

**Beltrami County Smoke Free Ordinance for
Indoor Public Places and Places of Work
Ordinance No. 38A**

The County Board of the County of Beltrami, Minnesota, ordains:

SECTION 1. PURPOSES AND FINDINGS OF FACT.

The Beltrami County Board 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 35,000 to 62,000 Americans each year from heart disease. Secondhand smoke also causes an estimated 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 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 hours is equivalent to smoking 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.

Unregulated electronic delivery devices, commonly referred to as electronic cigarettes, or e-cigarettes, closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine or other substances created by heat through an electronic ignition system. 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 (FDA), July 22, 2009; <http://www.fda.gov/NewEvents/PublicHealthFocus/ucm173146.htm>.)

E-cigarettes produce a vapor of undetermined and potentially harmful substances, which may appear similar to smoke emitted by traditional tobacco products. Their use in workplaces and public places where smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions.

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.

In 2007, the State of Minnesota passed the Freedom to Breathe Act of 2007, found at Chapter 82, Laws of 2007.

By reducing the exposure of young people to adult smoking and unhealthy role modeling, elimination of smoking in public places furthers Minnesota'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 Beltrami County Board finds and declares that the purpose of this Ordinance 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.

SECTION 2. DEFINITIONS.

As used in this Ordinance:

(a) "Indoor area" means all space between a floor and a ceiling as bounded by walls, doorways, or windows, whether opened or closed, covering more than 50 percent of the combined surface area of the vertical panes 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 a wall.

(b) "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.

(c) "Place of employment" means any enclosed, indoor location at which two or more individuals perform any type of a 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 agency. This term includes any location where two or more individuals gratuitously perform services for which individuals are ordinarily paid. 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 employment 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.

(d) "Proprietor" has the meaning specified by the Minnesota Clean Indoor Air Act Rules, Minnesota Rules, part 4620.0 100, subd. 13, as amended from time to time.

(e) "Public meeting" includes all meetings open to the public pursuant to the Minnesota Open Meeting Law.

(f) "Public place" means any enclosed, 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; educational facilities other than public schools, as defined in Minnesota Statutes, section 120A.05, Subd. 9, 11 and 13;

hospitals; nursing homes; auditoriums; arenas; meeting rooms; and common areas of rental apartment buildings.

(g) "Public transportation" means any public means of transportation including light and commuter rail transit; buses; enclosed bus and transit stops; taxis, vans, limousines, and other for-hire vehicles other than those being operated by the lessee; and ticketing, boarding and waiting areas in public transportation terminals.

(h) "Smoking" means the inhaling or exhaling smoke from any lighted cigar, cigarette, pipe or any other lighted tobacco or plant product. Smoking also includes the inhaling or exhaling vapor from an electronic delivery device, commonly known as "vaping".

SECTION 3. PROHIBITIONS.

Subd. 1. Public places, places of employment, public transportation, and public meetings. Except as otherwise provided in this Ordinance, smoking shall not be permitted in and no person shall smoke in a public place, a public meeting, in a place of employment, or in public transportation.

Subd. 2. Building entrances. To ensure that tobacco smoke or electronic delivery device vapor does not enter public places or places of employment, and that persons entering such places are not exposed involuntarily to tobacco smoke, or electronic delivery device vapor, smoking is prohibited within 10 feet of primary public entrances and exits, open windows and ventilation intakes of public places and places of employment.

Subd. 3. Daycare premises. Smoking is prohibited in a daycare center licensed under Minnesota Rules or in a family home or in a group family daycare provider home licensed under Minnesota Rules.

Subd. 4. Healthcare facilities and clinics. Smoking is prohibited in any area of a hospital, healthcare clinic, doctor's office, licensed residential facility for children, or other health care-related facility, except that a patient or resident in a nursing home, boarding care facility, or licensed residential facility for adults may smoke in a designated separate, enclosed room maintained in accordance with applicable state and federal law.

Except as provided in Minnesota Statutes section 246.0141, smoking by patients in a locked psychiatric unit may be allowed in a separate well-ventilated area in the unit under a policy established by the administrator of the program that allows the treating physician to approve smoking, if in the opinion of the treating physician, the benefits to be gained in obtaining patient cooperation with treatment outweigh the negative impacts of smoking.

Subd. 5. Public transportation vehicles. Smoking is prohibited in public transportation vehicles except that the driver a public transportation vehicle may smoke when the vehicle

is being used for personal use. For purposes of this subdivision, "personal use" means that the public transportation vehicle is being used by the driver for private purposes and no for-hire passengers are present. If a driver smokes under this subdivision, the driver must post a conspicuous sign inside the vehicle to inform passengers.

Subd. 6. **Rented or leased rooms.** Smoking is prohibited in:

- (1) Guest rooms in hotels and motels
- (2) Rented or leased cabins at resorts
- (3) Dormitory rooms.

SECTION 4. PERMITTED SMOKING.

