

SMOKE- & COMMERCIAL TOBACCO-FREE OUTDOORS

Model Ordinance for Minnesota Communities



This model ordinance was prepared for Minnesota cities and counties interested in enacting a policy to establish smoke-free and commercial tobacco-free outdoor areas in their jurisdictions.

Commercial tobacco use is still the leading cause of preventable death in Minnesota.¹ Secondhand smoke has repeatedly been identified as a health hazard; in 2006, the U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke.²

1 MINN. DEP'T OF HEALTH, MINN. COMPREHENSIVE TOBACCO CONTROL FRAMEWORK 2016–2021 (2021), <https://www.health.state.mn.us/communities/tobacco/initiatives/docs/mnframework.pdf>.

2 U.S. DEP'T OF HEALTH AND HUMAN SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE: A REPORT OF THE SURGEON GENERAL (2006), https://www.cdc.gov/tobacco/data_statistics/sgr/2006/index.htm.

Many studies have also found that levels of secondhand smoke exposure in outdoor areas can reach levels recognized as hazardous, depending on the direction and amount of wind, the number and proximity of people who smoke, and the presence of enclosures such as walls or roofs.³ Outdoor commercial tobacco-free laws protect communities from secondhand smoke exposure.

Outdoor commercial tobacco-free laws also help people who are trying to quit by eliminating the sight and smell of commercial tobacco use. Prohibiting smoking and commercial tobacco use in certain outdoor areas sends a message to children and youth, as well as adults, that smoking and commercial tobacco use is not a norm in the community and is an unacceptable behavior in these settings.

Over the last two decades, many Minnesota communities have enacted smoke-free and commercial tobacco-free laws or policies affecting outdoor areas such as parks, recreational facilities, beaches, outdoor workplaces, restaurant and bar patios, transit waiting areas, and public events, such as county fairs and farmers' markets. Before August 1, 2023, when adult-use recreational cannabis use was legalized in Minnesota, at least twenty Minnesota cities and seven counties had adopted policies that prohibit smoking, commercial tobacco use, or both, in certain outdoor areas.

Note about Cannabis

On Aug. 1, 2023, the State of Minnesota made recreational cannabis legal for adult-use consumption. The new law specifically allows local units of government to adopt ordinances to restrict or prohibit public use of cannabis.⁴ This model ordinance addresses smoking or "vaping" as a method of cannabis use through a comprehensive definition of "smoking" that reflects the definition used in the Minnesota Clean Indoor Air Act. This model ordinance does not address other methods of using cannabis (edibles), nor does it address or restrict possession of cannabis.

3 Andrea Licht et al., *Secondhand Smoke Exposure Levels in Outdoor Hospitality Venues: A Qualitative and Quantitative Review of the Research Literature*, 22 TOBACCO CONTROL 172-9 (2012), doi:10.1136/tobacco-control-2012-050493; Neil Klepeis et al., *Real-time Measurement of Outdoor Tobacco Smoke Particles*, 57 J AIR WASTE MGMT ASSOC. 522-34 (2007), doi:10.3155/1047-3289.57.5.522 ; Xisca Sureda et al., *Second-hand Smoke Exposure in Outdoor Hospitality Venues: Smoking Visibility and Assessment of Airborne Markers*, 165 ENV'T RES 220-27 (2018), doi: 10.1016/j.envres.2018.04.024; Bekir Kaplan et al., *Evaluation of Secondhand Smoke Using PM2.5 and Observations in a Random Stratified Sample in Hospitality Venues From 12 Cities*, 16 INT'L J ENV'T RES PUBLIC HEALTH 1381 (2019), doi: 10.3390/ijerph16081381; James Repace, *Benefits of Smokefree Regulations in Outdoor Settings: Beaches, Golf Courses, Parks, Patios, and in Motor Vehicles*, 34 WILLIAM MITCHELL L. REV. 1621-38 (2008), <https://open.mitchellhamline.edu/wmlr/vol34/iss4/15>.

