

## **Ramsey County Smoke-Free Restaurant Ordinance**

Ordinance 2004-342

Adopted September 14, 2004

Effective March 31, 2005

WHEREAS, Non-smoking sections in buildings do not eliminate non-smokers' exposure to second-hand smoke (U.S. Environmental Protection Agency Office of Air and Radiation IARC Scientific Publications 81:25-41, 1987); and

WHEREAS, Carcinogens found in Environmental Tobacco Smoke (ETS) are causally related to cancer. It is estimated that every year 3,000 non-smokers in the U.S. die of lung cancer related to ETS (60 deaths in MN). To date, over 50 substances in second-hand smoke have been identified as carcinogens. (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, Annually between 35,000 and 62,000 non-smokers die in the U.S. (700 to 1,240 deaths in MN) from Ischemic heart disease related to ETS (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, Each year 9,700 to 18,600 low birth weight babies born in the U.S. (190 to 370 in MN) are causally related to ETS (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, Annually between 1,900 and 2,700 deaths from Sudden Infant Death Syndrome (SIDS) occur in the U.S. (30 to 50 deaths in MN) related to ETS (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, Irritants in ETS cause 150,000 cases annually of bronchitis and pneumonia (3,000 cases in MN). Irritants also cause 700,000 cases annually of middle ear infections in children in the U.S (14,000 in MN) (U.S. Department of Health and Human Services; Health Effects of Exposure to Environmental Tobacco Smoke, 1999); and

WHEREAS, ETS rapidly diffuses throughout a room. Using indoor air quality standards, ventilation rates would have to be increased more than a thousand-fold to reduce cancer risk associated with ETS. Such ventilation rate would result in a virtual windstorm indoors (Repace, J. "Risk Management and Passive Smoking at Work and at Home," St. Louis University Public Law Review, 13(2): 763-785, 1994); and

WHEREAS, The U.S. Department of Health and Human Services Healthy People 2010 has as one of its objectives to cut exposure to ETS by non-smokers from 65% in 1994 to 45% in 2010 (U.S. Department of Health and Human Services Healthy People 2010, Washington D.C., U.S. Department of Health Human Services 2000); and

WHEREAS, Sitting in a smoke-free section of a restaurant for two hours is like smoking 1½ cigarettes (Presentation by Katherine Hammond, PhD, University of California School of Public Health); and

WHEREAS, Nine out of ten non-smokers are exposed to ETS at least once every 2 to 3 days (Journal of the American Medical Association, January 1998); and

**NOW, THEREFORE IT BE ORDAINED**, The Ramsey County Board of Commissioners hereby approves the **Ramsey County Smoke-Free Restaurant Ordinance**:

**SECTION I. Title:**

This ordinance shall be known and referenced as the Ramsey County Smoke-Free Restaurant Ordinance.

**SECTION II. Jurisdiction:**

**Subsection 1.** The purpose of this ordinance is to protect the health, safety, and general welfare of the people of Ramsey County pursuant to the powers granted under Minnesota Statutes, chapters 145A and 375, and the Home Rule Charter for Ramsey County.

**Subsection 2.** This ordinance applies throughout all of Ramsey County.

**Subsection 3.** Nothing in this ordinance shall prevent other local levels of government, within Ramsey County, from adopting more restrictive measures to protect citizens from second-hand smoke.

**SECTION III. Definitions:**

**Subsection 1. Bar** means any Establishment a) that has an on-sale intoxicating liquor license, an on-sale non-intoxicating malt liquor license, an on-sale 3.2 percent malt liquor license, a wine license and/or a strong beer liquor license issued by the State of Minnesota, the municipality within which it is located, or Ramsey County; and b) whose sales of beer, non-intoxicating malt liquor, 3.2 percent malt liquor, wine, and intoxicating liquor are demonstrated for an existing licensee to be, or for an initial licensee projected to be, more than fifty percent of the total net sales of food and beverages, after taxes, that are served in the Establishment. These are the sales reported to the Minnesota Department of Revenue from the most recent calendar year.

**Subsection 2. Department** means the Saint Paul-Ramsey County Department of Public Health.

**Subsection 3. Establishment** means the portion of a building, including the infrastructure, that is typically reviewed, assessed, inspected, and included as part of the plan review, licensing, and monitoring processes of food and/or beverage facilities

by the applicable public health licensing authorities. It also includes, in the case of multi-purpose buildings and rooms and for the purposes of this ordinance, those portions of the building that are being used for food and/or beverage services during an event.

**Subsection 4. Other Person in Charge** means the agent of the Proprietor authorized to perform administrative direction to, and general supervision of, the activities within an Establishment at any given time.

