

LYON COUNTY CLEAN INDOOR AIR ORDINANCE

SECTION 1. Title.

This Ordinance shall be known and referenced as the Lyon County Clean Indoor Air Ordinance.

SECTION 2. Purpose and Jurisdiction.

2.01 Purpose. The purpose of this Ordinance is to protect the health, safety and welfare of the people of Lyon County from the adverse effects of secondhand smoke by better ensuring their ability to breathe air that is uncontaminated by secondhand smoke and the aerosol or vapor produced by electronic delivery devices (more commonly known as e-cigarettes); to affirm that the right to breathe has priority over allowing people to smoke or use electronic delivery devices; and to protect vulnerable populations, including employees, children, the elderly, and those with chronic health conditions from the adverse effects of secondhand smoke or electronic delivery devices, pursuant to the powers granted under Minnesota Statutes, Chapters 145A and 375.

2.02 Jurisdiction. Pursuant to Minn. Stat. § 145A.05, this Ordinance applies throughout all of Lyon County, including the municipalities therein.

2.03 More Restrictive Regulations Permitted. Nothing in this Ordinance shall prevent other local levels of government within Lyon County from adopting more restrictive regulations.

SECTION 3. Definitions.

3.01 Application of Definitions. All terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term “shall” means mandatory and the term “may” means permissive. Definitions in the Ordinance shall pertain only to this Ordinance and shall have the meanings stated herein.

3.02 Electronic Delivery Device. “Electronic Delivery Device” shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of aerosol or vapor from the product. Electronic Delivery Device includes any such devices, whether they are manufactured, distributed, marketed or sold as e-cigarettes, e-cigars, e-pipes, or under any product name or descriptor.

3.03 Food Establishment. “Food Establishment” shall mean any establishment, however designated, engaged in the preparation or serving of food or beverages for consumption in or anywhere on the premises, or any establishment that has an on-sale non-intoxicating malt liquor license, an on-sale intoxicating liquor license, an on-sale wine license, or a strong beer liquor license issued by the State of Minnesota, the municipality within which it is located, or Lyon County.

3.04 Indoor Area. “Indoor Area” shall mean 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 (0.011 gauge with an 18 by 16 mesh count) window screen is not considered a wall.

3.05 Other Person in Charge. “Other Person in Charge” shall mean 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.

3.06 Place of Work. “Place of Work” shall mean any indoor area at which two or more individuals offer products or perform any type of a service in person for consideration of payment under any type of contractual relationship. This includes, but is not limited to, an employment relationship with or for a private corporation, partnership, individual, or government agency. Place of Work includes any location where products or services are offered gratuitously. Place of Work 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 work during hours of operation if one or more person is present. An area in which work is performed in a private residence is a place of work during hours of operation if the homeowner uses the area exclusively and regularly:

- (1) As a principal place of business and has two or more on-site employees; or
- (2) As a place to meet or deal with patients, clients, or customers in the normal course of the homeowner's trade or business.

3.07 Proprietor. “Proprietor” shall mean 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. Proprietor may apply to a corporation as well as an individual.

3.08 Public Place. “Public Place” shall mean any indoor area used by the general public or serving as a place of work including, but not limited to, arenas, auditoriums, bars, bowling alleys, bingo halls, licensed retail tobacco establishments, public schools other educational facilities, hospitals, offices and other commercial establishments, pool halls, public conveyances, restaurants, retail stores, and common areas of rental apartment buildings. Public Place includes taxis, limousines, and other for-hire vehicles used to transport the public during their hours of operation.

3.09 Smoking. “Smoking” shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product, or inhaling or exhaling vapor from any electronic delivery device. Smoking includes being in possession of a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco product or plant product intended for inhalation, or an electronic delivery device that is turned on or is otherwise activated.

SECTION 4. Smoking Prohibitions.

Except as provided, smoking is prohibited in the following locations:

- A. Public places and places of work.

B. Outdoor dining or bar areas, including sidewalk seating, of any food establishments that provide wait staff or any other staff services to patrons in those areas.

C. Within ten (10) feet of entrances, exits, windows, and ventilation intakes of public places and places of work.

SECTION 5. Exceptions.

5.01 Private Places. This Ordinance does not prohibit smoking in private homes, private residences; or private motor vehicles when they are not in use as a place of work, as defined by this Ordinance.

5.02 Traditional Ceremonies. This Ordinance does not prohibit the use of tobacco by an enrolled member of a federally-recognized Indian tribe as part of a traditional Indian spiritual or cultural ceremony.