4 MINN. STAT. § 152.0263, subd. 5, <https://www.revisor.mn.gov/statutes/cite/152.0263#stat.152.0263.5>.

Legal Considerations

Outdoor smoke-free and commercial tobacco-free policies have become more common in recent years, and very few have been challenged in court. In most instances, courts have upheld local ordinances that prohibit smoking in outdoor areas on the grounds that such laws are within the local government's authority to protect public health, safety, and welfare and are not preempted by statewide smoke-free laws.⁵

The Minnesota Clean Indoor Air Act does not regulate outdoor areas, nor does it contain a provision prohibiting smoking within a certain number of feet of places of work or public places. The Minnesota Clean Indoor Air Act does, however, expressly authorize local communities to enact additional restrictions that are more stringent than those in state law, and many local ordinances contain so-called set-back provisions that prohibit smoking near entryways and windows of buildings.⁶ Additionally, the state law legalizing the use, sale, and possession of adult-use recreational cannabis explicitly allows local units of government to regulate cannabis use in public places, including smoking and vaping cannabis.⁷

Customizing an Ordinance

Crafting an ordinance requires drafters to tailor the content to meet the unique circumstances of each community. Therefore, as you review this model ordinance, please keep in mind that every city or county will need to tailor it. We have included context boxes throughout the model ordinance to explain some of the key provisions. These boxes, and the explanations within them, are not meant to be included in a final ordinance. Whether a city or county chooses to incorporate portions, or all, of this model ordinance language, the drafters need to remember to omit the context boxes.

In some instances, we have inserted prompts for customization or suggested optional language in brackets (ex. [optional text]) to prompt drafters to customize the language to fit community-specific needs. In some instances, the provided options are followed by notes describing the

5 See, e.g., *Gallagher v. Clayton*, 699 F.3d 1013 (8th Cir. 2012) (upholding Clayton, Missouri's ordinance prohibiting smoking on any city-owned or -leased property, including buildings, grounds, parks and playground. A city resident had challenged the ordinance on constitutional grounds claiming "the health threat of secondhand smoke from outdoor tobacco use is de minim[i]s" and that the city lacked a sufficient rationale for prohibiting it. The court found the City had established a rational basis for the prohibition.), <http://media.ca8.uscourts.gov/opndir/12/11/113880P.pdf>.

6 MINN. STAT. § 144.417, subd. 4.

7 MINN. STAT. § 152.0263, subd. 5.

provisions in more detail. Drafters should remove these bracketed prompts and choose or remove the option provided and delete the brackets.

Please keep in mind that some degree of customization will be necessary to ensure that the proposed ordinance is consistent with a community's existing laws. Customization also helps communities apply the model ordinance to address racial and health equity impacts and aims.

For questions about this model ordinance, please contact us at publichealthlawcenter@mitchellhamline.edu.

This publication was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice, and the Center does not lobby, advocate, or directly represent communities. The information in this document should not be considered legal advice. This model ordinance was made possible by funds from the Minnesota Department of Health's Commercial Tobacco Prevention and Control Program.

AN ORDINANCE OF THE [CITY/COUNTY OF _____] TO REGULATE SMOKING AND COMMERCIAL TOBACCO USE IN OUTDOOR AREAS

Section 1. Title.	5
Section 2. Findings Of Fact And Purpose.	5
Section 3. Authority and Jurisdiction.	7
Section 4. Definitions.	8
Section 5. Prohibitions.	12
Section 6. Sacred Use of Tobacco.	14
Section 7. Enforcement.	14
Section 8. Violations and Penalties.	15
Section 9. Severability.	17
Section 10. Effective Date.	17

The [city council/county board of commissioners] of [city/county] does ordain:

Section 1. Title.

This Ordinance will be known as the “[insert jurisdiction name] Smoking and Commercial Tobacco Use Ordinance.”

Section 2. Findings Of Fact And Purpose.

Comment

A Findings of Fact and Purpose section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies and demonstrates the jurisdiction’s reasoning for adopting specific provisions. The Public Health Law Center can provide support for communities to determine which Findings of Fact and Purpose statements and references should be retained in a final ordinance, depending on which provisions from the model ordinance the community chooses to adopt.