**Subsection 5. Private Club** means an incorporated organization organized under the laws of the state for civic, fraternal, social, or business purposes; for intellectual improvement, for promotion of sports, or for a congressionally chartered veterans' organization, which:

- a. has more than 50 members; and
- b. has owned or rented a building or space in a building for more than one year that is suitable and adequate for the accommodation of its members; and
- c. is directed by a board of directors, executive committee, or other similar body chosen by the members at a meeting held for that purpose. No member, officer, agent, or employee shall receive any profit from the distribution or sale of beverages to the members of the club, or their guests, beyond a reasonable salary or wage fixed and voted upon each year by the governing body; and
- d. does not restrict its membership on the basis of race, color, creed, religion, or national origin.

**Subsection 6. Proprietor** means the party who ultimately controls, governs, or directs the activities within the Establishment. A Proprietor may be a corporation or a natural person.

**Subsection 7. Restaurant** has the meaning set forth at Minnesota Statutes, section 157.15 subdivision 12, as amended. It includes those portions of a multi-purpose building that is being used for food and/or beverage services during an event. It does not include a Bar, as defined in this ordinance.

**Subsection 8. Smoking or Smoke**, depending upon the context, means inhaling, exhaling, burning or carrying any lighted cigar, cigarette, pipe, weed, other plant substances or other lighted smoking equipment in any manner or in any form.

#### **SECTION IV. Smoking Prohibited in Restaurants:**

**Subsection 1. Smoking Prohibited.** Smoking is prohibited in all indoor areas of any Restaurant, including its indoor entrance areas commonly referred to as vestibules, alcoves, and foyers.

**Subsection 2. Exemptions.** The prohibitions of subsection 1 do not apply to the following places or situations:

- a. Bars, including those that are immediately adjacent to a Restaurant provided the following conditions are met:
  - 1) The Bar is separated from the Restaurant on all sides by continuous floor-to-ceiling walls, which are interrupted only by closeable doors that are continuously closed, except when a person is actively entering or exiting the Bar; and
  - 2) The Bar ventilation systems are totally separated from those for the Restaurant, with the Bar maintaining a negative air pressure in relation to the adjacent Restaurant; and
  - 3) The Bar's sales of beer, non-intoxicating malt liquor, 3.2 percent malt liquor, wine, and intoxicating liquor are more than fifty percent of its total net sales of food and beverages, after taxes; and
  - 4) The Bar does not permit entrance or employment of minors at any time, consistent with Minnesota Statutes, section 340A.503 subdivision 4 (b); and
  - 5) The Bar has a food and/or beverage license that is separate from the Restaurant and issued by the public health licensing authorities.
- b. Restaurants that are closed to the public while being used for a private function.
- c. Private Clubs, except when they are open to serve food and/or beverage to the public that are not members. Guests accompanied by members are considered to be members. No Private Club shall be exempt from the smoke-free provisions of this ordinance if it is established to avoid compliance with this ordinance.
- d. An event that includes licensed food and/or beverage service in any municipal owned and managed building, when the municipal governing body has declared specific portions of the building to be exempt for the event.

**Subsection 3. Fees.** The County Board shall, by resolution, establish fees for the initial application and renewal of an exemption allowed under section IV, subsections 2 (a) and 2 (c) of this ordinance. The County Board shall, by resolution, establish such other fees as may be necessary for the administration of this ordinance.

**Subsection 4. Right to Prohibit Smoking.** Nothing in this ordinance prevents the Proprietor or Other Person in Charge of any Establishment from prohibiting Smoking in the Establishment.

**Subsection 5. Compliance with Minnesota Clean Indoor Air Act.** Irrespective of any exceptions granted under authority of this ordinance, compliance must be maintained with the Minnesota Clean Indoor Air Act, as amended.

