

LAKE COUNTY ORDINANCE #20

LAKE COUNTY SMOKE-FREE PUBLIC PLACES AND PLACES OF WORK ORDINANCE

The County Board of Lake County, Minnesota hereby ordains:

**Whereas**, in a 2006 Report of the United States Surgeon General, U.S. Surgeon General Carmona concluded that "exposure to secondhand smoke remains an alarming public health hazard" and that "more than 126 million nonsmokers are still exposed;" and

**Whereas**, numerous nationally recognized medical and scientific authorities, including the American Medical Association, the Surgeon General, the National Institute on Occupational Safety and Health, the National Cancer Institute, the Environmental Protection Agency, the National Academy of Sciences, the National Toxicology Program, and the World Health Organization have issued reports and health advisories addressing adverse effects of exposure to secondhand smoke; and

**Whereas**, tobacco smoke is a leading cause of disease in nonsmokers and a major source of indoor air pollution and secondhand smoke causes heart disease, lung cancer, respiratory infections, decreased respiratory function, and other health problems; and

**Whereas**, it is estimated that in the U.S., secondhand smoke causes about 46,000 (a range of 22,700 to 69,600) deaths per year from cardiac-related illnesses (including 700 to 1,240 deaths among Minnesotans), and 3,400 deaths per year from lung cancer; and

**Whereas**, it is estimated that between 24,300 and 71,900 low birth-weight or pre-term deliveries, about 202,300 episodes of childhood asthma (new cases and exacerbations), between 150,000 and 300,000 cases of lower respiratory illnesses in children, and about 789,700 cases of middle ear infections in children occur in the United States each year as a result of exposure to secondhand smoke; and

**Whereas**, there is no known safe level of exposure to secondhand smoke and neither the separation of smokers and nonsmokers nor the introduction of new ventilation systems can eliminate the health hazards it causes; and

**Whereas**, electronic delivery devices, more commonly referred to as electronic cigarettes or e-cigarettes, closely resemble and purposefully mimic the act of smoking, and, they produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by conventional tobacco productsmany millions of Americans, including Lake County residents, both minors and adults, are still exposed to secondhand smoke in their workplaces and homes, despite substantial progress in tobacco control; and

**Whereas**, the use of electronic delivery devices in places where the use of combustible tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing smoking prohibitions; and

**Whereas**, the only way to completely protect workers and the public from the health threats of secondhand emissions from electronic cigarettes is to create 100% smoke-free workplaces and public spaces; and

Formatted: Centered

Commented [PHLC1]: Note: This ordinance does not, as written or if amended, really provide county residents protection from exposure to secondhand smoke in homes.

**Whereas**, objective evidence does not support fears that restricting smoking in ~~enclosed~~ indoor areas will harm a community's economy, and many independent economic studies drawn from the experiences of hundreds of communities that have successfully eliminated smoking in workplaces and public places have shown that the elimination of smoking has no material economic impact on a community; and

**Whereas**, restricting smoking in places of work and public places can help to reduce youth exposure to secondhand smoke and model smoke-free behavior; and

**Whereas**, public health policies, ordinances, and other laws are part of the system by which people learn behaviors, guide youth, reduce health threats, and reinforce community norms that support the public's health; and

**Whereas**, the Lake County Board of Commissioners is also this County's Board of Health: and

**Whereas**, ~~Minnesota Statutes, Chapter 145A, Sections 145A.04 and 145A.05 of the Local Public Health Act, establish the powers and duties of a Board of Health~~ has the power and duty to: (a) Adopt ordinances to regulate actual or potential threats to the public health; (b) define public health nuisances; and ~~(c) provide for their prevention~~; and

**Whereas**, due public notice has been provided, ~~public informational meetings have been held, and a public hearing was conducted by the Lake County Board of Commissioners on May 24, 2007~~, pursuant to Minnesota Statutes, Section 375.51;

**NOW, THEREFORE, BE IT RESOLVED** that the Lake County Board of Commissioners hereby adopts the "Lake County Smoke-Free Public Places and Places of Work Ordinance" as on file in the County Administrator's office on this May 24, 2007:

#### **SECTION I. TITLE**

This Ordinance shall be known as the Lake County Smoke-Free Public Places and Places of Work Ordinance.

