

Chapter 234

CIGARETTES AND TOBACCO PRODUCTS

[HISTORY: Adopted by the Village Board of the Village of Plover 6-4-1985 as §§ 12.04 and 12.25 of the 1985 Code. Amendments where noted where applicable.]

GENERAL REFERENCES

Fires caused by careless smoking — See Ch. 286.

ARTICLE I [Amended by Ord. No. 13-10]

LICENSING AND POSSESSION

§ 234-1. Cigarette retailer's license.

- A. License required. No person shall sell cigarettes in the Village without first obtaining a license from the Village Clerk. The provisions of § 134.65, Wis. Stats., are hereby adopted and made a part of this section by reference.
- B. License fee. The license fee shall be as provided in the Village Fee Schedule.¹ [Amended by Ord. No. 19-98]

§ 234-2. Possession by or sale to minors. [Added by Ord. No. 14-88; amended by Ord. No. 27-93; Ord. No. 19-04²]

- A. Purchase or possession by minors prohibited. The purchase or possession of cigarettes or tobacco products by persons under 18 years of age is prohibited as provided in §§ 254.911, 254.916 and 254.92, Wis. Stats., which are hereby adopted and made a part of this section by reference.
- B. Sale or gift to minors prohibited. The sale or provision of cigarettes or tobacco products to persons under 18 years of age is prohibited as provided in § 134.66, Wis. Stats., which is hereby adopted and made a part of this section by reference.

ARTICLE II [Amended by Ord. No. 13-10]

SMOKING AND USE OF TOBACCO PRODUCTS

§ 234-3. Definitions. [Added by Ord. No. 5-94; amended by Ord. No. 4-06; amended by Ord. No. 13-10]

For purposes of this article, certain words and terms are defined as follows:

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- 1. Editor's Note: See Ch. A600, Fees.
 - 2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

ASSISTED LIVING FACILITY – A community-based residential facility, as defined in s. 50.01(1g), a residential care apartment complex, as defined in s. 50.01(1d), or an adult family home, as defined in s. 50.01(1) (b).

CIGARETTE – Any roll of tobacco wrapped in paper or any substance other than tobacco.

DAY CARE CENTER – has the meaning given in s. 49.136(1) (d).

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.

EMPLOYEMENT – 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 INDOOR AREA - All space between a floor and a ceiling that is bounded by walls, doors, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A 0.011 gauge screen with any 18 by 16 mesh count is not a wall.

INPATIENT HEALTH CARE FACILITY – A hospital, as defined in s. 50.33(2), a county home established under s. 49.70, a county infirmary established under s. 49.72, a nursing home, as defined in s. 50.01(3), a hospice, as defined in s. 50.90 (1), a Wisconsin veterans home under s. 45.50, or a treatment facility.

LODGING ESTABLISHMENT – A bed and breakfast establishment, as defined as s. 254.61 (1); a hotel, as defined in s. 254.61(3); or a tourist rooming house, as defined in s. 254.61(6).

PERSON IN CHARGE – The person, or his or her agent, who ultimately controls, governs or directs the activities aboard a public conveyance or at a location where smoking is prohibited or regulated under this ordinance.

PLACE OF EMPLOYMENT – 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 – 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 CONVEYANCE – A mass transit vehicle as defined in s. 340.01(28m), a school bus as defined in s. 340.01(56), or any other device by which persons are transported, for hire, on a highway or by rail, water, air, or guidewire within this state, but does not include such a device while providing transportation in interstate commerce.

PUBLIC PLACE – 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 – An establishment as defined in s. 254.61(5).

RETAIL ESTABLISHMENT – Any store or shop in which retail sales is the principal business conducted.

RETAIL TOBACCO STORE – A retail establishment that does not have a “Class B” intoxicating liquor license or a Class “B” fermented malt beverages license and that generates 75 percent or more of its gross annual income from the retail sale of tobacco products and accessories.

SMOKELESS TOBACCO – Any tobacco which is used by means other than smoking.

SMOKING – Burning or holding, or inhaling or exhaling smoke from a lighted cigar, a lighted cigarette, a lighted pipe, or any other lighted smoking equipment.

SPORTS ARENA – Any stadium, pavilion, gymnasium, swimming pool, skating rink, bowling center, or other building where spectator sporting events are held.

STATE INSTITUTION – A mental health institute, as defined in s. 51.01(12), a center for the developmentally disabled, as defined in s. 51.01(3), or a secure mental health facility at which persons are committed under s. 980.06.

SUBSTANTIAL WALL – A wall with no opening or with an opening that either does not allow air in from the outside or is less than 25% of the wall’s surface area.

TAVERN – An establishment, other than a restaurant, that holds a “Class B” intoxicating liquor license or Class “B” fermented malt beverages license.

TOBACCO BAR – A tavern that generates 15 percent or more of its annual gross income from the sale on the tavern premises, other than from a vending machine, of cigars and tobacco for pipes.

TOBACCO PRODUCT – Any form of tobacco prepared in a manner suitable for smoking but not including a cigarette.

TREATMENT FACILITY – A publicly or privately operated inpatient facility that provides treatment of alcoholic, drug dependent, mentally ill, or developmentally disabled persons.

VILLAGE-OWNED FACILITY — Any Village-owned structure and any and all stairways and approaches to that structure, and specifically includes all park shelters located in Village parks.

VILLAGE-OWNED VEHICLE — Any motor vehicle or commercial motor vehicle, as those words are defined in § 340.01, Wis. Stats., which has on the title the Village of Plover as owner of that vehicle.

