

MEMORANDUM



To: Mike Wildgen, City Manager
From: Toni Ramirez Wheeler, Staff Attorney
Cc: David L. Corliss, Assistant City Manager
Re: Key Dates Related to the Petition for Repeal of Ordinance Relating to
Regulating Smoking in Public Places
Date: November 23, 2004

We anticipate the petition and accompanying ordinance to repeal the Lawrence Public and Workplace Smoking Restriction Ordinance No. 7782, that is being circulated pursuant to the Initiative and Referendum statute, K.S.A. 12-3013, will soon be turned into the City Clerk and County Election Office. This memorandum sets forth important dates for actions pertinent to the petition. It also provides information on matters relevant to the petition which may be of interest to the City Commission. This memorandum is submitted for the use and benefit of the City. It contains interpretations by the Legal Services Department staff of Kansas statutes, case law, and Attorney General opinions. It is not intended to provide legal advice to the citizens circulating the petition. They should seek independent legal counsel.

The Deadline to Submit the Petition to the City and County

K.S.A. 12-3013 requires the petition requesting the governing body to pass an ordinance, along with said ordinance to be filed with the City Clerk. The City Clerk then forwards the petition to the county election officer to determine the sufficiency of each signature and the number thereof on the petition pursuant to K.S.A. 25-3601 to 25-3607.

K.S.A. 25-3602(d) requires a petition to be submitted to the county election officer within 180 days of the date of the first signature on the petition. Failure to timely submit the petition renders the petition null and void.

One interpretation of this statutory provision would permit the petition to be submitted anytime, so long as the first signature on the petition that is submitted was signed within 180 days of the date the petition is submitted to the County Clerk. Any signatures obtained prior to 180 days of the date it is

submitted to the County Clerk would have to be excluded from the submitted petition.

Another interpretation of K.S.A. 25-3602(d) would have the petition submitted to the County Clerk within 180 days of the date of the first signature on the petition. The date of the first signature on the petition, according to Chuck Magerl, is June 8, 2004. Therefore, under this interpretation, the petition should be submitted to the county election official on or before Friday, December 3, 2004, to meet the 180 day deadline.

Prior to submitting the petition to the County Clerk, the petition must be filed with the City Clerk. The statutes are silent, however, on the date the petition must be filed with the City Clerk.

K.S.A. 25-3602(a) provides that the petition shall be filed at one time all in one group. Later or successive filings are deemed separate petitions and not part of any earlier or later filing.

Who Is Qualified to Sign the Petition?

The term “electors” means persons who were qualified electors at the time they sign a petition and does not mean they had to be qualified electors at the time of the preceding regular city election. Kansas Attorney General Opinion No. 91-67. A person who completes a voter registration application is not an elector until the county election officer adds the applicant’s name to the county’s official voter registration list. A person is not eligible to sign a petition as a qualified elector until the applicant’s name is entered into the county’s voter registration file. Therefore, a person may not submit an application to register to vote and sign the petition on the same day.

Certification by the Douglas County Clerk

The county election officer will determine the sufficiency of each signature on the petition. The county election officer will also confirm the petition is signed by the required number of electors. The initiative and referendum statute requires the petition proposing an ordinance to be signed by electors equal to at least 25% (in cities of the first class) of the electors who voted in the last preceding regular city election. According to the Douglas County Clerk’s office, the petition must be signed by 3,764 electors.

In determining the sufficiency of each signature, Ms. Jaimes, the Douglas County Clerk, reported it is her practice to examine each signature until she reaches a number between 20 and 50 over the number of signatures required

on the petition. In examining the signatures, she will verify that the name of the signor is a name on the registered voter list. She will also examine the signature on the petition to confirm it resembles the signature the county has on file for the elector.

There is some question, according to Ms. Jaimes, whether the address on the petition for a signer has to match exactly the address on the County's registered voter list in order for the petition signature to be deemed a valid signature. Recent United States Supreme Court decisions seem to indicate that an exact address match is not required on certain types of petitions in order for the signature to be valid on the petition. The County Counselor may need to advise the county clerk on this matter.

There is no deadline mandated by state statute for the county election officer to complete the certification process required by K.S.A. 12-3013. Ms. Jaimes has indicated that she anticipates completing the review of the signatures on the petition within three (3) to five (5) business days of receiving the petition. However, there is no statutory requirement that the clerk complete the review within this time period.

If the County Clerk receives the petition on Friday, December 3, 2004, and the Douglas County Clerk's office can complete its review within the time period estimated by Ms. Jaimes, it is likely the clerk's certification can be expected on or about Monday, December 13, 2004.