The purpose of this Ordinance is to protect the health of the people of [city / county] from the negative effects of smoking and commercial tobacco use when in public places and places of employment; affirm the right of people to breathe air without exposure to secondhand smoke; reduce commercial tobacco use and exposure among children, youth, and young adults; protect the health of vulnerable and disproportionately impacted populations; and reduce commercial tobacco product waste, which can harm human and animal health, and the environment.

The [city council / county board] adopts the following findings to support the provisions in this Ordinance:

- In 2006, the U.S. surgeon general concluded that there is no risk-free level of exposure to secondhand smoke.¹
- Exposure to secondhand smoke can occur at significant levels outdoors. Levels of secondhand smoke exposure outdoors can reach levels recognized as hazardous, depending on direction and amount of wind, number and proximity of smokers, and enclosures like walls or roofs.^{2, 3, 4, 5, 6, 7, 8} To be completely free from exposure to secondhand smoke in outdoor places, a person may have to be at least 29 feet away from the source of the smoke.^{5, 9, 10}
- Commercial tobacco use is the number one cause of preventable death in Minnesota¹¹ and continues to be an urgent public health issue, as evidenced by the following: An estimated 6,300 Minnesotans die from smoking annually;¹² each year, smoking costs Minnesota an estimated \$2.92 billion in medical expenses, including \$605.4 million in Medicaid costs and \$5.4 billion in productivity losses;¹³ and, research indicates that approximately 30% of all cancer deaths in Minnesota are attributable to commercial tobacco use.¹⁴
- Significant disparities in commercial tobacco use exist in Minnesota, which create barriers to health equity.¹⁵ American Indian or Alaska Native (32.8%), multiracial Minnesotans (21%), and Minnesotans who identify as “some other race” (17.3%) report a higher smoking prevalence than Minnesotans who identify as white (13.6%), Black (12.8%), Hispanic (10.7%), and Asian (8.3%).¹⁶
- Evidence continues to build that exposure to electronic smoking device aerosol, including secondhand exposure, has immediate impacts on the human respiratory and cardiovascular systems, and poses a risk to human health.^{17, 18, 19, 20, 21, 22, 23, 24, 25}
- Secondhand cannabis smoke has been identified as a health hazard and cannabis smoke contains at least 33 known carcinogens.²⁶

- The Minnesota Clean Indoor Air Act does not prohibit smoking outdoors, regardless of the distance from building openings, nor does it prohibit smoking in cabs of trucks, certain residential healthcare facilities, tobacco shops, and hotel rooms.²⁷
- Commercial tobacco waste is a major, consequential, and persistent source of litter. Cigarette butts are perennially the most common form of litter collected during cleanup programs worldwide,^{28, 29} for example, in 2020, cigarette butts made up nearly 20% of all litter collected through cleanup programs in the U.S. (9.7 billion out of 49.6 billion items).³⁰ Non-cigarette forms of commercial tobacco waste, such as plastic cigar tips and little cigar wrappers, also significantly contribute to litter.^{31, 32, 33} Waste from electronic smoking devices has become a recognized and growing form of litter.^{32, 34, 35}
- Laws restricting the use of commercial tobacco products have recognizable benefits to public health including reduced prevalence of use;^{36, 37} reduced secondhand smoke exposure, as measured by self-report and laboratory analysis of biomarkers or indoor air;^{36, 37, 38, 39} increased cessation of commercial tobacco use;^{36, 37} and reduced initiation of commercial tobacco use among young people.³⁷

Section 3. Authority and Jurisdiction.

[Choose the city or county version and delete the language that is not applicable to the jurisdiction adopting this ordinance.]