5.03 Sleeping Accommodations. Smoking is permitted in up to twenty (20) percent of the rooms offered as sleeping accommodations to guests in hotels, motels, or similar lodging places, provided that all smoking-permitted guest rooms are:

- (1) On the same floor of a hotel, motel, or similar lodging place and contiguous; and
- (2) Clearly marked as “smoking permitted” on, or next to, the entrance to each room.

5.04 Farm Vehicles and Construction Equipment. This Ordinance does not prohibit smoking in farm trucks, as defined in Minn. Stat. §168.002, subd. 8; implements of husbandry, as defined in Minn. Stat. § 168A.01, subd. 8; and special mobile equipment, as defined in Minn. Stat. § 168.002, subd. 31. This subdivision applies to farm trucks, implements of husbandry, and special mobile equipment, when being used for their intended purposes.

5.05 Family Farms. This Ordinance does not prohibit smoking in the house, garage, barns, and other buildings on a family farm that:

- (1) Is engaged in farming, as defined in Minn. Stat. § 500.24, subd. 2, (a);
- (2) Meets the definition of family farm under Minn. Stat. § 500.24, subd. 2, (b), (c), (j), or (l); and
- (3) Employs two or fewer persons who are not family members.

5.06 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 6. Responsibilities of Proprietors.

6.01 Posting of Signs. The proprietor or other person in charge of a public place or place of work where smoking is prohibited shall conspicuously post a sign at all entrances stating: “This entire area is smoke-free.” The sign shall include the universal “no smoking/vaping” symbol. All signs required by this Ordinance shall use lettering sized to be readable and consistent with the Minnesota Clean Indoor Air Act, as it may be amended from time to time.

6.02 Smoking Paraphernalia Prohibited. The proprietor or other person in charge of a public place or place of work shall ensure that no ashtrays, lighters, matchbooks, or other smoking paraphernalia are provided in areas where smoking is prohibited by this Ordinance.

6.03 Proprietor Duties. The proprietor or other person in charge of a public place or place of work shall ask any person who smokes in an area where smoking is prohibited by this Ordinance to refrain from smoking. If the person does not refrain after being asked to do so, the proprietor or other person in charge shall ask the person to leave. If the offending party refuses to leave, the proprietor or other person in charge shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser. The proprietor or other person in charge of a place subject to this ordinance shall not serve or service an individual smoking in violation of this Ordinance.

6.04 Smoking Receptacles. The proprietor or other person in charge of a public place or place of work where smoking is prohibited shall ensure that all smoking receptacles are located at a place and distance that:

- (1) Is at least ten (10) feet from the exits, windows, and ventilation intakes of public places and places of work; and
- (2) Reduces the risk that smoke odors will enter the public place or place of work.

SECTION 7. 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 or the use of electronic delivery devices in any such place.

SECTION 8. Retaliation Prohibited.

No person or employer shall discharge, refuse to hire, refuse to serve, 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 afforded by this Ordinance or other law.

SECTION 9. Employees' Rights Preserved.

An employee who consents to work in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

SECTION 10. Other Applicable Laws.

This Ordinance is intended to complement the Minnesota Clean Indoor Air Act, as it may be amended from time to time. Nothing in this Ordinance authorizes smoking in any location where smoking is prohibited or restricted by other laws.

SECTION 11. Violations and Penalties.

11.01 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.

11.02 Proprietor or Other Person in Charge. 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 this Ordinance, or to retaliate against an employee, applicant for

employment, or customer who, in good faith reports a violation of this Ordinance.

11.03 Penalties. A violation of this Ordinance shall be a petty misdemeanor. A subsequent violation within 24 months of a previous conviction shall be a misdemeanor. Each day of violation constitutes a separate offense.

11.04 County Licensing. Failure to comply with any provision of this Ordinance shall constitute grounds for the denial, refusal to renew, suspension, or revocation of any food, liquor, or other business license issued by the County.

11.05 Injunctive Relief. In addition to the penalties provided in this Section, the County Attorney may bring a civil action against the proprietor or other person in charge of a public place or place of work to enjoin repeated or continuing violations of this Ordinance.

SECTION 12. Severability and Savings Clause.

If any section or portion of this Ordinance is found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that section or portion shall be considered severable and the finding shall not serve as invalidation, or affect the validity or enforceability of any other section or provision of this Ordinance.

SECTION 13. Effective Date.

The provisions of this revised Ordinance shall be in full force and effect after publication, and shall be enforceable on and after _____, 2016.