City Commission Action

The initiative and referendum statute requires the City Commission to take one of two actions upon receiving an ordinance and valid petition. K.S.A. 12-3013 provides in pertinent part:

If the petition accompanying the proposed ordinance is signed by the required number of electors qualified to sign, the governing body shall either (a) pass such ordinance without alteration within 20 days after attachment of the clerk's certificate to the accompanying petition; or (b) if not passed within 20 days, forthwith call a special election, unless a regular city election is to be held within 90 days thereafter and at such special or regular city election submit the ordinance, without alteration, to the vote of the electors of the city.

If the clerk's certification attaches on December 13, 2004, and the City Commission intends to pass the ordinance as submitted, it must do so before Sunday, January 2, 2005 (within 20 days after attachment of the clerk's certification to the petition).

If the Commission declines to adopt the ordinance, it must "forthwith" call a special election unless a regular city election will be held within 90 days. The statute does not prescribe the period of time within which a special election must be held. There is no Kansas case on the period of time within which the special election must be held. However, there is a Kansas Attorney General opinion from 1978 interpreting an earlier version of K.S.A. 12-3013. In that opinion, the Attorney General opined that the special election must be held within 110 days after the date of the clerk's certification. In reaching this conclusion the Attorney General stated:

In my view, the ambiguity concerning the date of the special election should be resolved in accordance with the evident legislative purpose in prescribing with some specificity the period of time within which specific action is to be taken upon initiative-proposed ordinances. The commission must pass the ordinance, if it chooses to do so, within twenty days after the clerk's certificate, and a special election must be called if no regular city election is to be held within ninety days thereafter. These prescriptions indicate a clear legislative concern that initiative measures receive prompt and specific legislative action, and that the popular will, reflected in the petition process, should not be thwarted or frustrated by delay. In my judgment, the quoted language above requires that the special election be held within 110 days after the date of the certificate of the clerk.

Kansas Attorney General Opinion No. 78-94.

This interpretation of the statute has not been tested in a court. A court would not be bound to adopt this interpretation as an Attorney General opinion on an issue is persuasive authority only.

If a primary election is held, it is scheduled to occur on Tuesday, March 1, 2005. If the clerk's certification attaches on December 13, 2004, the primary election would be held within 90 days of the petition certification. However, the need for a primary election may not be known until 12:00 Noon, Tuesday, January 25, 2005 (the filing deadline for city commission candidates).

The next regular city election is scheduled for Tuesday, April 5, 2005. This election will be beyond (by just a few days) the 110 days of the clerk's certification (again, if the certification attaches on December 13, 2004) recommended in Kansas Attorney General Opinion No. 78-94. Given the ambiguity in the statute concerning the date of a special election, the age of Kansas Attorney General Opinion No. 78-94, and the date of the regularly scheduled city election, placing the proposed initiative ordinance on the ballot of the April 5, 2005 election may not be viewed as unreasonable by a court.

Restrictions on Repealing or Amending Ordinance Proposed by Petition and Passed by the Governing Body or Adopted by the Voters

K.S.A. 12-3013(c) provides:

If a majority of the qualified electors voting on the proposed ordinance votes in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city. Any ordinance proposed by a petition as herein provided and passed by the governing body or adopted by a vote of the electors shall not be repealed or amended except (1) by a vote of the electors, or (2) by the governing body, if the ordinance has been in effect for 10 years from the date of publication, if passed by the governing body, or from the date of the election, if adopted by a vote of the electors.

If the proposed initiative ordinance is adopted by the Commission or by a vote of the electors, the Lawrence Public and Workplace Smoking Restriction Ordinance No. 7782, passed by the Lawrence City Commission on May 11, 2004, would be repealed. It is the Legal Services Department's opinion that the smoking regulations in place prior to the effective date of Ordinance No. 7782 would be reinstated. Essentially, this state statute would prohibit the Lawrence City Commission from altering this reinstated law for a period of ten years, unless it is put to a vote of the electors.

If the proposed initiative ordinance fails to be adopted by the City Commission or by a vote of the electors, there appears to be no statute which precludes citizens from commencing the initiative process over again. The only restriction that may apply appears in K.S.A. 12-3013(c) which provides that there shall not be more than one special election in any six-month period. It states in pertinent part:

Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section, but there shall not be more than one special election in any period of six months for such purpose.