[County version:]

- (A) Authority. The County Board of Commissioners is authorized to adopt this Ordinance by Minnesota Statutes sections 144.417, subd. 4(a), 145A.04, 145A.05, 152.0263, subd. 5, and Chapter 375, and any other applicable state law, as may be adopted or amended from time to time.
- (B) Jurisdiction. This Ordinance applies throughout [_____] County.
- (C) Nothing in this Ordinance shall prevent cities and townships within [_____] County from adopting stricter regulations to protect people from smoking or use of commercial tobacco products.
- (D) Nothing in this Ordinance authorizes smoking or use of commercial tobacco products in any location where smoking or use of commercial tobacco products is prohibited.

[City version:]

- (A) Authority. The City Council is authorized to adopt this Ordinance by Minnesota Statutes sections 144.417, subd. 4(a), 145A.05, subd. 9, 412.221, 152.0263, subd. 5, [insert any

other applicable state statutes], and any other applicable state law, as may be adopted or amended from time to time.

- (B) Nothing in this Ordinance authorizes smoking or use of commercial tobacco products in any location where smoking or use of commercial tobacco products is prohibited.

Section 4. Definitions.

Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this ordinance, the following definitions apply unless the context clearly indicates or requires a different meaning:

- (A) [City/county] staff. [City/county] staff and service providers include but are not limited to employees; independent contractors; contractors; vendors; consultants; volunteers; and elected and appointed officials.
- (B) **Commercial Tobacco Product.** Any product containing, made, or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including, but not limited to, cigarettes; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco product does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.
- (C) **Commercial Tobacco Product Use.** The act of smoking commercial tobacco or the consumption of any commercial tobacco product.
- (D) **Electronic Delivery Device.** Any product containing or delivering nicotine, lobelia or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device 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. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

- (E) **Indoor Area.** 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 0.011-gauge window screen with an 18 by 16 mesh count is not a wall.
- (F) **Minnesota Clean Indoor Air Act.** Minnesota Statutes Sections 144.411 to 144.417, as amended from time to time.
- (G) **Place of Employment.** “Place of employment” as defined in Minnesota Statutes Section 144.413, subd. 1b, as amended from time to time.

Definition of “Place of Employment”

The local unit of government may use a reference to the state statute, as is done in this model, or include the actual text of the definition of “place of employment” from the Minnesota Clean Indoor Air Act:

“Place of employment” means any indoor area at which two or more individuals perform any type of a 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. Place of employment includes any indoor area where two or more individuals gratuitously perform services for which individuals are ordinarily paid. A place of employment includes, but is not limited to, public conveyances, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, and rooms or areas containing photocopying equipment or other office equipment used in common. Vehicles used in whole or in part for work purposes are places of employment during hours of operation if more than one person is present. An area in which work is performed in a private residence is a place of employment during hours of operation if:

(1) the homeowner uses the area exclusively and regularly as a principal place of business and has one or more on-site employees; or

(2) the homeowner uses the area exclusively and regularly as a place to meet or deal with patients, clients, or customers in the normal course of the homeowner’s trade or business.

(Minnesota Statutes § 144.413, subd. 1b)

- (H) **Proprietor.** The party who ultimately controls, governs, or directs the activities at the public place or place of employment, regardless of whether the party is owner or lessee of the public place or place of employment. The term “proprietor” may apply to a corporation, partnership, limited liability company, or other entity, as well as an individual.
- (I) **Public Meeting.** “Public meeting” as defined in Minnesota Statutes Section 144.413, subd. 3, as amended from time to time.
- (J) **Public Place.** “Public place” as defined in Minnesota Statutes Section 144.413, subd. 2, as amended from time to time. The term “public place” does not include streets or sidewalks that are used only as pedestrian or vehicular thoroughfares.

Alternative Definitions of “Public Place”

Using the MCIAA definition: The local unit of government may use a reference to the state statute, as included here, or include the actual text of the definition of “public place” from the Minnesota Clean Indoor Air Act:

“Public place” means any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail stores and other commercial establishments; educational facilities other than public schools, as defined in section 120A.05, subdivisions 9, 11, and 13; hospitals; nursing homes; auditoriums; arenas; meeting rooms; and common areas of rental apartment buildings.

