



Olmsted County Code of Ordinances

Chapter 2100
OLMSTED COUNTY SMOKE-FREE WORKPLACES ORDINANCE

Olmsted County, MN

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Chapter 2100

OLMSTED COUNTY SMOKE-FREE WORKPLACES ORDINANCE

SECTION 2101. Title.

This Ordinance shall be known and referenced as the Olmsted County Smoke-Free Workplace Ordinance.

SECTION 2102. Purpose and Jurisdiction.

2102.01 Purpose.

The purpose of this Ordinance is to protect the health, safety and welfare of the people of Olmsted County from the adverse effects of secondhand smoke by better ensuring their ability to breathe air that is uncontaminated by secondhand smoke and 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 vape; and to protect vulnerable populations, including employees, children, the elderly, and those with chronic health conditions from the adverse effects of secondhand smoke or e-cigarette vapor, pursuant to the powers granted under Minnesota Statutes, Chapters 145A and 375.

2102.02 Application.

As provided in Minnesota Statutes §145A.05, this Ordinance applies throughout all of Olmsted County, including the municipalities therein.

2102.03 Authority of Community Health Board.

As provided in Minnesota Statutes §145A.04, the Community Health Board is authorized to enforce laws, regulations, and ordinances within its jurisdictional area.

2102.04 More Restrictive Regulations by Other Local Governments Permitted.

Nothing in this Ordinance shall prevent other local levels of government within Olmsted County from adopting more restrictive measures to protect citizens from secondhand smoke or e-cigarette vapor.

SECTION 2103. Definitions.

2103.01 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.

2103.02 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 vapor from the product, an activity commonly referred to as "vaping". Electronic delivery devices include but are not limited to what is commonly referred to as "e-cigarettes". Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device shall also include any device used for vaporizing medical cannabis pursuant to Minnesota Statutes Section 152.22, Subd. 6. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or for other medical purposes, and is being marketed and sold solely for that approved purpose.

2103.03 Food Establishment.

"Food Establishment" shall mean any establishment, however designated, engaged in the preparation or serving 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 issued by the State of Minnesota, the municipality within which it is located, or Olmsted County.

2103.04 Hookah.

"Hookah" shall mean a pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled for the use of tobacco products.

2103.05 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 0.011 gauge window screen with an 18 by 16 mesh count is not a wall.

2103.06 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.

2103.07 Place of Work.

"Place of Work" shall mean any indoor area at which one or more individuals offer products or perform any type of a service in person for members of the public 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.

This term includes any location where products or services are offered gratuitously. Examples of a place of work include, but are not limited to, indoor areas of an office, a factory, a hotel or motel; a vehicle used in whole or in part for work purposes during hours of operation if more than one person is present; a warehouse; indoor areas of private clubs and rooms used for private meetings or social functions, and other locations where products are offered and/or services are performed under an employment relationship. An area in which work is performed in a private residence is a place of work 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.

2103.08 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. The term "proprietor" may apply to a corporation as well as an individual.

2103.09 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, commercial establishments including licensed retail tobacco establishments, educational facilities other than public schools, as defined in Minnesota Statutes §120A.05, subdivisions 9, 11, and 13, hospitals, offices and other commercial establishments, pool halls, public conveyances, restaurants, retail stores, and common areas of rental apartment buildings. This term includes taxis, limousines, and other for-hire vehicles used to transport the public during hours of operation. "Public Place" also means an outdoor area of a public recreation center or public park, including, but not limited to, a public playground, swimming pool or other recreational area when in use by youth under the age of eighteen.

2103.10 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, an activity which is commonly known as "vaping". Smoking shall include possessing or carrying a lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco product or plant product intended for inhalation.

2103.11 Tobacco Product.

"Tobacco products" shall mean any products containing, made, or derived from tobacco 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, any substance or item containing tobacco leaf,

cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking or both for chewing and smoking. Tobacco products excludes any tobacco 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, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

SECTION 2104. Smoking Prohibitions.

2104.01 Smoking Prohibited.

Except as provided in Section 2104.2, 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; and
- C. Within fifteen (15) feet of entrances, exits, open windows, and ventilation intakes of public places and places of work, to help prevent tobacco smoke from entering public places and places of work and to protect individuals entering such places from being exposed involuntarily to secondhand smoke, e-cigarette vapor and vaporized medical cannabis.

