ROSEAU COUNTY ORDINANCE NO. 39

ROSEAU COUNTY ORDINANCE FOR CLEAN INDOOR AIR

THE COUNTY BOARD OF THE COUNTY OF ROSEAU, MINNESOTA, HEREBY ORDAINS:

Section 1. Purpose or Findings.
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 also causes an estimated 7,000 lung cancer deaths in America each year. 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.

Electronic delivery devices closely resemble and purposefully mimic the act of smoking as users inhale aerosolized liquid nicotine and other substances heated by an electronic ignition system. They produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to smoke emitted by conventional tobacco products. Their use in workplaces and public places where smoking is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions. After testing a number of e-cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that quality control processes used to manufacture the products are inconsistent or non-existent ("Summary of results: Laboratory analysis of electronic cigarettes conducted by FDA, Food and Drug Administration, July 22, 2009; http://www.fda.gov/NewsEvents/PublicHealthFocus/ucm173146.htm

By reducing the exposure of young people to adult smoking and unhealthy role modeling the elimination of smoking and vaping in public places furthers Minnesota's goal of reducing youth smoking. In addition to Minnesota, California, Connecticut, Delaware, Maine, and New York are among the states that have adopted laws ending all smoking in bars, restaurants, and other public places, as have the nations of Ireland, New Zealand and Norway. 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 duty to provide their workers with a workplace that is not unreasonably dangerous.

Accordingly, the Roseau County Board finds and declares that the purpose of this Ordinance is to:
(1) Protect the health, safety and welfare of the people of Roseau County from the adverse effects of secondhand smoke and the use of electronic delivery devices. (2) Affirm that the right to breathe has priority over allowing people to smoke or use electronic delivery devices.

Section 2. Jurisdiction.
Pursuant to Minn. Stat. §§ 145A.04-.05, this Ordinance shall apply throughout all of Roseau County including the municipalities therein. Nothing in this Ordinance shall prevent other local levels of

government within Roseau County from adopting more stringent measures to protect citizens from smoking as defined in this Ordinance.

Section 3. Definitions.
(a.) **"Electronic Delivery Device"** means 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. The term includes any such devices, whether they are manufactured, distributed, marketed or sold as e-cigarettes, e-cigars, e-pipes, or under any other product name or descriptor.
(b.) **"Indoor Area"** means all space between a floor and a ceiling that is bounded by walls, doorways or windows, whether opened or closed, covering more that 50 percent of the combined surface area of the vertical panes constituting the perimeter of the area. A wall includes a retractable divider, garage door, or other physical barrier, whether temporary or permanent. A standard (0.011) gauge window screen with an 18 by 16 mesh count is not considered a wall.
(c.) "**Minnesota Clean Indoor Air Act"** means Minn. Stat. §§ 144.411-.417, as it may be amended from time to time.
(d.) **"Place of Employment"** means any indoor area where one or more individuals perform any type of service for consideration of payment under any type of contractual relationship, including but not limited to an employment relationship with or for a private corporation, partnership, individual, or government office. This term includes any location where one or more individuals gratuitously perform services for which individuals are ordinarily paid.
(e.) **"Public Place"** means any indoor area used by the general public, including, but not limited to, restaurants, bars, any other food or liquor establishment, retail stores and other commercial establishments, schools and other educational facilities, hospitals, nursing homes, auditoriums, arenas, meeting rooms, and common areas of rental apartment buildings.
(f.) **"Smoke" or "Smoking"** means the inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe or any other tobacco or plant product, or inhaling or exhaling aerosol or vapor from any electronic delivery device. Smoking shall include being in possession of a lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product intended for inhalation or an electronic delivery device that is turned on or otherwise activated.

Section 4. Smoking Prohibited.
Smoking shall not be permitted in and no person shall smoke in a public place or in a place of employment.

Section 5. Responsibilities of Proprietors.
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 or place of employment shall make reasonable efforts to prevent smoking by: (a.) Posting Signs. (b.) Refusing to serve or service any person acting in violation of this Ordinance. (c.) 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, ask 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.

No proprietor, person or entity in charge of a public place or place of employment, may retaliate or take adverse action against an employee or other person who, in good faith, reports a violation of this Ordinance.

Section 6. Other Applicable Laws.
This Ordinance is intended to complement and go beyond the Minnesota Clean Indoor Air Act. Nothing in this Ordinance authorizes smoking in any location regulated by any other laws or applicable regulations.

Section 7. Violations and Penalties.
A person who violates any provision of this Ordinance shall be guilty of a petty misdemeanor. A person who violates any provision of this Ordinance within one year of a previous violation shall be guilty of a misdemeanor. Each violation and every day in which a violation occurs or continues, constitutes a separate offense.

Section 8. Severability. 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.

This ordinance shall become effective following publication according to law.

Passed by the Roseau County Board of Commissioners, this 10th day of May, 2016.

Roger Falk
Chair, Roseau County Board of Commissioners

Attest:

Jeff Pelowski, Coordinator/Environmental Officer

Approved as for form and execution:

Karen M. Foss
Karen M. Foss, Roseau County Attorney