Subd. 1. **Scientific study participants.** Smoking by participants in peer reviewed scientific studies related to the health effects of smoking may be allowed in a separated room ventilated at a rate of 60 cubic feet per minute per person pursuant to a policy that is approved by the commissioner and is established by the administrator of the program to minimize exposure of nonsmokers to smoke.

Subd. 2. **Traditional Native American ceremonies.** This Ordinance does not prohibit smoking by a Native American as part of a traditional Native American spiritual or cultural ceremony. For purposes of this section, a Native American is a person who is a member of an Indian tribe as defined in Minnesota Statutes, section 260.755, subdivision 12.

Subd. 3. **Private places.** Except as provided in Minnesota Statutes, section 144.414, subdivision 2, nothing in this Ordinance prohibits smoking in private homes, private residences, or private automobiles when they are not in use as a place of employment as defined in this Ordinance.

Subd 4. **Non-nicotine Sampling Shop.** This Ordinance does not prohibit the sampling of a non-nicotine substance by means of an Electronic Delivery Device by a customer or potential customer for the specific purpose of sampling non-nicotine products. For the purposes of this subdivision, a sampling shop is a retail establishment with an entrance door opening directly to the outside that derives more than 90 percent of its gross revenue from the sale of Electronic Delivery Devices and related accessories and products, and in which the sale of other products is merely incidental. Such establishments are commonly referred to as Vaping Shops. It does not include a department or section of any individual business establishment with any type of liquor, food, or restaurant license.

Subd. 5. **Heavy commercial vehicles.** This Ordinance does not prohibit smoking in the cabs of motor vehicles registered under Minnesota Statutes, section 168.013, subdivision 1e, with a total gross weight of 26,001 pounds or greater.

Subd. 6: Farm vehicles and construction equipment. This Ordinance does not prohibit smoking in farm trucks, as defined in Minnesota Statutes, section 168.011, subdivision 17; implements of husbandry, as defined in Minnesota Statutes, section 168A.01, subdivision 8; and special mobile equipment, as defined in Minnesota Statutes, section 168.011, subdivision 22. This subdivision applies to farm trucks, implements of husbandry, and special mobile equipment, when being used for their intended purposes.

Subd. 7. Family farms. This Ordinance does not prohibit smoking in the house, garage, barns, and other buildings on a family farm that meets the following criteria:

- (1) the family farm is engaged in farming, as defined in Minnesota Statutes, section 500.24, subdivision 2, paragraph (a);
- (2) the family farm meets the definition of family farm under Minnesota Statutes, 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.

Subd. 8. Theatrical productions. This Ordinance does not prohibit smoking by actors and actresses as part of a theatrical performance conducted in compliance with Minnesota Statutes, section 366.01. Notice of smoking in a performance shall be given to theater patrons in advance and shall be included in performance programs.

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, public transportation, place of employment or public meeting shall make reasonable efforts to prevent smoking in the public place, public transportation, place of employment or public meeting by:

(a) Posting "no smoking" signs that comply with the Minnesota Clean Indoor Air Act Rules (Minnesota Rules), part 4620.0500, as amended from time to time.

(b) Ensuring that smoking equipment, including but not limited to ashtrays, lighters, and matchbooks, are not provided in any area where smoking is prohibited.

(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, asking 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 or as trespasser.

(d) The proprietor or other person or entity in charge of a restaurant or bar may not serve an individual who is in violation of this subdivision.

SECTION 6. ADDITIONAL PRIVATE PROHIBITIONS.

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

SECTION 7. 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 Ordinance or other law.

No proprietor, person or entity in charge of a public place, public meeting, place of employment, or public transportation may retaliate or take adverse action against an employee or other person who, in good faith, reports a violation of this Ordinance or the Minnesota Clean Air Act to the proprietor or person in charge of the public place, public meeting, place of employment, or public transportation, or to the Commissioner of Health or other designee responsible for enforcing this Ordinance or the Minnesota Clean Indoor Air Act.

SECTION 8. 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.

SECTION 9. OTHER APPLICABLE LAWS.

This Ordinance 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 Ordinance authorizes smoking in any location where smoking is prohibited or restricted by any other laws.

SECTION 10. VIOLATION AND PENALTIES.

Subd. 1. **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, or to smoke in an area where smoking is prohibited by a private policy established by the proprietor or other person in charge of the area, as authorized by section 6 of this Ordinance.

Subd. 2. **Proprietors.** It is a violation of this Ordinance for the proprietor, person, or entity that owns, leases, manages, operates, or otherwise controls the use of an area in which smoking is prohibited under this Ordinance to knowingly fail to comply with the provisions of this Ordinance.

Subd. 3. **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 after having been determined to have committed a previous violation shall be guilty of a misdemeanor. Each day of violation constitutes a separate offense.


Subd. 4. **Enforcement.** This Ordinance shall be enforced by the Local City Police and County Sheriffs Department or other enforcement agencies designated by the county.

SECTION 11. 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.

SECTION 12. ADOPTION OF ORDINANCE

This Ordinance is hereby adopted by the Beltrami County Board of Commissioners the 18th day of September, 2007, and amended by the Beltrami County Board of Commissioners on the 3rd day of December, 2013.

