

SMOKE-FREE ORDINANCE

Effective January 1, 2017

SMOKE FREE ORDINANCE SUMMARY

The Minnesota Clean Indoor Air Act (MCIAA) currently regulates smoking in indoor areas to protect the public from secondhand smoke. These Minnesota Statutes can be found here: <http://www.health.state.mn.us/divs/eh/indoorair/mciaa/ftb/mciaa.pdf> Kandiyohi County's Smoke-Free Ordinance expands on the current Minnesota Statutes using similar language. Although the ordinance and Statutes have similar language, they do have several differences to better protect the health of the community. The three significant differences between the current Statutes and the Smoke-Free Ordinance are as follows:

1. MN Statute 144.413 Subd.4 does not include electronic delivery devices in the definition of "smoking." The ordinance includes the use of electronic delivery devices in the definition of "smoking" in Section 3.07. By including electronic delivery devices in the smoking definition, the use of these devices is prohibited in the same public places that smoking is currently prohibited. In simple terms, e-cigarettes are not allowed in the places smoking is currently prohibited.
2. MN Statute 144.4167 Subd.4 permits sampling inside tobacco shops (as defined in the MCIAA). However, as of August 8, 2016 Federal FDA regulations (CFR1140.6(d)) have been implemented prohibiting free sampling of cigarettes and e-cigarettes in tobacco shops. The ordinance prohibits all sampling inside tobacco shops by not including tobacco shops under the ordinance's exclusion section, Section 4.04.
3. Section 4.01 E of this ordinance prohibits smoking 25 feet from entrances of public buildings and places of work.

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SMOKE-FREE ORDINANCE

“The Kandiyohi County Board of Commissioners does ordain:”

SECTION 1: PURPOSE

1.01 Purpose. This Ordinance is enacted to protect the health, safety, and general welfare of the people of Kandiyohi County pursuant to powers granted under Minnesota Statutes Chapters 145A and 375 and subsequent recodifications and/or amendments, and other applicable legislation, as may be adopted from time to time.

1.02 Objectives. The principal objectives of this Ordinance are:

A. To prevent secondhand tobacco exposure and its adverse health effects on employees, patrons, and the general public while in public indoor areas and places of employment; and

B. To protect, in particular, the health of vulnerable populations including children and those with chronic health conditions; and

C. To maintain consistency in enforcement of clean air in public indoor areas and in the use of products that simulate combustible tobacco products.

SECTION 2: JURISDICTION

2.01 Jurisdiction. Pursuant to Minnesota Statutes §§ 145A.04 and 145A.05, this Ordinance shall apply throughout all of Kandiyohi County. Nothing in this Ordinance shall prevent other local levels of government within Kandiyohi County from adopting more stringent measures to protect citizens from smoking as defined in this Ordinance.

SECTION 3: DEFINITIONS

3.01 Health Authority. “Health Authority” means the Kandiyohi County Health and Human Services Department and designated employees, agents, or contractors, as the Kandiyohi County Board may designate.

3.02 Indoor area. “Indoor area” shall have the same meaning as “indoor area” as set forth in Minn. Stat. § 144.413, subd. 1a, as may be amended from time to time.

3.03 Place of employment. “Place of employment” shall have the same meaning as “place of employment” as set forth in Minn. Stat. § 144.413, subd. 1b, as may be amended from time to time.

3.04 Proprietor. "Proprietor" means the party, regardless of whether the party is owner or lessee of the public place, who ultimately controls, governs, or directs the activities within the public place. The term does not mean the owner of the property unless the owner ultimately controls,

governs, or directs the activities within the public place. The term "proprietor" may apply to a corporation as well as an individual.

3.05 Public place. "Public place" shall have the same meaning as "public place" as set forth in Minn. Stat. § 144.413, subd. 2, as may be amended from time to time.

3.06 Public transportation. "Public transportation" shall have the same meaning as "public transportation" as set forth in Minn. Stat. § 144.413, subd.5, as may be amended from time to time.

3.07 Smoking. "Smoking" means the inhaling, exhaling or combustion of any cigar, cigarette, pipe, synthetic product, tobacco product, tobacco-related product, weed, plant or any other similar article. "Smoking" includes possessing or carrying a lighted cigar, cigarette, pipe or any other lighted tobacco product or tobacco-related device. "Smoking" also includes the use of, or the inhaling or exhaling of vapor from, any electronic delivery device, as well as carrying an electronic delivery device that is turned on or otherwise activated.

SECTION 4: GENERAL PROVISIONS

4.01 Prohibitions.

A. Smoking in public places. Smoking shall not be permitted in and no person shall smoke in a public place, at a public meeting, in a place of employment, or in public transportation, except as provided in this section or Section 4.04 below.

B. Day care premises. Smoking is prohibited in a day care center licensed under Minnesota Rules, parts 9503.0005 to 9503.0175, or in a family home or in a group family day care provider home licensed under Minnesota Rules, parts 9502.0300 to 9502.0445, during its hours of operation. The proprietor of a family home or group family day care provider must disclose to parents or guardians of children cared for on the premises if the proprietor permits smoking outside of its hours of operation. Disclosure must include posting on the premises a conspicuous written notice and orally informing parents or guardians.

C. Health care facilities and clinics.

1. Smoking is prohibited in any area of a hospital, health care clinic, doctor's office, licensed residential facility for children, or other health care-related facility, except that a patient or resident in a nursing home, boarding care facility, or licensed residential facility for adults may smoke in a designated separate, enclosed room maintained in accordance with applicable state and federal laws.