#### **SECTION II. PURPOSE AND JURISDICTION**

##### **Subsection A.**

The purpose of this Ordinance is to:

1. Protect the public health, welfare and safety of the people of Lake County from the adverse effects of secondhand smoke by better ensuring their ability to breathe safe and uncontaminated air;
2. Affirm that the right to breathe clean air has the priority over the desire to smoke; and

3. Protect vulnerable populations, including children, employees, the elderly, and those with chronic health conditions from the adverse effects of secondhand smoke pursuant to the powers granted under Minnesota Statutes, Chapters 145A and 375.

#### **Subsection B.**

[Pursuant to Minn. Stat. § 145A.05](#), this Ordinance applies throughout all of Lake County, including the municipalities therein.

#### **Subsection C.**

Nothing in this Ordinance shall prevent other local levels of government from adopting more restrictive measures to protect citizens from secondhand smoke.

### **SECTION III. DEFINITIONS**

#### **Subsection A.**

[“Electronic Delivery Device” means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the inhalation of aerosol or vapor from the product. The term includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor.](#)

#### **Subsection B.**

"Food Establishment" means any establishment, however designated, engaged in the preparation of food or beverages for consumption either on or off the premises, or anywhere consumption of food occurs on the premises. This term includes any establishment that has an on-sale non-intoxicating malt liquor license, an on-sale intoxicating liquor license, an on-sale wine license, ~~and/or~~ a strong beer liquor license, [or any other liquor license](#) issued by the State of Minnesota, the municipality within which it is located, or Lake County.

#### **Subsection C.**

[“Indoor Area” means all space between a floor and a ceiling that is bounded by walls, doorways, 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 standard window screen (0.011 gauge with an 18 by 16 mesh count) is not considered a wall.

**Subsection DB.**

"Other person in charge" means the agent of the Proprietor authorized to provide administrative direction to, and general supervision of, the activities within a public place or place of work at any given time.

**Subsection EC.**

"Place of work" means any enclosed, indoor arelocation at which two or more individuals perform any type of service for consideration of payment under any type of contractual relationship including, but not limited to, an employment relationship with or for a private corporation, partnership, individual, or government agency. This term includes any enclosed, indoor arelocation where two or more individuals gratuitously perform services for which individuals are ordinarily paid. Examples of a "place of work" include enclosed, indoor areas of an office, a public conveyance, a factory, a warehouse, a hotel or motel, a vehicle used in whole or in part for work purposes, or any other locations where services are performed under an employment relationship. Enclosed, i indoor areas of private clubs and rooms used for private meetings or social functions are "places of work" if two or more persons acting under a contractual relationship provide cleaning, catering, food and beverage service, maintenance, or other support services in the location.

**Subsection FD.**

"Proprietor" means the party who ultimately controls, governs or directs the activities within the public place or place of work, regardless of whether the party is owner or lessee of the public place or place of work. The term may apply to a corporation as well as an individual has the meaning specified by the Minnesota Clean Indoor Air Act Rules, part 462.1100, subd. 13, as amended from time to time.

**Subsection GE.**

"Public place" means any enclosed, indoor area used by the general public or serving as a place of work, including, but not limited to, food establishments, retail stores, offices and other commercial establishments, public conveyances, schools and other educational facilities other than public schools, hospitals, auditoriums, arenas, meeting rooms, and common areas of apartment buildings, condominiums or similar buildings.