St. Louis Park, Minnesota Smoking Ordinance

A summary of the St. Louis Park, Minnesota ordinance is attached as well as a brochure titled "Tobacco Smoke Disclosure Program," developed by the City of St. Louis Park's Environmental Health Division. Hennepin County, Minnesota, the county within which St. Louis Park is located, recently adopted an ordinance that creates smoke-free environments in licensed food or beverage establishments including bars. The Hennepin County ordinance goes into effect March 31, 2005 and will nullify the St. Louis Park ordinance. A copy of the Hennepin County ordinance (Ordinance No. 24) is also attached.

To: Mike Wildgen, City Manager
From: Regan Gerlt, Management Intern
Cc: Toni Wheeler, Staff Attorney
Date: 11.18.04
Subj: St. Louis Park, MN Smoking Ordinance
Contact: Brian Hoffman, Inspections Department Director; (952) 924-2588

Background:

A task force was convened in St. Louis Park, MN to address the issue of second hand smoke exposure in food and beverage establishments. As a result, the Tobacco Disclosure Notice Program was approved by the city commission, and its objectives were to provide information to citizens on the effects of second hand smoke, encourage local food and beverage establishments to reduce employee and patron exposure to second hand smoke, and provide average nicotine levels present in the non-smoking seating sections of those establishments to citizens. The program is premised on the idea that providing information to the public on the effects of second hand smoke exposure, and providing information on the level of nicotine in non-smoking sections of food and beverage establishments, will guide the public in making better informed decisions on which establishments they choose to patronize.

Ordinance Regulations:

Food and beverage establishments initially must decide whether they will promote a smoking or smoke-free environment. If the establishment decides to allow smoking, they are required to pay their licensing fee and an additional surcharge of \$700 dollars per year. The purpose of the surcharge is to cover those fees that are incurred by the city due to testing of air samples, as well as cover the cost of distributing a brochure which outlines the effects of second hand smoke.

A second requirement states that food and beverage establishments must allow the city access to their nonsmoking sections three times a year to conduct double testing (six samples per establishment will be taken within a one year period). Samples are taken annually during an establishment's opening hours, middle hours, and late night hours. Samples are then tested by the city and the results are given back to the establishment in the form of a business specific disclosure notification.

Thirdly, for an establishment to comply with the ordinance, they must:

- 1) Post the business specific disclosure notice on all doors or near public and employee entrances.
- 2) Post and maintain a supply of the second hand smoke brochures given to establishments when they apply for their license.

The inspection department is in charge of testing all air samples and the department's health inspectors enforce the regulations during their normal food inspections. Failure to comply with the ordinance potentially results in the loss of an establishment's license.

- Also see St. Louis Park Tobacco Smoke Disclosure Program brochure

<http://www.stlouispark.org/Government/Code/CH8BusinessLic.pdf>

Pg 30 and 31

The text is below as well as at the link.

Sec. 8-258. Regulations and standards.

All food and beverage establishments and food vending machines licensed under this subdivision shall comply with the city's food code as set forth in section 12-1 of this Code.

(Ord. No. 2181-00, § 4(16-304C.), 11-6-2000; Ord. No. 2198-01, § 2, 5-21-2001)

(a) All food and beverage establishments and food vending machines licensed under this subdivision shall comply with the city's food code as set forth in section 12-1 of this Code.

(Ord. No. 2181-00, § 4(16-304C.), 11-6-2000; Ord. No. 2198-01, § 2, 5-21-2001)

(b) Except for smoke-free establishments, all food and beverage licensees providing indoor seating for consumption of prepared food and beverage products shall be subject to the following testing and disclosure of environmental tobacco smoke requirements:

BUSINESSES AND LICENSES

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(1) A testing surcharge fee to be paid in addition to the regular license fee.

(2) Licensee shall allow the city or designated representative access to the licensed premises to perform collection of air samples from the designated non-smoking section a minimum of three times per year. Collection times will be randomly selected by the city and occur during the establishments normal business hours. Two air samples of 100 liters each will be collected simultaneously by equipment placed on tables or stands separated by a distance of not less than half the distance of the area being sampled. The licensee shall ensure that the sampling equipment is not disturbed or tampered with for the duration of the test.

(3) Collected samples will be laboratory analyzed for nicotine concentration using NIOSH

(National Institute on Occupational Safety and Health method 2544). The results of all samples for each establishment will be averaged for the year. The resulting average nicotine concentration will be identified in micrograms per cubic meter.

