

**2016-05-17-01**  
**MURRAY COUNTY CLEAN INDOOR AIR ORDINANCE**

**SECTION 1. Title.**

This Ordinance shall be known and referenced as the Murray 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 Murray 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.

**2.02 Application.** As provided in Minn. Stat. § 145A.05, this Ordinance applies throughout all of Murray County, including the municipalities therein.

**2.03 Authority of Community Health Board.** As provided in Minn. Stat. § 145A.04, the Community Health Board is authorized to enforce laws, regulations, and ordinances within its jurisdictional area.

**2.04 More Restrictive Regulations by Other Local Governments Permitted.** Nothing in this Ordinance shall prevent other local levels of government within Murray County from adopting more restrictive measures to protect citizens from secondhand smoke or e-cigarette vapor.

**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, an activity commonly referred to as “vaping”. Electronic delivery devices include but are not limited to what is commonly referred to as “e-cigarettes”.

**3.03 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 Murray County.

**3.05 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 considered a wall.

**3.06 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.

**3.07 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 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. 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 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.

**3.08 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.

**3.09 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, public schools, as defined in Minn. Stat. § 120A.05, subdivisions 9, 11, and 13, educational facilities, 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.

**3.10 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, or an electronic delivery device that is turned on or is otherwise activated.

**3.11 Tobacco Product.** “Tobacco products” shall mean any product 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 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 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 4. Smoking Prohibitions.**

**4.01 Smoking Prohibited.** Except as provided in Section 4.02, 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 twenty-five (25) feet of entrances, exits, windows, and ventilation intakes of public places and places of work.

**4.02 Exceptions.** The prohibitions of this Section do not apply to the following places or situations:

- A. Private homes, private residences; or private motor vehicles when they are not in use as a place of work, as defined by this Ordinance;
- B. The use of tobacco by an enrolled member of a federally-recognized Indian tribe as part of a traditional Indian spiritual or cultural ceremony;
- C. 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

D. **Farm vehicles and construction equipment.** Sections 144.414 to 144.417 do not prohibit smoking in farm trucks, as defined in section 168.002, subdivision 8; implements of husbandry, as defined in section 168A.01, subdivision 8; and special mobile equipment, as defined in section 168.002, subdivision 31. This subdivision applies to farm trucks, implements of husbandry, and special mobile equipment, when being used for their intended purposes.

E. **Family farms.** Sections 144.414 to 144.417 do not prohibit smoking in the house, garage, barns, and other buildings on a family farm that meet the following criteria: (1) the family farm is engaged in farming, as defined in section 500.24, subdivision 2, paragraph (a); (2) the family farm meets the definition of family farm under 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.

**F. Theatrical productions.** Sections 144.414 to 144.417 do not prohibit smoking by actors and actresses as part of a theatrical performance conducted in compliance with section 366.01. Notice of smoking in a performance shall be given to theater patrons in advance and shall be included in performance programs.

G. 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.

**SECTION 5. 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:

**5.01 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/vaping" 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, Minn. Stat. §§144.411 to 144.417, and Minnesota Clean Indoor Air Act Rules, Parts 4620.0100 to 4620.1450, as amended from time to time;

**5.02 Smoking Paraphernalia Prohibited.** Shall ensure that no ashtrays, lighters, matchbooks, or other smoking paraphernalia are provided in areas where smoking is prohibited;

**5.03 Proprietor Duties.** Shall ask any person who smokes in an area where smoking is prohibited to refrain from smoking or using an electronic delivery device. 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.

**5.04 Smoking Receptacles.** Such receptacles shall be located at a place and distance that

- a) is at least 25 feet from the exits, 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 6. 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 7. 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 8. 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 9. Other Applicable Laws.**

This Ordinance is intended to complement the Minnesota Clean Indoor Air Act, 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 10. Violations and Penalties.**

**10.01 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.

**10.02 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, as prohibited.

**10.03 Penalties.**

A. A violation of this Ordinance shall be a petty misdemeanor for the first offense; any additional violation shall be a misdemeanor. 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

**10.04 Enforcement.** Administration of this Ordinance, including guidance for and challenges to this Ordinance, shall be according to the authorities provided in Minnesota Statutes, other applicable Minnesota law, and the Murray County Environmental Services Administrative Ordinance.

**10.05 Injunctive Relief.** In addition to the penalties provided in 10.03 of 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 11. 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 12. Effective Date.**

The provisions of this revised Ordinance shall be in full force and effect after publication, and shall be enforceable on and after August 30, 2016.