place of employment shall be responsible for all the following:

- A. Post conspicuous signs no smaller than five inches by seven inches in enclosed areas and the entrance or vestibule to the public place, place of employment or the building wherein they are located, as the case may be, bearing the text "No Smoking" or the international "No Smoking" symbol, which consists of a pictorial representation of a cigarette enclosed in a circle with a bar across it. Such signs shall also be posted outside of the main entrance to the public place or place of employment, shall reference the fifteen-foot buffer zone in which smoking is prohibited, and contain the telephone numbers of the designated enforcement authorities noted in this section, in addition to the telephone number and website designated by the Illinois Department of Public Health for registering complaints.
- B. Remove ash trays or other similar containers intended for the deposit of tobacco ash, cigarettes, cigars or other tobacco products from public places.
- C. Request any person who smokes in an area where smoking is prohibited to refrain from smoking, and if the person continues to smoke, request the person to leave.
- D. Notify employees regarding the requirements of this section.

12.28.060 - Enforcement.

- A. This section shall be enforced by the Village of Harwood Heights Police Department.
- B. Notice of the provisions of this section shall be given to all applicants for a business license in the Village of Harwood Heights.
- C. Any citizen who desires to register a complaint under this section may initiate enforcement by contacting the Village of Harwood Heights Police Department.
- D. An employer, owner, lessee, manager, operator, or employee of an establishment regulated by this section shall inform persons violating this section of the appropriate provisions thereof and request that the violator cease smoking in a prohibited area and, if the person continues to smoke, request the person to leave.

12.28.070 - Penalties.

- A. Any person who shall violate Section 12.28.020(A) or (B) of this chapter shall, on conviction thereof, be punished by a fine of one hundred dollars (\$100.00) for a first violation and two hundred fifty (\$250.00) for any subsequent violations within one year. Each day in which a violation of Section 12.28.020(A) or (B) occurs constitutes a separate and distinct violation.
- B. Any person who shall violate Section 12.28.020(C) or (D) of this chapter shall, on conviction thereof, be punished by a fine of five hundred dollars (\$500.00) upon conviction for the first violation and seven hundred fifty dollars (\$750.00) for each subsequent conviction stemming from a violation within one year of the initial violation of Section

12.28.020(C) or (D) of this chapter. Each day in which a violation of Section 12.28.020(C) or (D) occurs constitutes a separate and distinct violation.

- C. Any person who shall violate Section 12.28.020(E) of this chapter shall, on conviction thereof, be punished by a fine of two hundred fifty dollars (\$250.00) for each violation. Each day during which a violation of Section 12.28.020(E) continues beyond the specified time for correction shall constitute a separate punishable offense, although owners, operators, managers or other controllers of public places and places of employment shall be given a reasonable time to come into compliance with Section 12.28.020(E) following issuance of a notice of violation, but such period shall not, in any event, exceed one week.
- D. In addition to the fines established by this section, violation of this chapter by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- E. Violation of this chapter is hereby declared to be a public nuisance, which may be abated by an action in the circuit court for injunctive relief, or other means provided for by law, and the city may take action to recover the costs of the nuisance abatement.

SECTION 3. RESOLUTION OF CONFLICTS.

All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. SAVING CLAUSE.

If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance, which are hereby declared to be separable.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall become effective after its passage, approval, and publication in the manner provided by law.

VOTES

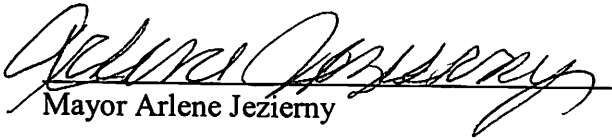
AYES: Trustee Schuepfer, Steiner, Brzezniak-Volpe, Zerillo, Lewandowski

NAYS:

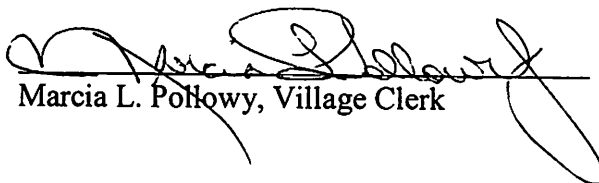
ABSENT: Trustee Brzozowski-Wegrecki

ABSTAIN:

Passed and Approved this 14th day of November, 2019.


Mayor Arlene Jezierny

ATTEST:


Marcia L. Polowy, Village Clerk

STATE OF ILLINOIS

COUNTY OF COOK

CERTIFICATION

I, Marcia L. Pollowy, do hereby certify that I am the duly elected and acting Clerk of the Village of Harwood Heights, County of Cook, State of Illinois.

I do further certify that the foregoing Ordinance 19-20 entitled:

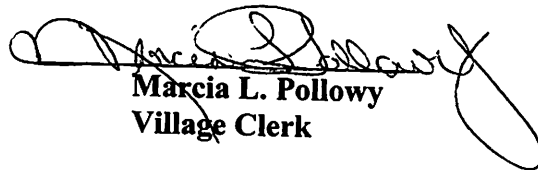
AN ORDINANCE AMENDING TITLE 12, CHAPTER 12.28, OF THE VILLAGE OF HARWOOD HEIGHTS CODE TO PROHIBIT VAPING IN PUBLIC PLACES AND PLACES OF EMPLOYMENT

Is true and correct copy of an Ordinance adopted by the Board of Trustees of the Village of Harwood Heights at a meeting held on the 14th day of November, 2019.

I do further certify that the original of which the foregoing is a true copy is entrusted to my care and safekeeping, and that I am keeper of the same.

I do further certify that I am the keeper of the records, ordinances, and resolutions of said Village of Harwood Heights, Cook County, Illinois.

In witness whereof I have hereunto set my official hand and seal this 15th day of November, 2019.


Marcia L. Pollowy
Village Clerk

Corporate Seal