**Subsection HF.**

"Smoke" or "Smoking" means inhaling or exhaling burning, or carrying of smoke from any lighted or heated cigarette, cigar, pipe, or any other lighted or heated tobacco or plant product, whether natural or synthetic, containing, made, or derived from nicotine, tobacco, marijuana or other plant, that is intended for inhalation. The terms Smoking includes possessing or carrying or using an activated electronic delivery device lighted cigarette, cigar, pipe or any other lighted tobacco or plant product intended for inhalation.

**Commented [PHLC2]:** This rule was repealed in 2013. As such, ordinance will need to include its own definition.

## **SECTION IV. PROHIBITIONS**

### **Subsection A.**

Except as provided in subsection (B), no person shall smoke:

~~1. In public places and places of work;~~

~~2. Within ten (10) feet of entrances, exits, windows and ventilation intakes of public places and places of work; or~~

~~3. In including~~ outdoor dining or bar areas of food establishments. The proprietor ~~of an outdoor dining or bar area of a food establishment~~ may designate ~~for smoking~~ up to \_\_\_\_\_ 50% of the outdoor seating capacity ~~of the restaurant~~ ~~for smoking~~, provided this location is appropriately \_\_\_\_\_ signed as a smoking area.

### **~~Subsection B.~~**

~~To ensure that tobacco smoke does not enter public places and places of work and that persons entering such places are not exposed involuntarily to tobacco smoke, smoking is prohibited within ten (10) feet of entrances, exits, open windows and ventilation intakes of public places and places of work.~~

### **Subsection B.**

The prohibitions of this section do not apply to:

1. **Scientific study participants.** Smoking by participants in peer reviewed scientific studies related to the health effects of smoking may be allowed in a separated room ventilated at a rate of 60 cubic feet per minute per person pursuant to a policy that is approved by the commissioner and is established by the administrator of the program to minimize exposure of nonsmokers to smoke.
2. **Traditional Native American ceremonies.** Smoking by a Native American as part of a traditional Native American spiritual or cultural ceremony is allowed. For purposes of this section, a Native American is a person who is a member of an Indian tribe as defined in Minn. Stat. § #260.755, subd. ~~ivision~~ 12.
3. **Private places.** This ~~Ordinance~~ does not prohibit smoking in:
  - a) private homes, private residences, or private automobiles when they are not in use as a place of employment, or
  - b) sleeping rooms of hotels and motels which are rented to guests and which are designated as smoking-permitted rooms by the proprietor or other person in charge.
4. ~~Tobacco products shop. This ordinance does not prohibit the lighting of tobacco in a tobacco products shop by a customer or potential customer for the specific purpose of sampling tobacco products. For the purposes of this subdivision, a tobacco products shop is a retail establishment with an entrance door opening directly to the outside that derives more than 90 percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking~~

~~accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.~~

~~5. Heavy commercial vehicles.~~ Smoking in the cabs of motor vehicles registered under Minn. Stat. ~~§~~ 168.013, subd. ~~ivision~~ 1e, with a total gross weight of 26,001 pounds or greater.

~~56. Farm vehicles and construction equipment.~~ This ~~Ordinance~~ does not prohibit smoking in farm trucks, as defined in Minn. Stat. ~~§~~ 168.011, subd. ~~ivision~~ 17; implements of husbandry, as defined in Minn. Stat. ~~§~~ 168A.01, subd. ~~ivision~~ 8; and special mobile equipment, as defined in Minn. Stat. ~~§~~ 168.011, subd. ~~ivision~~ 22. This subdivision applies to farm trucks, implements of husbandry, and special mobile equipment; when being used for their intended purposes.

~~67. Family farms.~~ This ~~Ordinance~~ does not prohibit smoking in the house, garage; barns, and other buildings on a family farm ~~if the family farm that meets the following criteria:~~

~~a) [the family farm] is engaged in farming, as that term is defined in Minn. Stat. § 500.24, subd. ivision 2, paragraph (a);~~

~~b) Meets the dthe family farm meets the definition of family farm under Minn. Stat. § 500.24, subd. ivision 2, paragraph (b), (c), (j), or (l); and~~

~~c) [the family farm] employs two or fewer persons who are not family members.~~

~~78. Theatrical productions.~~ This ~~Ordinance~~ does not prohibit smoking by actors and actresses as ~~part of a theatrical performance conducted in compliance with Minn. Stat. § 366.01.~~ Notice of smoking in a performance shall be given to theater patrons in advance and shall be included in performance programs.