(4) Each establishment will be provided with a business specific disclosure notice(s) with

the annual license. The notice(s) shall be placed by the licensee on the inside of all transparent entrance door(s) or sidelights into the establishment so as to be visible for the entering public and employees. When no translucent material is present at the entrance door(s), then the disclosure notice(s) shall be located on an interior side wall adjacent to the entrance door(s) approved by the city as the most visible location for the entering public. Only a single sign is needed for each entrance door or pair of doors when the doors are together. Each disclosure notice shall identify the food and beverage establishment by name, disclosure to the public that they may be exposed to environmental tobacco smoke in the non-smoking seating section, and the average level of nicotine sampled. New disclosure notices will be issued for each calendar year.

(5) Establishments shall make available public education pamphlets, supplied by the city, providing information on environmental tobacco smoke and the disclosure notice. Pamphlets shall be displayed on a wall or tabletop dispenser in an easily accessed location as near to each disclosure notice as practically possible. The establishment is responsible to maintain a supply of the pamphlets on display and must notify the city if additional pamphlets are needed.

(6) The public education pamphlets on environmental tobacco smoke and a training session explaining the disclosure notice shall be provided to every employee by the licensee within thirty days of the initial disclosure notice posting and at the time of hire for new employees.

(7) Establishments making substantial improvements in building design or mechanical operating systems intended to reduce environmental tobacco smoke concentrations may request additional samples be collected and any relevant improvement be identified with a revised disclosure notice.

(8) In order for an establishment to be considered smoke free and exempt from the requirements, it must prohibit the smoking of tobacco products within the building and have signage indicating a non-smoking environment at all public entrances. Signage must include, but is not limited to, the international non-smoking symbol with a minimum 3.5-inch cross dimension.



HISTORY...

A St. Louis Park Smoking Task Force consisting of various community members convened in April of 2002 to consider addressing secondhand smoke exposure in restaurants.

The recently amended Minnesota Clean Indoor Air Act regulates tobacco smoking in most public areas and places of employment, but the only requirement for food and beverage establishments is to provide non-smoking seating and signage.

After meeting for over a year, the Task Force made the following recommendation to the City Council: Create a Tobacco Disclosure Notice Program based on indoor air sampling for secondhand tobacco smoke.

PROGRAM GOALS...

- Provide information that will help the community, patrons and employees, make a conscious decision regarding personal and family exposure to secondhand smoke.
- Increase youth awareness of the potentially harmful effects of tobacco use and exposure to secondhand smoke.
- Encourage community restaurants to reduce or eliminate patron and employee exposure to secondhand smoke. Restaurants decide to be completely smoke-free or participate in the Disclosure Notice Program.

WHAT IS SECONDHAND SMOKE?

- A mixture of the smoke given off by the burning end of a cigarette, pipe, or cigar, and the smoke exhaled from the lungs of a smoker.
- Also referred to as "environmental tobacco smoke", exposure to secondhand smoke is considered "involuntary or passive smoking".
- Comprised of approximately 4,000 substances, including arsenic, asbestos, radon, benzene, formaldehyde, lead, and nicotine.

IS SECONDHAND SMOKE A HEALTH THREAT?

- **YES!** The Environmental Protection Agency (EPA) classifies secondhand smoke as a **Group A Carcinogen.**¹
- Over 40 of the substances released are known to cause cancer in humans and many are strong irritants.¹
- Children with asthma are especially at risk. The EPA estimates exposure to secondhand smoke increases the number of episodes and severity of symptoms in children with asthma.¹
- The Centers for Disease Control and Prevention (CDC) reports secondhand smoke increases the risk of heart disease in nonsmokers and is recommending that clinicians advise their patients with heart disease to avoid buildings where smoking is allowed.²

¹ U.S. EPA Secondhand Smoke Brochure 403-F-93-004, July 1993

² National Cancer Institute: *Health Effects of Exposure to Environmental Tobacco Smoke: Smoking and Tobacco Control Monograph No. 10* NIH Pub. No. 99-4845 Accessed February 2004

National Toxicology Program: *10th Report on Carcinogens*, December 2002 Accessed February 2004

U.S. Environmental Protection Agency: *Passive Health Effects of Passive Smoking: Lung Cancer and Other Diseases*, Pub. No. EPA/600/6-90/006f Accessed February 2004

WHY SAMPLE FOR NICOTINE?

- Nicotine is used as an indicator for the presence of secondhand smoke, a relatively easy-to-measure substance present only from the burning of tobacco.
- City staff collected a total of 6 air samples annually to check for the presence of nicotine during 3 random days and times. Each sampling was for a minimum 100-minute period in the non-smoking section. The resulting average nicotine concentration for each restaurant is included in the Disclosure Notice - **confirming the presence of secondhand smoke in the non-smoking area.**

IS THERE A SAFE LEVEL?