2. Except as provided in Minnesota Statutes section 246.0141, smoking by patients in a locked psychiatric unit may be allowed in a separated well-ventilated area in the unit under a policy established by the administrator of the program that allows the treating physician to approve smoking if, in the opinion of the treating physician, the benefits to be gained in obtaining patient cooperation with treatment outweigh the negative impacts of smoking.

D. Public transportation vehicles. Smoking is prohibited in public transportation vehicles except that the driver of a public transportation vehicle may smoke when the vehicle is being used for personal use. For purposes of this subdivision, “personal use” means the public transportation vehicle is being used by the driver for private purposes and no for-hire passengers are present. If a driver smokes under this subdivision, the driver must post a conspicuous sign inside the vehicle to inform passengers.

E. Building entrances. Smoking is prohibited within (25) feet of entrances, exits, open windows, and ventilation intakes of public places and places of work, including public streets, sidewalks, and alleys located within (25) feet of said building entrances, 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.

4.02 Private Prohibitions. Nothing in this Ordinance shall prevent 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.

4.03 Other Applicable Laws. This Ordinance is intended to complement and go beyond the Minnesota Clean Indoor Air Act, Minnesota Statutes, Sections 144.411 to 144.417, or other applicable law, as amended from time to time. Nothing in this Ordinance authorizes smoking in any location where smoking is prohibited or restricted by other laws.

4.04 Exclusions. This Ordinance does not apply to:

A. 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.

B. Traditional Native American ceremonies. This Ordinance does not prohibit smoking by a Native American as part of a traditional Native American spiritual or cultural ceremony. For purposes of this section, a Native American is a person who is a member of an Indian tribe as defined in Minnesota Statutes section 260.755, subdivision 12.

C. Private places. Except as provided in Section 4.02 of this Ordinance, nothing in this Ordinance prohibits smoking in:

1. Private homes, private residences, or private automobiles when they are not in use as a place of employment.
2. Hotel or motel sleeping room rented to one or more guests.

D. Heavy commercial vehicles. Nothing in this Ordinance prohibits smoking in the cabs of motor vehicles registered under Minnesota Statutes section 168.013, subdivision 1e, with a total gross weight of 26,001 pounds or greater.

E. Farm vehicles and construction equipment. Nothing in this Ordinance prohibits smoking in farm trucks, as defined in Minnesota Statutes section 168.002, subdivision 8; implements of husbandry, as defined in Minnesota Statutes section 168A.01, subdivision 8; and special mobile equipment, as defined in Minnesota Statutes section 168.002, subdivision 31. This subsection applies to farm trucks, implements of husbandry, and special mobile equipment, when being used for their intended purposes.

F. Family farms. Nothing in this Ordinance prohibits smoking in the house, garage, barns, other buildings, vehicles, and equipment on a family farm that meets the following criteria: (1) the family farm is engaged in farming, as defined in Minnesota Statutes section 500.24, subdivision 2, paragraph (a); (2) the family farm meets the definition of family farm under Minnesota Statutes section 500.24, subdivision 2, paragraph (b), (c),(j), or (l); and (3) the family farm employs two or fewer persons who are not family members.

G. Theatrical productions. Nothing in this Ordinance prohibits smoking by actors and actresses as part of a theatrical performance conducted in compliance with Minnesota Statutes section 366.01. Notice of smoking in a performance shall be given to theater patrons in advance and shall be included in performance programs.

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

SECTION 5: RESPONSIBILITIES OF PROPRIETORS

5.01 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, public transportation, or place of employment shall make reasonable efforts to prevent smoking in the public place, public transportation, place of employment, or public meeting by:

A. Posting “no smoking” signs that comply with the requirements for sign placement and size of letters consistent with the Minnesota Clean Indoor Air Act Rules, Minnesota Rules, part 4620.0500, as may be amended from time to time; and

B. 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.

C. Ensuring that smoking equipment, including ashtrays or matches, is not provided in areas where smoking is prohibited.

D. The proprietor or other person or entity in charge of a business or indoor public area may not serve or service an individual who is in violation of this Ordinance.

SECTION 6: ENFORCEMENT AND PENALTIES

6.01 Enforcement. This Ordinance shall be enforced by the Health Authority and local law enforcement.

6.02 Misdemeanor. Any person who violates this Ordinance, or who permits a violation to exist on the premises under his/her control, or fails to take action to abate the existence of the violation(s) within a specified time period, when ordered or notified to do so by the Health Authority, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by law. Each day of violation constitutes a separate offense.

6.03 Adverse license action. Failure to comply with any provision of this Ordinance shall be adequate grounds for the denial, refusal to renew, revocation or suspension of license or permit issued by the County or issuance of a citation to the person alleged to have committed the violation.

6.04 Civil remedies. In the event of a violation or a threat of violation of this Ordinance, the County Attorney may take appropriate action to enforce this Ordinance, including application for injunctive relief, action to compel performance, or other appropriate action in court, if necessary, to prevent, restrain, correct, or abate such violations or threatened violations. The County Attorney enforcing provisions of this Ordinance may seek costs and disbursements, including attorneys' fees.

SECTION 7: SEVERABILITY

If any provision or application of this Ordinance is held invalid, that invalidity shall not affect other provisions or applications of this Ordinance.

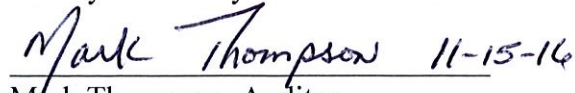
SECTION 8: EFFECTIVE DATE

This ordinance shall be effective on and after January 1, 2017.

Dated at Willmar, Minnesota, the 15th day of November, 2016


Roger Imdieke, Chairman

Kandiyohi County Board of Commissioners


Mark Thompson, Auditor

Kandiyohi County Auditor/Treasurer