## **SECTION V. RESPONSIBILITIES OF PROPRIETORS**

The proprietor or other person in charge of a public place or place of work where smoking is prohibited shall:

**Subsection A.** Post ~~appropriate "No Smoking" signage on or immediately inside of all outside entrances to the public place or place of work. Signs must be placed at an unobscured location, at a height that will be easily seen by persons entering the establishment, and using printed letters that are at least 0.5 inches (1.3 centimeters) in size s that comply with the Minnesota Clean Indoor Air Act Rules, Minnesota Rules part 4620.0500, as amended from time to time;~~

**Subsection B.** Ensure that no ashtrays, lighters, matchbooks, smoking papers, ~~or water pipes (including hookahs), or similar smoking paraphernalia water pipes,~~ are provided in any area where smoking is prohibited ~~as specified in this Lake County Ordinance;~~ and

**Subsection C.** Ask any person who smokes in an area where smoking is prohibited, to refrain from smoking and, if the person does not comply with this request, ask the person to leave and, if the person refuses to leave, contact the appropriate law enforcement authorities.

## **SECTION VI. PRIVATE PROHIBITIONS**

Nothing in this Ordinance prevents the proprietor or other person in charge of any place, including, without limitation, any residence, motor vehicle, hotel, motel, or other lodging place, or any outdoor space, from prohibiting or further restricting smoking in any such place.

## **SECTION VII. RETALIATION PROHIBITED**

No person or employer shall discharge, refuse to hire, penalize, discriminate against, or in any manner retaliate against any employee, applicant for employment or customer because the employee, applicant, or customer exercises any right to a smoke free environment provided by this Ordinance or other current law.

## **SECTION VIII. OTHER APPLICABLE LAWS**

This Ordinance is intended to complement the Minnesota Clean Indoor Air Act, Minnesota Stat. ~~§§~~ [Subchapter 114.411 to 114.417](#), as amended from time to time. Nothing in this Ordinance authorizes smoking in any location where smoking is prohibited or restricted by other laws.

## **SECTION IX. VIOLATION AND PENALTIES**

### **Subsection A. Smoking where prohibited.**

It is a violation of this Ordinance for any person to smoke in an area where smoking is prohibited by this Ordinance or by a private policy established by the proprietor or other person in charge of the area, ~~as authorized by SECTION VI.~~

### **Subsection B. Proprietors.**

It is a violation of this Ordinance for the proprietor or other person in charge of any premises subject to this Ordinance to fail to comply with the requirements of SECTION V, or to retaliate against an employee, applicant for employment, or customer, as prohibited in SECTION VII.

### **Subsection C. Penalties.**

A person who violates any provision of this Ordinance shall be guilty of a petty misdemeanor and subject of a fine of up to three hundred dollars (\$300.00) for the first offense. Any subsequent violation of any provision of this Ordinance shall be a misdemeanor. Each day of violation constitutes a separate offense.

~~Subsection D. Enforcement.~~

~~Responsibility for enforcement of this Ordinance is with law enforcement agencies.~~

**Subsection ED. Injunctive Relief.**

In addition to the penalties provided in Subsection ~~C(C), the the City or~~ County Attorney may bring a civil action against a proprietor or other person in charge of public place or place of work to enjoin repeated or continuing violations of this Ordinance.

**SECTION X. SEVERABILITY**

If any portion of this Ordinance, or its application to any circumstances, is held invalid, the remaining provisions shall be considered severable, and shall be given effect to the maximum extent possible.

**SECTION XI. EFFECTIVE DATE**

This Ordinance shall take effect-\_\_\_\_\_ ~~October 1, 2007.~~