**SECTION V. Responsibilities of Proprietors:**

**Subsection 1. Records Required for Exemption.**

- a. **Existing Establishments.** Applicants for Establishments claiming exemption allowed under section IV, subsections 2(a) or 2(c) of this ordinance, shall annually provide to the Department a copy of the food and liquor sales records as provided to the Minnesota Department of Revenue from the most recent calendar year. The application shall be submitted in a form determined by the Department and shall be due by June 1 of each year, except that the due date for the initial request for exemption shall be April 30, 2005. The information shall be provided under oath and penalty of perjury. The application shall be the basis for demonstrating whether the Establishment is eligible for continued exemption. Initial exemptions shall be from the effective date of this ordinance through June 30, 2006. Thereafter the term of exemptions shall be July 1 through June 30.
- b. **Prospective Establishments.** Persons seeking to open an Establishment exempt from the smoke-free requirements of section IV of this ordinance shall provide a notarized affidavit and agreement to the Department at the same time their initial food and/or beverage license applications are submitted to the public health licensing authority. The affidavit, in a form determined by the Department, must demonstrate that their business plan projections indicate that they are eligible for such exemption. The agreement must provide that they will convert to smoke-free status if their records indicate, after six calendar months of operation, that the business is not eligible for continued exemption. After six months of operation, the Proprietor shall submit a copy of the previous six months' reports of food and liquor sales records as provided to the Minnesota Department of Revenue. The report shall be submitted in a form determined by the Department. The information shall be provided under oath and penalty of perjury. The report shall be the basis for demonstrating whether the Establishment is eligible for continued exemption.
- c. **Existing Establishment Modifications.** Persons seeking to make changes in their Establishment in order to seek an exemption from the smoke-free requirements of section IV in this ordinance shall provide a notarized affidavit and agreement to the Department prior to making changes and commencing operations to allow smoking. The affidavit, in a form determined by the Department, must demonstrate that their business plan projections indicate that they are eligible for such exemption. The agreement, in a form determined by the Department, must provide they will convert back to smoke-free status if their records indicate, after six calendar months of changed operation, that the business is not eligible for continued exemption. After six

months of operation the Proprietor shall submit a copy of the previous six months' reports of food and liquor sales records as provided to the Minnesota Department of Revenue. The report shall be submitted in a form determined by the Department. The information shall be provided under oath and penalty of perjury. The report shall be the basis for demonstrating whether the Establishment is eligible for continued exemption.

**Subsection 2. Certificate of Exemption.** A certificate of exemption obtained pursuant to this section shall be conspicuously displayed to the public.

**Subsection 3. Signage.**

- a. Where smoking is allowed in a Bar, Private Club, or a facility in which private functions are conducted, the Proprietor, or Other Person in Charge, shall conspicuously post a sign at all entrances to that area or facility stating one of the following:
  - 1) "This entire establishment is a designated smoking area" or
  - 2) "Warning -This area contains tobacco smoke, which causes cancer, heart disease, lung disease, and can harm you, your unborn baby, and children"
- b. If a Bar, Private Club, or a facility in which private functions are conducted has both smoke-free areas and a designated Smoking area, the Proprietor or Other Person in Charge shall conspicuously post, in addition to those messages required by the Minnesota Clean Indoor Air Act, signs at all initial entry points clearly stating "Warning -This area contains tobacco smoke."
- c. The Proprietor or Other Person in Charge shall also clearly indicate those areas inside the Establishment where Smoking is permitted and those that are smoke-free, through the use of signs required in this subsection 3.
- d. The Proprietor or Other Person in Charge of a Restaurant shall conspicuously post a sign at all entrances stating: "This entire establishment is smoke-free." The sign shall include the universal "no smoking" symbol.
- e. The placement and size of lettering for all signs and symbols required under this Ordinance shall be consistent with the Minnesota Clean Indoor Air Act, Minnesota Statutes sections 144.411 to 144.417, and the Minnesota Clean Indoor Air Act Rules, Minnesota Rules, Parts 4620.0100 to 4620.1450.

**Subsection 4.** The Proprietor or Other Person in Charge shall ensure that ashtrays, lighters, and matchbooks are not provided in areas where Smoking is prohibited.

**Subsection 5.** The Proprietor, or Other Person in Charge, shall 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, 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.

**SECTION VI. No Retaliation:**

No person shall discharge, refuse to hire, refuse to serve or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer makes a report or files a complaint alleging a violation of this ordinance.

**SECTION VII. Enforcement:**

**Subsection 1. Petty Misdemeanor.** Any person who violates this ordinance, or who shall permit such a violation to exist on the premises under their control, or who shall fail to take action to abate the existence of the violation within the specified time period when ordered or notified to do so, shall be guilty of a petty misdemeanor, and upon conviction thereof shall be punished therefore, as provided by law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

**Subsection 2. Equitable Relief.** 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.

**Subsection 3. Penalties.** Failure to comply with this ordinance shall be a basis for adverse action under Minnesota Statutes, section 340A.415.

**Subsection 4. Citations.** Whenever any representative of the Department, or any other person authorized to issue citations for the violation of law, discovers a violation of this ordinance, a citation may be issued to the person alleged to have committed the violation. The citation shall be issued to the person charged with the violation, or in the case of a corporation or municipality, to any officer or agent expressly or impliedly authorized to accept such issuance.

**SECTION VIII. Exceptions and Appeals from Denial of Exemption:**

Applications for exceptions and appeals from the denial of exemptions permitted under section IV, subsection 2 of this ordinance shall follow the procedure established in the Ramsey County Administrative Ordinance, section IV, subsection 11 and section VII.

**SECTION IX. Severability and Savings Clause:**

If any portion of this ordinance, 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.

**SECTION X. Effective Date:**

This ordinance shall be effective on March 31, 2005.