2104.02 Exceptions.

The prohibitions of this Section do not apply to the following places or situations:

- A. Private residences;
- B. Motor vehicles in private use;
- C. Motor vehicles that serve as a place of work for no more than one employee;
- D. The use of tobacco by an enrolled member of a federally-recognized Indian tribe as part of a traditional Indian spiritual or cultural ceremony;
- E. Twenty (20) percent of the guest rooms offered as sleeping accommodations to guests in hotels, motels, or similar lodging places, provided that:
 - 1) All smoking-permitted guest rooms on the same floor of a hotel, motel, or similar lodging place are contiguous; and
 - 2) All smoking-permitted guest rooms are clearly marked as "smoking permitted" on, or next to, entrances to each room; and

F. Situations where members of the public are passing through on an outdoor street, alley, or sidewalk where smoking is prohibited by this Ordinance while en route to another location.

G. Use of vaporized medical cannabis by a person legally authorized to use in any place not prohibited by Minnesota Statutes Section 152.23

SECTION 2105. Responsibilities of Proprietors or Other Person in Charge.

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

2105.01 Posting of Signs.

Shall conspicuously post a sign at all entrances to the public place or place of work stating: "This entire area is smoke-free." The sign shall include the universal "no smoking" symbol. All signs and symbols required by this Ordinance shall be located, and the lettering sized to be readable, consistent with the Minnesota Clean Indoor Air Act, Minnesota Statutes, Sections 144.411 to 144.417, and Minnesota Clean Indoor Air Act Rules, Parts 4620.0100 to 4620.1450, as amended from time to time;

2105.02 Smoking Paraphernalia Prohibited.

Shall ensure that no ashtrays, lighters, matchbooks, or other smoking paraphernalia are provided in areas where smoking is prohibited;

2105.03 Proprietor Duties for Smokers.

Shall ask any person who smokes in an area where smoking is prohibited to refrain from smoking. If the person does not refrain from smoking 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.

2105.04 Smoking Receptacles.

May place receptacles outdoors for persons that are entering the place of work or public place to deposit their extinguished cigarettes, cigars, and other smoking materials. Such receptacles shall be located at a place and distance that a) does not encourage smoking within 15 feet of the exits, open windows, and ventilation intakes of places of work and public places; and b) reduces the risk that tobacco smoke, e-cigarette vapor and associated odors will enter such openings to the building.

SECTION 2106. 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 2107. 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 2108. 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 2109. Other Applicable Laws.

This Ordinance is intended to complement the Minnesota Clean Indoor Air Act, Minnesota Statutes, Sections 144.411 to 144.417, 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 2110. Violations and Penalties.

2110.01 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.

2110.02 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 Section 2105 of this Ordinance or to retaliate against an employee, applicant for employment or customer, as prohibited by Section 2107 of this Ordinance.

2110.03 Penalties.

A. The Director of the Department of Public Health is authorized to issue a civil notice of violation for any violation of this Ordinance. Each day of violation constitutes a separate offense.

B. 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 or a municipality within the County.

2110.04 Enforcement of Violations and Appeals.

Except as provided by Minnesota law, the procedures which must be followed in the event a) an exception to any provision of this ordinance is sought where no process for an exception has been spelled out in this ordinance, b) issuance of a civil notice of violation of any provision of this ordinance occurs, or c) an appeal of a civil notice of violation is sought shall be governed

by the Olmsted County Administrative Enforcement and Appeals Procedure Ordinance set forth in Chapter 4000 of the Olmsted County Code of Ordinances.

2110.05 Injunctive Relief.

In addition to the penalties provided in 2110.03 of this Section, a municipal attorney or 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 2111. 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 2112. Effective Date.

The 2017 changes to Sections 2110.03 and 2110.04 of this ordinance pertaining to the manner in which appeals of civil notices of violations are directed to a County Hearing Officer or to the Public Health Services Advisory Board for initial review pursuant to the County Administrative Enforcement and Appeals Procedure Ordinance shall take effect January 1, 2018.

END OF CHAPTER 2100