- **NO!** There is no safe level of exposure to second hand smoke. Health effects are cumulative based on concentration and length of exposure.
- Actual exposure to secondhand smoke concentrations may be more or less than the average amount indicated based on tobacco product usage within the restaurant at any given time.

AM I AFFECTED IN THE NON-SMOKING SECTION?

- **YES!** Even if smoke is not visible or smelled, the substances comprising secondhand smoke easily spread throughout the room.
- Ventilation systems may also spread the smoke throughout the building.
- The average nicotine level indicated on the Disclosure Notice was derived from samples collected in the non-smoking seating section.

ADDITIONAL INFORMATION

Complete test results for all restaurants allowing smoking are available on the City web-site stlouispark.org, at City Hall 2nd floor service counter, or by calling 952-924-2588.

RESOURCES

U.S. EPA Indoor Air Quality Information
<http://epa.gov/iaq/iaqinfo.html>
1.800.438.4318

MN Smoke-Free Coalition
www.smokefreecoalition.org

MN Partnership for Action Against Tobacco (MPAA)
www.mpaat.org
651.224.0900

QUIT PLAN
www.quitplan.com
1.888.345.PLAN
(Free Smoking Cessation Helpline)

American Cancer Society
1.800.ACS.2345
www.Cancer.org
("Health Information Seekers" then "Prevention & Early Detection" then "Tobacco & Cancer")

American Lung Association of MN
www.ALAM.org
651.227.8014
1.800.LUNG-USA (586-48720)

This brochure is being provided by the City
of St. Louis Park for distribution and use by
restaurants located in
The City of St. Louis Park

Funded in part by a grant from the
Park Nicollet Foundation



Inspections Department
Environmental Health Division

952-924-2588

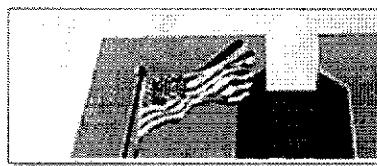
May 2004



POSSIBLE EXPOSURE

TOBACCO SMOKE DISCLOSURE PROGRAM

A public health initiative providing information on secondhand tobacco smoke exposure. Restaurants choosing to allow tobacco smoking cooperate with the City by posting disclosure notices to inform patrons and employees about possible exposure to secondhand smoke.



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Ordinance # 24 Smoke-Free Ordinance

DEPARTMENT

Human Services

ORDINANCE NO. 24-as amended (version1) 10-5-04 SMOKE-FREE ORDINANCE

CONTACT INFORMATION

E-Mail community.health@co.hennepin.mn.us
Phone 612-348-3925

"The Hennepin 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 Hennepin 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 smoke exposure and its adverse health effects on patrons and employees of food establishments; and
- B. To protect, in particular, the health of vulnerable populations including children and those with chronic health conditions.

SECTION 2: GENERAL PROVISIONS.

2.01 Scope. This Ordinance shall be applicable to all food establishments.

2.02 Prohibitions.

- A. Smoking is prohibited in the indoor areas of food establishments unless otherwise excluded.
- B. 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.
- C. Nothing in this Ordinance shall prevent other local levels of government within Hennepin County from adopting measures to protect citizens from secondhand smoke.
- D. This Ordinance is intended to complement 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.

2.03 Exclusions. This Ordinance does not apply to:

- A.** Outdoor spaces of food establishments.
- B.** Locations where smoking is expressly authorized by state or federal law, rule, or regulation.
- C.** The use of tobacco as part of a recognized religious ritual or activity.
- D.** Guest rooms of a hotel or motel.
- E.** Food establishments located in a house of worship when the food service is limited to preparation, service or consumption by the members of the house of worship and not advertised to the public.
- F.** The exclusions contained in this section shall not apply to an individual, organization or activity which is established or undertaken to avoid compliance with this Ordinance.