Covering all public sidewalks and streets: If the jurisdiction intends to prohibit smoking on public sidewalks, streets, and roads, then the following definition could be adopted, along with the changes recommended in the comment to Section 5 below:

Any publicly or privately owned place that is open to the general public, regardless of any fee or age requirement, including sidewalks, streets, parking lots, plazas, shopping areas, stadiums, or sporting facilities.

Public Use of Cannabis

This model ordinance provides language to specifically address smoking any substance, including cannabis, and including use of e-cigarettes to consume any substance, including cannabis. The purpose of this ordinance is to address secondhand smoke exposure and other commercial tobacco use. This ordinance does not address public cannabis use, in general, including use of edibles. Some local jurisdictions choose to regulate cannabis use similar to alcohol use since the use of cannabis can be impairing or intoxicating. If a local unit of government would like to regulate all public use of cannabis, then a separate ordinance should be considered that specifically addresses that topic.

- (K) **Public Transportation.** As defined in Minnesota Statutes Section 144.413, subd. 5, as amended from time to time.
- (L) **Smoking.** Inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette, pipe or any other lighted or heated product containing, made, or derived from nicotine, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking includes carrying or using an activated electronic delivery device. “Smoking” does not include the use of traditional, or sacred, tobacco used by many American Indian and Alaska Native communities for spiritual and medicinal purposes.

Sacred Use of Tobacco

Smoke-free policies, while prohibiting the use of commercial tobacco, often provide exceptions that allow a person to possess or provide tobacco or a tobacco-related device to another person as part of a traditional, or sacred, tobacco practice used by American Indian or Alaska Native communities for spiritual and medicinal purposes. These exemptions include the use of tobacco, tobacco-related devices, imitation tobacco products, or lighters as part of an educational experience related to traditional, or sacred, tobacco practices that have been approved by administrators. If you would like more information about this topic, please visit keepitsacred.itcml.org. This definition of “smoking” provides for such an exception.

Section 5. Prohibitions.

- (A) Smoking is not allowed in indoor public places, public meetings, places of employment, or in public transportation, as defined by the Minnesota Clean Indoor Air Act.
- (B) Smoking and commercial tobacco product use are not allowed at any time by any person on any property that is owned, leased, rented, or otherwise used or controlled by the [city/county]. This prohibition includes but is not limited to indoor and outdoor areas of all [city/county] controlled facilities; grounds; parking lots; work areas; vehicles and equipment; outdoor park and recreation areas, lands, and bodies of water; public golf courses; playgrounds; beaches; swimming pools; nature areas; recreation centers; and walkways, paths and trails that are part of, within, or adjacent to the grounds of any of the above. This prohibition does not include public streets or sidewalks that are used only as pedestrian or vehicular thoroughfares.
- (C) Smoking and commercial tobacco product use are not allowed in personal vehicles parked on property that is owned, leased, rented, or otherwise used or controlled by the [city/ county].
- (D) Smoking is not allowed within twenty-five (25) feet of entrances, exits, windows and ventilation intakes of public places and places of employment.

Comprehensive Outdoor Smoking Prohibition

This model has been drafted to limit smoking in outdoor areas of most public places and places of employment, as well as in areas within the control of the city or county. However, the language in the model **does not** cover public sidewalks, streets, and roads. If a jurisdiction would like to prohibit smoking in all outdoor areas, including public sidewalks, streets, and roads, then the more comprehensive definition of “public place” above at Section 4 (J) should be adopted along with the comprehensive version of Section 5 of this model below:

Section 4. Definitions.

- (J) **Public Place.** Any publicly or privately owned place that is open to the general public, regardless of any fee or age requirement, including sidewalks, streets, parking lots, plazas, shopping areas, stadiums, or sporting facilities.

Section 5. Prohibitions.

- (A) Smoking is not allowed in indoor public places, public meetings, places of employment, or in public transportation, as defined by the Minnesota Clean Indoor Air Act.

