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Chapter 238. - Public Smoking in Licensed Liquor Establishments and Restaurants

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Sec. 238.01. - Purposes and findings of fact.

The city council finds that:

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 and other health problems. Secondhand smoke kills an estimated thirty-five thousand (35,000) to sixty-two thousand (62,000) Americans each year from coronary heart disease. Secondhand smoke also causes an estimated three thousand (3,000) lung cancer deaths in America each year.

These 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. The proposed Framework Convention on Tobacco Control, a global treaty negotiated by more than one hundred ninety (190) countries, declares that "scientific evidence has unequivocally established that exposure to tobacco smoke causes death, disease and disability."

There is no safe level of exposure to tobacco smoke. Science has been unable to find any level of dilution at which smoke does not cause cancer. Neither the separation of smokers and nonsmokers, nor the introduction of new ventilation systems, can eliminate the health hazards caused by secondhand smoke.

Employees in smoky workplaces are at special risk. One study has estimated that working in a smoky bar for eight (8) hours is equivalent to smoking sixteen (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.

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, 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.

By reducing the exposure of young people to adult smoking and unhealthy role modeling, elimination of smoking in public places furthers the state's goal of reducing youth smoking.

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.

Accordingly, the city council finds and declares that the purpose of this chapter is to:

- (1) Protect the public health, welfare and safety by better ensuring 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.

(C.F. No. 05-1074, § 1, 1-11-06)

Sec. 238.02. - Definitions.

As used in this article:

- (1) *Bowling centers, pool halls, rental halls and bingo halls* means those establishments licensed under chapter 322, 403, and 405 of the Saint Paul Legislative Code, whether or not they are also a licensed liquor establishment.
- (2) *Licensed liquor establishment* means an establishment that has an on-sale intoxicating liquor license; an on-sale 3.2 percent malt liquor license; a wine license and/or a strong beer license issued pursuant to chapters 409 or 410 of the Saint Paul Legislative Code, as amended from time to time, but does not include outdoor areas and does not include the guest rooms of a hotel or motel.
- (3) *Other person in charge* means the agent of the proprietor authorized to perform administrative direction to and general supervision of the activities within a bar or restaurant at any given time.
- (4) *Proprietor* means the party who holds the license or licenses for a bar or restaurant. The term "proprietor" may apply to a corporation as well as an individual.
- (5) *Restaurant* means an establishment that is operating under a license issued pursuant to Legislative Code section 331A.04(d)(19), (20), (21), (22), (23), (24) or (26) as amended from time to time, but does not include outdoor areas and does not include the guest rooms of a hotel or motel.
- (6) *Smoking* means the inhaling, exhaling or combustion of any cigar, cigarette, pipe, tobacco product, weed, plant or any other similar article. "Smoking" includes possessing or carrying a lighted cigar, cigarette, pipe or any other lighted smoking equipment. "Smoking" does not include 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.F. No. 05-1074, § 1, 1-11-06; C.F. No. 09-1203, § 1, 11-25-09)

Sec. 238.03. - Prohibitions.

Smoking is prohibited in restaurants, pool halls, bowling centers, rental halls, bingo halls and licensed liquor establishments.

(C.F. No. 05-1074, § 1, 1-11-06)

Sec. 238.04. - Responsibilities of proprietors.

The proprietor or other person in charge of a bar or restaurant shall:

- (1) Post "no smoking" signs that comply with the Minnesota Clean Indoor Air Act Rules, Minnesota Rules, part 4620.0500, as amended from time to time;
- (2) Ensure that ashtrays, lighters, and matchbooks are not provided in any area where smoking is prohibited; and
- (3) 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. If the person refuses to leave, the proprietor or person in charge of the bar or restaurant shall contact the police department and ask that the person be trespassed from the establishment.

(C.F. No. 05-1074, § 1, 1-11-06)

Sec. 238.05. - Additional private prohibitions.

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

(C.F. No. 05-1074, § 1, 1-11-06)

Sec. 238.06. - Retaliation prohibited.

No person or employer shall discharge, refuse to hire, 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 chapter or other law.

(C.F. No. 05-1074, § 1, 1-11-06)

Sec. 238.07. - Employee's 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.

(C.F. No. 05-1074, § 1, 1-11-06)

Sec. 238.08. - Other applicable laws.

This chapter is intended to complement and go beyond the Minnesota Clean Indoor Air Act, Minnesota Statutes §§144.411 to 144.417, as amended from time to time. Nothing in this chapter authorizes smoking in any location where smoking is prohibited or restricted by other laws.

(C.F. No. 05-1074, § 1, 1-11-06)

Sec. 238.09. - Violation and penalties.

- (a) *Proprietors.* It is a violation of this chapter for the proprietor to fail to comply with the requirements of section 238.04, or to retaliate against an employee, applicant for employment or customer, as prohibited by section 238.06.
- (b) *Penalties.* Failure to comply with the requirement of this chapter shall be a basis for adverse action under Saint Paul Legislative Code § 310.06(b)(7).
- (c) A violation of any provision of this chapter shall be considered a violation of the provisions of the legislative code relating to the licensed activity under § 310.05(m)(2) and shall be punishable accordingly under that section.

(C.F. No. 05-1074, § 1, 1-11-06)

Sec. 238.10. - Severability.

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

(C.F. No. 05-1074, § 1, 1-11-06)