2.04 Jurisdiction. This Ordinance shall apply throughout all of Hennepin County as follows:

- A.** A statutory or home rule charter city that maintains a delegation of authority agreement with the Minnesota Department of Health and/or the Minnesota Department of Agriculture to regulate food establishments pursuant to Minnesota Statutes 145A.07 and/or 28A.075 may either:
 - 1. Elect to enforce this Ordinance or a local ordinance; or
 - 2. Provide verification to Hennepin County of its intention to have the Health Authority enforce this Ordinance by submitting a resolution of the City Council or authorized City official to Hennepin County.
- B.** The Health Authority shall be responsible for enforcing this Ordinance for areas within its delegation of authority agreement with the Minnesota Department of Health and the Minnesota Department of Agriculture to regulate food establishments pursuant to Minnesota Statutes 145A.07 and 28A.075. The Health Authority shall also be responsible for enforcing this Ordinance:
 - 1. In food establishments in cities under the provisions in section 2.04, subpart A., 2., of this Ordinance; and
 - 2. In food establishments not delegated by the Minnesota Department of Agriculture pursuant to Minnesota Statutes 28A.075 located within cities maintaining a delegation of authority agreement with the Minnesota Department of Health pursuant to Minnesota Statutes 145A.07.

SECTION 3: DEFINITIONS.

3.01 Food establishment. "Food establishment" means those establishments defined in Minnesota Rules 4626.0020, subpart 35, including an establishment that has an on-sale non-intoxicating malt liquor license; an on-sale intoxicating liquor license; an on-sale wine license and/or strong beer liquor license issued by the State of Minnesota, the municipality within which it is located, or Hennepin County.

3.02 Health Authority. "Health Authority" means the Hennepin County Human Services Department and its designated employees, agents, or contractors, as the Hennepin County Board may designate.

3.03 Other person in charge. "Other person in charge" has the meaning specified in the Minnesota Clean Indoor Air Act Rules, Minnesota Rules, part 4620.0100, subpart 10, as amended from time to time.

3.04 Proprietor. "Proprietor" has the meaning specified by the Minnesota Clean Indoor Air Act Rules, Minnesota Rules, part 4620.0100, subpart 13, as amended from time to time.

3.05 Smoking. "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.

SECTION 4: ADMINISTRATION. Except where otherwise specified, this Ordinance is subject to all provisions of the Hennepin County Administrative Ordinance, Ordinance No. 1, as may be amended from time to time.

SECTION 5: RESPONSIBILITIES OF PROPRIETORS.

5.01 Proprietors or other person in charge shall:

A. Post "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. 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 the food establishment.

SECTION 6: ENFORCEMENT.

6.01 Inspections. Compliance with the requirements of this Ordinance will be verified:

A. As part of a routine food establishment inspection conducted by the Health Authority pursuant to Hennepin County Ordinance No. 3, Food Protection Ordinance;

B. As part of routine food establishment inspection conducted by a statutory or home rule charter city that maintains a delegation of authority agreement with the Minnesota Department of Health and/or the Minnesota Department of Agriculture to regulate food establishments pursuant to Minnesota Statutes 145A.07 and/or 28A.075; or

C. As part of a complaint investigation.

6.02 Access to premises and records. The proprietor or other person in charge shall, upon the request of the Health Authority and after proper identification, permit access to all parts of the establishment as often as necessary, and at any reasonable time for the purpose of inspection and shall exhibit and allow copying of any and all records necessary to ascertain compliance with this Ordinance.

6.03 Interference with the Health Authority. No person shall in any way interfere with or hinder the Health Authority in the performance of duties, or refuse the Health Authority to make such inspections.

SECTION 7: PENALTY.

7.01 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.

7.02 Adverse license action. Violation of any provision of this Ordinance by a proprietor or other person in charge shall be adequate grounds for the denial, refusal to renew, revocation or suspension of a license to operate a food establishment as determined by the Health Authority.

7.03 Civil remedies. In the event of a violation or a threat of violation of this Ordinance, the City Attorney or 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 City Attorney or County Attorney enforcing provisions of this Ordinance may seek costs and disbursements, including attorneys' fees.

7.04 Citations. Whenever the Health Authority 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 case of a corporation or municipality, to any officer or agent expressly or impliedly authorized to accept such issuance.

SECTION 8: FEES. Fees for Health Authority complaint investigation, verification, and enforcement of violations of this Ordinance in food establishments shall be those established by resolution, as amended from time to time, of the Hennepin County Board of Commissioners.

SECTION 9: SEPARABILITY. If any provision or application of this Ordinance is held invalid, that invalidity shall not affect other provisions or applications of this Ordinance.

SECTION 10: CAPTIONS. The captions printed in boldfaced type before sections of this Ordinance are mere catch words to indicate the content of the section.

SECTION 11: EFFECTIVE DATE. After passage by the Hennepin County Board of Commissioners, this Ordinance shall take effect on March 31, 2005.

Printer-Friendly Version

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