- (B) Smoking is not allowed in outdoor public places, including public sidewalks, streets, or roads that are used as pedestrian or vehicular thoroughfares.
- (C) Smoking and commercial tobacco product use are not allowed at any time by any person on any property that is owned, leased, rented, or otherwise used or controlled by the [city/county]. This prohibition includes but is not limited to indoor and outdoor areas of all [city/county]-controlled facilities; grounds; parking lots; work areas; vehicles and equipment; outdoor park and recreation areas, lands, and bodies of water; public golf courses; playgrounds; beaches; swimming pools; nature areas; recreation centers; and walkways, paths and trails that are part of, within, or adjacent to the grounds of any of the above.
- (D) Smoking and commercial tobacco product use are not allowed in personal vehicles parked on property that is owned, leased, rented, or otherwise used or controlled by the [city/county].
- (E) Smoking is not allowed within twenty-five (25) feet of entrances, exits, windows and ventilation intakes of public places and places of employment.

Why a 25-Foot Buffer Zone?

Twenty-five feet is the common distance used in many smoke-free air policies as a buffer zone to protect people from secondhand smoke exposure due to drifting from outdoor smoking. This is the distance used by the U.S. Department of Housing and Urban Development in its smoke-free public housing rule, implemented in 2018. To be completely free from exposure to secondhand smoke in outdoor places, a person may have to be at least nine meters (29.5 feet) away from the source of the smoke, about the width of a two-lane road. (Jihee Hwang & Kiyong Lee, *Determination of Outdoor Tobacco Smoke Exposure by Distance from a Smoking Source*, 16 NICOTINE TOB RES. 478-84 (2014), doi:10.1093/ntr/ntt178.) While 25 feet has become the commonly used distance, a jurisdiction could include a further distance to be more protective.

- (E) Nothing in this ordinance prohibits any person, proprietor, or employer with control over any property from prohibiting smoking and commercial tobacco product use on any part of such property, even if smoking or commercial tobacco product use is not otherwise prohibited in that area.

Section 6. Sacred Use of Tobacco.

Religious, Spiritual, or Cultural Ceremonies or Practices. Nothing in this ordinance prevents the use of traditional, or sacred, tobacco used by many American Indian and Alaska Native communities for spiritual and medicinal purposes.

Section 7. Enforcement.

- (A) No proprietor or other person, firm, limited liability company, corporation, or other entity that owns, leases, manages, operates, or otherwise controls the use of a public place or place of employment will permit smoking in an area they control where smoking is prohibited by this or any other law.
- (B) No [city/county] staff may permit smoking or commercial tobacco product use in any area that is under the control of the [city/county] and in which smoking or commercial tobacco product use is prohibited by this or any other law.
- (C) [City/county] staff may check property that is owned, leased, rented, or otherwise used or controlled by the [city/county] to make sure this Ordinance is not violated. Any person who violates this Ordinance will be reminded of its requirements and asked to immediately stop smoking or using commercial tobacco products. Any person who does not stop smoking or using commercial tobacco products will be asked to immediately leave [city/county] property.
- (D) The proprietor or other person, firm, limited liability company, corporation, or other entity that owns, leases, manages, operates, or otherwise controls the use of a public place or place of employment shall make reasonable efforts to prevent smoking in the public place and place of employment by:
 - (1) Posting appropriate signs or by any other means which may be appropriate; and
 - (2) Asking any person who smokes in an area where smoking is prohibited to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, asking the person to leave. If the person refuses to leave, the proprietor, person, or entity in charge shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser.
- (E) The proprietor or other person or entity in charge of the outdoor area of a public place or place of employment where smoking is prohibited, must not provide smoking equipment, including ashtrays or matches, in areas where smoking is prohibited.

- (F) The proprietor or other person or entity in charge of a restaurant or bar may not serve an individual who is in violation of this section.