§234-4. Prohibitions against smoking in enclosed locations. [Added by Ord. No. 13-10]

Except as provided in §234-8, no person may smoke in any of the following enclosed places:

A. Day care centers.

- B. Educational facilities.
- C. Inpatient health care facilities.
- D. Theaters.
- E. State Institutions.
- F. Restaurants.
- G. Taverns.
- H. Private clubs.
- I. Common areas of multiple – unit residential properties.
- J. Lodging establishments.
- K. Public conveyance, including, but not limited to: motor buses, taxicabs, or other public passenger vehicles.
- L. All enclosed indoor areas, other than those listed in § 234-4 (A-K), that are places of employment or that are public places.

§234-5. Prohibitions against smoking and use of tobacco products in Village-owned buildings or vehicles. [Amended by Ord. No. 13-10]

- A. Use of cigarettes, tobacco products and smokeless tobacco prohibited. No person may smoke or use tobacco products or cigarettes or use smokeless tobacco within any Village-owned facility. No person may smoke or use tobacco products or cigarettes or use smokeless tobacco within any Village-owned vehicle.

§234-6. Prohibitions against smoking in outdoor locations. [Added by Ord. No. 13-10]

No person may smoke in any of the following outdoor locations:

- A. Anywhere on the premises of a day care center when children who are receiving day care services are present.
- B. In a sports arena.
- C. In a bus shelter.
- D. Areas in Village parks as posted and so designated by the Parks Department including athletic fields, bleachers and dugouts, Skateboard Park, ice skating rink, playground and swing set areas.
- E. Within a reasonable distance outside any entrances designated smoke free pursuant to §234-4 and §234-5, open windows, and intake ventilation systems of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

§234-7. Responsibility of persons in charge. [Added by Ord. No. 13-10]

- A. No person in charge may allow any person to smoke in violation of §234-4 and §234-5 at a location that is under the control or direction of the person in charge.
- B. A person in charge may not provide matches, ashtrays, or other equipment for smoking at the location where smoking is prohibited.

- C. A person in charge shall make all reasonable efforts to prohibit persons from smoking at a location where smoking is prohibited by doing all of the following:
 - (1) Posting signs setting forth the prohibition and providing other appropriate notification and information concerning the prohibition.
 - (2) Refusing to service a person, if the person is smoking in a restaurant, tavern, or private club.
 - (3) 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.
- D. If a person refuses to leave a location after being requested to do so as provided in §234.7 (C) (3), the person in charge shall immediately notify an appropriate law enforcement agency of the violation.
- E. A person in charge may take measures in addition to those listed in §234-7 (C) (2) and (3) to prevent persons from being exposed to others who are smoking or to further ensure compliance with this section.

§234-8. Exceptions. [Added by Ord. No. 13-10]

The prohibition against smoking in §234-4 and §234-6 does not apply to the following:

- A. A private residence.
- B. A room used by only one person in an assisted living facility as his or her residence.
- C. A room in an assisted living facility in which 2 or more persons reside if every person who lives in that room smokes and each of those persons 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.
- D. A retail tobacco store that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.
- E. A tobacco store that is in existence on June 3, 2009, and in which only the smoking of cigars and pipes is allowed.
- F. The person in charge of a restaurant, tavern, private club, or retail establishment located in an area subject to the ordinance may designate an outside smoking area that is a reasonable distance from any entrance, open window, and intake ventilation system of enclosed areas where smoking is prohibited, so as to insure that tobacco smoke does not enter those areas.

§234-9. Signs. [Added by Ord. No. 13-10]

- A. Signs shall be conspicuously placed at each entrance normally used by the public where smoking and/or the use of tobacco products is prohibited by this ordinance.
- B. It shall be unlawful for any person to remove, deface, or destroy any legally required “No Smoking” or “No Tobacco Product Use” sign.

§234-10. Enforcement. [Added by Ord. No. 13-10]

- A. Any person who desires to register a complaint under this section may contact the Village

Police Department. It shall be the duty of the Chief of Police or designee and they shall have the power, whenever a complaint of violation of §234- 4through §234- 6 of this Code, to enter upon the premises named in this section to investigate a complaint and take appropriate enforcement action.

§234-11. Violations and penalties. [Amended by Ord. No. 13-10]

- A. Any person in charge who violates §234-7 shall be subject to a forfeiture of:
 - (1) \$100.00 plus costs for each violation.
 - (2) A written warning will be issued for the first violation.
 - (3) No forfeitures may exceed \$100.00 plus costs in total for all violations occurring on a single day.
- B. Any person who violates §234-4, §234-5, or §234-6 shall be subject to a forfeiture of:
 - (1) Not less than \$100.00 nor more than \$250.00 plus costs for the first violation.
 - (2) Not less than \$100.00 nor more than \$250.00 plus costs for second or subsequent violation within 12 months of a previous violation.
- C. Any person who violates §234-9-B shall be subject to a forfeiture of:
 - (1) Not less than \$50.00 nor more than \$200.00 plus costs for each violation.
- D. In addition to the penalties provided by §234-11, any Village employee who violates any provision within §234, Article II may also be subject to progressive discipline by his or her employer.

§234-12. Injunction. [Added by Ord. No. 13-10]

Notwithstanding s. 165.60, state or local officials or any affected party may institute an action in any court with jurisdiction to enjoin repeated violations of this section.

§234-13. Repeal and effective date. [Added by Ord. No. 13-10]

All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect on July 5, 2010.