

AN ORDINANCE PROHIBITING SMOKING IN PUBLIC PLACES
AND PLACES OF WORK

The City Council of the City of Bloomington hereby ordains:

Section 1. That Chapter 12 of the City Code is hereby amended to read as follows:

CHAPTER 12

PUBLIC PEACE AND SAFETY

ARTICLE II. PROHIBITED CONDUCT

Division O. Smoking Prohibited

SEC. 12.79. [RESERVED] FINDINGS OF FACT AND PURPOSE.

The City Council finds that:

- (a) Tobacco smoke is a leading cause of disease in nonsmokers and a major source of indoor air pollution. Secondhand smoke causes heart disease, lung cancer, respiratory infections, decreased respiratory function, reproductive problems and other health problems. Secondhand smoke kills an estimated 35,000 to 62,000 Americans each year from heart disease. Secondhand smoke also causes an estimated 3,000 lung cancer deaths in America each year.
- (b) These adverse health effects are well documented and numerous 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 recognized the deadly effects of exposure to secondhand smoke.
- (c) There is no safe level of exposure to tobacco smoke. Neither the separation of smokers and nonsmokers, nor the introduction of new ventilation systems, can eliminate the health hazards caused by secondhand smoke.
- (d) Employees in smoky workplaces are at special risk. One study has estimated that working in a smoky setting for eight hours is equivalent to smoking 16 cigarettes. Also at special risk are children, elderly people, and those with cardiovascular disease or impaired respiratory function, including people with asthma and those with obstructive airway disease.
- (e) Objective evidence does not bear out the fear that elimination of public smoking will harm a community's economy or result in a net loss of jobs in restaurants and bars. On the contrary, many independent economic studies have shown that the elimination of smoking has no material economic impact on a community. These studies are drawn from the experience of hundreds of communities that have successfully eliminated smoking in workplaces and public places. The states of California, Connecticut, Delaware, Maine, Massachusetts, and New York have adopted laws ending all smoking in bars, restaurants, and other public places, as have the nations of Ireland, New Zealand and Norway.
- (f) By reducing the exposure of young people to adult smoking and unhealthy role modeling, elimination of smoking in public places furthers Minnesota's goal of reducing youth smoking.
- (g) There is no legal or constitutional "right to smoke." Business owners have no legal or constitutional right to expose their employees and customers to toxic chemicals, whether in tobacco smoke or otherwise. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.

Therefore, the City Council declares that the purpose of this ordinance is to:

- (1) Protect the public health, safety and welfare by better insuring the ability of citizens to breathe safe and uncontaminated air;
- (2) Affirm that the right to breathe has priority over the desire to smoke; and
- (3) Protect vulnerable populations including employees, children, the elderly and those with chronic health conditions.

SEC. 12.80. [RESERVED] DEFINITIONS.

The following words and terms, when used in this Division, shall have the following meanings unless the context clearly indicates otherwise:

Bar – a portion of an establishment where a person can purchase and consume alcoholic beverages.

Office – a building, structure or area used by the general public or serving as a place of work at which principal activities consist of professional, clerical or administrative services. An office includes, but is not limited to, professional offices, offices in financial institutions, business offices, telemarketing offices and governmental offices.

Other Person in Charge – the agent of the proprietor authorized to perform administrative direction to and general supervision of the activities within a place of work and public place at any given time.

Place of Work – any enclosed, indoor location at which two or more individuals perform any type of a service for consideration of payment under any type of employment relationship, including but not limited to an employment relationship with or for a private corporation, partnership, individual, or government agency. This term includes any location 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, and other locations where services are performed under an employment relationship. Enclosed, 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 an employment relationship provide cleaning, catering, food or beverage service, maintenance or other support services in the location.

Proprietor – the party, regardless of whether the party is the owner or lessee of the place of work or public place, who ultimately controls, governs or directs the activities within the place of work or public place. The term “proprietor” may apply to a corporation as well as an individual.

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

Restaurant – a food and beverage service establishment, whether the establishment serves alcoholic or nonalcoholic beverages.

Smoking – the inhaling, exhaling or combustion of any cigarette, cigar, pipe or any other lighted smoking equipment. Smoking includes carrying a lighted cigarette, cigar, pipe or any other lighted smoking equipment.

SEC. 12.81. [RESERVED] PROHIBITIONS.

- (a) Except as provided in subsection (c), no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants. The proprietor of an outdoor dining area or outdoor bar area of a restaurant may designate for smoking up to fifty percent (50%) of the outdoor seating capacity of the restaurant provided this location is appropriately signed as a smoking area.
- (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 twenty-five (25) feet of entrances, exits, open windows and ventilation intakes of public places and places of work.
- (c) The prohibitions of this Section do not apply to:
 - (1) Private residences.
 - (2) Motor vehicles.
 - (3) The use of tobacco as part of a traditional Indian spiritual or cultural ceremony.
 - (4) Sleeping rooms of hotels and motels which are rented to guests.

SEC. 12.82. [RESERVED] RESPONSIBILITIES OF PROPRIETORS.

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

- (a) Post “nonsmoking” signs that comply with the Minnesota Clean Indoor Air Act Rules, Minnesota Rules Part 4620.0500;
- (b) Ensure that ashtrays, lighters and matchbooks are not provided in areas where smoking is prohibited; and

(c) Ask 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, ask the person to leave and use any other means which may be appropriate to obtain compliance.

SEC. 12.83. [RESERVED] 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 law.

SEC. 12.84. [RESERVED] PRIVATE PROHIBITIONS.

Nothing in this Division prevents the proprietor or other person in charge of any place, including, without limitation, any residence, motor vehicle or outdoor space, from prohibiting smoking in any such place.

SEC. 12.85. [RESERVED] OTHER LAWS.

This Division is intended to complement the Minnesota Clean Indoor Air Act, Minn. Stat., §§114.411 to 144.17, as amended from time to time. Nothing in this Division authorizes smoking in any location where smoking is prohibited or restricted by other laws.

SEC. 12.86. PENALTY.

Violation of any provision of this Division shall be a petty misdemeanor.

SEC. 12.87. SEVERABILITY.

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

SEC. 12.88. EFFECTIVE DATE.

This Division shall become effective upon publication.

SEC. 12.89. COMPLIANCE DATE.

Those public places or places of work issued a license by the City for the on-sale of 3.2 percent malt liquor, intoxicating liquor or wine or holding a premises permit for lawful gambling or a bingo hall license, shall comply with this Division by March 31, 2005. All other public places or places of work shall comply with this Division by September 1, 2004.

Passed and adopted this 19th day of July, 2004.

/s/ Gene Winstead

ATTEST:

Mayor

/s/ Barbara A. Clawson
Secretary to the Council

APPROVED:

/s/ David R. Ornstein
City Attorney