Balanced and Equitable Enforcement

Enforcement of smoke-free outdoor area policies is important because there is no risk-free amount of exposure to secondhand smoke and because even outdoors, secondhand smoke can reach hazardous levels. Enforcement, however, should balance the goal of protecting the public from secondhand smoke exposure with the knowledge that punitive measures are unlikely to help those struggling with commercial tobacco addiction to end their commercial tobacco use. Research tells us the best approaches to help those confronting addiction are counseling and education. Since most people will refrain from smoking if they know a smoke-free and commercial tobacco-free policy is in place, the best way to improve enforcement is to educate the public and local businesses about the policy throughout the implementation process. Greater community compliance will be achieved if the policy is easy to understand, the boundaries and areas covered under the policy are clearly identified, and active steps are taken to communicate its impact to all affected groups.

Section 8. Violations and Penalties.

- (A) Citations. Where appropriate, the preferred method of enforcement will be a request for voluntary compliance. Whenever an ordinance is violated, any person authorized to issue administrative citations for the violation of law may issue an administrative citation to the person alleged to have committed the violation. The administrative citation will be issued either to the person charged with the violation, or in the case of a corporation or municipality, to any officer or agent authorized to accept it.
- (B) Proprietors. Any proprietor, person or entity that owns, leases, manages, operates, or otherwise controls the use of an area in which smoking and commercial tobacco product use is prohibited, and that knowingly does not comply with this Ordinance, may be issued a civil administrative fine not to exceed \$300.
- (C) Individuals in violation. Any person who violates this Ordinance by smoking or engaging in commercial tobacco use anywhere it is prohibited, and who does not immediately stop when asked to, may be issued an administrative citation and required to:
- (1) Pay a civil fine not to exceed \$25 [or a fine based on ability to pay determined by the following criteria:

- (a) The individual's base income from all sources of income including pensions, dividends, wages, salary, and public benefits;
- (b) Adjusted daily income of the individual based on deductions for self-support and support of dependents;
- (c) Individual's assets; and,
- (d) Multiple or repeat violations of this [article/chapter] ; or,

Fines Based on Ability to Pay

In the context of smoke-free and commercial tobacco-free policies, basing any civil fines on the person's ability to pay may reduce the risk of overly burdensome fines that low-income individuals may not be able to pay. Adjusting fines based on ability to pay may also reduce the risk of civil penalties being escalated to more severe or criminal sanctions for failure to pay. (For more information on reforming fines and fees, see the [Fines and Fees Justice Center](#) and its resource, [First Steps Toward More Equitable Fines and Fees Practices \(2020\)](#)).

- (2) Participate in a community service program established by the public health department or complete an approved, evidence-based tobacco cessation program, including but not limited to telephone counseling, group counseling, or individual counseling.

Importance of Cessation Support

Support for quitting or reducing smoking is critical in any smoke-free and commercial tobacco free policy. Minnesota resources to assist with nicotine dependence are available for free through the Minnesota Department of Health's [Quit Partner](#) program or in partnership with local public health departments and local health care providers.

- (D) Repeat violations. Each day a violation occurs or continues will be considered a separate offense. Repeat or ongoing offenses may result in one administrative citation per day.
- (E) [City/county] licensees. Failure to comply with this Ordinance may be a basis for adverse action for licenses issued under [city/county] ordinances.

Section 9. Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Section 10. Effective Date.

[County version: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 375.51, subd. 3, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.]

[City version: This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.]

Endnotes

- 1 U.S. DEP'T OF HEALTH AND HUM. SERVS. THE HEALTH CONSEQUENCES OF INVOLUNTARY EXPOSURE TO TOBACCO SMOKE, A REPORT OF THE SURGEON GENERAL: EXECUTIVE SUMMARY (2006), https://www.ncbi.nlm.nih.gov/books/NBK44324/pdf/Bookshelf_NBK44324.pdf.
- 2 OFF. OF ENV'T HEALTH HAZARD ASSESSMENT, AIR RESOURCES BD., CAL. ENV'T PROT. AGENCY, PROPOSED IDENTIFICATION OF ENVIRONMENTAL TOBACCO SMOKE AS A TOXIC AIR CONTAMINANT: APPENDIX III (2005), <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/ets2006/app3exe.pdf>.
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