By  _____
~~Chair~~ Jack Frost, Vice-Chair
Beltrami County Board of Commissioners

Attest:
 _____
Kay Mack
Beltrami County Administrator

AFFIDAVIT OF PUBLICATION

State of Minnesota, }
County of Beltrami } SS

DENNIS DOEDEN, being duly sworn, on oath says that he is the Publisher of the Newspaper known as THE PIONEER, and has full knowledge of the facts which are stated below:

(A) The newspaper has complied with all of the requirements constituting qualifications as a qualified newspaper, as provided by Minnesota Statute 331A.02, 331A.07, and other applicable laws, as amended.

(B) The printed Beltrami Co. Auditor/Hearing 11-19 Amend Ord 29/38 which is attached was cut from the columns of said newspaper, and was printed and published once each day, for One successive days; it was first published on Wednesday, the 6th day of November, 2013, and was thereafter printed and published on every Wednesday to and including Wednesday, the 6th day of Nov., 2013; and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice:

abcdefghijklmnopqrstuvwxyz
BY *Dennis Doeden*

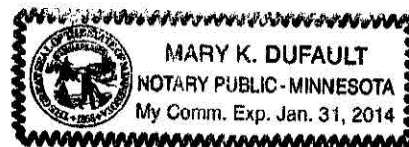
TITLE: Publisher

Subscribed and sworn to before me on this 6th day of Nov., 2013
Mary Dufault
Notary Public

RATE INFORMATION

- (1) Lowest classified rate paid by commercial users for comparable space \$ 10.45
- (2) Maximum rate allowed by law for the above matter \$ 10.45
- (3) Rate actually charged for the above matter \$ 5.65

Rate information is based on the cost of one lower case alphabet.



LEGAL ADVERTISEMENT - NOTICE OF PUBLIC HEARING
Notice of Intent to Amend Ordinance 29: Tobacco, Alcohol and Sales Regulation
 Ordinance 29 is currently in effect for In-Home Sales of Alcohol in Beltrami County.
 Notice is hereby given that the Beltrami County Board of Commissioners will hold a Public Hearing on the proposed Ordinance to be adopted by the Board of Beltrami County, Minnesota, on Tuesday, November 19, 2013, at 5:00 PM in the County Board Room, at the County Administration Building, 201 Minnesota Street, Bemidji, Minnesota.
 A complete copy of the proposed Ordinance is available for public review at the County Administrator's Office, Second Floor, Beltrami County Administration Building, 201 Minnesota Street, Bemidji, MN 56601 or may be seen on the Beltrami County website: www.co.beltrami.mn.us
 Dated this 5th day of November, 2013.
 County Administrator

COPY

AFFIDAVIT OF PUBLICATION

State of Minnesota, }
County of Beltrami } SS

DENNIS DOEDEN, being duly sworn, on oath says that he is the Publisher of the Newspaper known as THE PIONEER, and has full knowledge of the facts which are stated below:

(A) The newspaper has complied with all of the requirements constituting qualifications as a qualified newspaper, as provided by Minnesota Statute 331A.02, 331A.07, and other applicable laws, as amended.

(B) The printed Beltrami County Auditor/Notice of Amendment of Ordinances #29 Tobacco & #38A which is attached was cut from the columns of said newspaper, and was printed and published once each day, for One successive days; it was first published on Tuesday, the 28th day of January, 2014, and was thereafter printed and published on every Tuesday to and including Tuesday, the 28th day of January, 2014; and printed below is a copy of the lower case alphabet from A to Z, both inclusive, which is hereby acknowledged as being the size and kind of type used in the composition and publication of the notice:

abcdefghijklmnopqrstuvwxyz

BY: *Dennis Doeden*

TITLE: Publisher

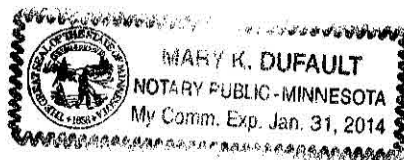
Subscribed and sworn to before me on this 28th day of Jan, 2014.

Mary Dufault
Notary Public

RATE INFORMATION

- (1) Lowest classified rate paid by commercial users for comparable space \$ 10.45
- (2) Maximum rate allowed by law for the above matter \$ 10.45
- (3) Rate actually charged for the above matter \$ 5.75

Rate information is based on the cost of one lower case alphabet.



CLASSIFIED

Notice of Amendment of Ordinances #29 Tobacco & #38A
Beltrami County Auditor
Education
Ordinances
of Beltrami County
Beltrami County Auditor
Notice of Amendment of Ordinances #29 Tobacco & #38A
Full copies of the amended ordinances are on file with the Beltrami County Auditor, Treasurer, 701 Minnesota Avenue, Bemidji, MN 56601, and may also be found on the Beltrami County website, www.beltrami.org
Kay L. Mack, Beltrami County Administrator

LEGAL ADVERTISEMENT
NOTICE OF MORTGAGE
FORECLOSURE SALE