

CITY OF DULUTH, MINNESOTA

LEGISLATIVE CODE, 1959, AS AMENDED

CHAPTER 28. HEALTH AND SANITATION.

Article VII. Smoking in Public Places.

Sec. 28-62. Findings of fact and statement of purpose.

(a) The Duluth City Council finds the following facts to exist:

(1) Tobacco smoke is a major contributor to indoor air pollution, and breathing second hand smoke is a cause of disease, including lung cancer, in nonsmokers. At special risk are children, elderly people, individuals with cardiovascular disease and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Many of these individuals cannot go into public places with second hand smoke due to their respiratory or allergenic handicap; and

(2) Health hazards induced by breathing second hand smoke include, but are not limited to, lung cancer, heart disease, respiratory infection and decreased respiratory function; and

(3) The simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to environmental tobacco smoke for which there is no known safe level of exposure. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9490, 5-29-2001, § 1.)

Sec. 28-63. Definitions.

For the purposes of this Article, the following words and phrases shall have the meaning hereinafter ascribed to them:

(a) Central Hillside Park shall mean that property bounded by Lake Avenue, Third Street, First Avenue East and Fourth Street, commonly referred to as "Central Hillside Park";

(b) Electronic cigarette shall mean any electronic-smoking device that can be used to deliver nicotine or any other substances to the person inhaling from the device. The term shall include such devices whether they are manufactured as electronic cigarettes, electronic cigars, electronic pipes or any other product name;

(c) Kitchi Gammi Park, for the purposes of this Article only, shall mean that park located on land located between Congdon Boulevard and Lake Superior and between the Lester River and 69th Avenue East;

(d) Lake Place shall mean that structure elevated over the right-of-way of Interstate Highway 35 between Lake Avenue and Fourth Avenue East containing park-like amenities;

(e) Lakewalk shall mean the constructed trail surface of that recreational trail running in close proximity to Lake Superior from the Duluth Aerial Lift Bridge to 26th Avenue East and from there following the platted railroad right-of-way of the Duluth, Missabe and Iron Range Railroad to east side of the Lester River and thereafter connecting to and located in Kitchi Gammi Park;

(f) Leif Ericson Park shall mean that property used for park purposes located between the platted railroad right-of-way of the Duluth, Missabe and Iron Range Railroad and the shoreline of Lake Superior and between Eighth Avenue East and 13th Avenue East;

(g) Medical facility shall mean any medical hospital, medical or dental clinic;

(h) Prohibited substances shall mean any tobacco related product, electronic cigarette and any other substance labeled as not safe for or intended for human consumption;

(i) Public place shall mean any public street, public sidewalk, public easement, publicly owned property, public park, publicly owned or operated parking lot or parking facility;

(j) Smoke shall mean the gases, particles or vapors released into the atmosphere as a result of combustion, electrical ignition or vaporization of or by any prohibited substance;

(k) Smoking shall mean inhaling or exhaling smoke from any instrumentality, including but not limited to any cigar, cigarette, pipe, hookah pipe or an operating electronic cigarette, or having in possession any such instrumentality producing smoke or engaging in any act that generates smoke;

(l) Tobacco related products shall mean any product containing, made or derived from tobacco that is intended for human consumption, or any component, part, or accessory of a tobacco product, including but not limited to tobacco found in cigars and cigarettes, tobacco intended to be used in pipes or cigarettes, chewing tobacco, moist or dry snuff, dissolvable tobacco products and electronic cigarettes and any other product containing, made or derived from tobacco that is intended or expected to be consumed with or without being combusted but does not include any tobacco product that has been approved by the United States food and drug administration for sale as a tobacco cessation product, tobacco dependent product or for other medical purposes and is marketed and sold only for those purposes. (Added by Ord. No. 10174, 9-10-2012, § 1; Ord. No. 10242, 9-9-2013, § 1; Ord. No. 10244, 9-9-2013, § 1.)

Sec. 28-64. Ingesting a prohibited substance--prohibited in certain places.

(a) No person shall ingest by smoking or chewing any prohibited substance at or in any of the following locations:

- (1) Anywhere smoking is prohibited by the Minnesota Clean Indoor Air Act;
- (2) Inside any Duluth Transit Authority transit shelter;
- (3) Within 15 feet from the nearest point of any Duluth Transit Authority transit shelter which displays at least two signs visible from the exterior of the shelter providing notice of this prohibition, said 15 feet measured in a straight line of constant elevation;
- (4) Anywhere in Wade Stadium that is open to the public except in areas designated for such consumption;
- (5) Within 100 feet of the nearest property line of a medical facility, said 100 feet measured in a straight line of constant elevation; provided that this prohibition does not apply to a person inside an enclosed motor vehicle in motion on a public street or alley;
- (6) On the Lakewalk, on Lake Place or in Leif Ericson Park;
- (7) Within the indoor area of any establishment with a retail tobacco license, including smoking for the purpose of sampling prohibited substances;
- (8) In Central Hillside Park;

(b) Any person violating this Section is guilty of a petty misdemeanor or may be penalized under Chapter 12 of the Duluth City Code, 1959, as amended;

(c) Signage to enforce the provisions of this ordinance shall be approved by the city of Duluth. (Added by Ord. No. 10174, 9-10-2012, § 2; Ord. No. 10241, 9-9-2013, § 1; Ord. No. 10244, 9-9-2013, § 2.)

Secs. 28-65 to 28-68. Repealed by Ordinance No. 10049, 9-13-2010, § 7.

Sec. 28-69. Other applicable laws.

This ordinance [Article] is intended to complement the Minnesota Clean Indoor Air Act, Minnesota Statute Sec. 144.411 to 144.417, as amended from time to time. Nothing in this ordinance [Article] authorizes smoking in any location where smoking is restricted by other applicable laws. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9490, 5-29-2001, § 1.)

Sec. 28-70. Private right of action.

In addition to the penalties provided in Section 28-64(b), any person injured by a repeated or continuing violation of the Article may bring a civil action against the proprietor or other person in charge of a public place to enjoin further violations. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9490, 5-29-2001, § 1; Ord. No. 9611, 7-28-2003, § 28; Ord. No. 10174, 9-10-2012, § 3.)

Sec. 28-71. Severability.

If any portion of this ordinance [Article], 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. (Ord. No. 9448, 6-12-2000, § 1; Ord. No. 9475, 12-21-2000, § 2; Ord. No. 9490, 5-29-2001, § 1.)

Sec. 28-72. Smoking outdoors--near medical facilities.

- (a) Medical facility means any medical hospital, medical or dental clinic;
- (b) Public place means any public street, public sidewalk, public easement, publicly owned property, public park, publicly owned or operated parking lot or parking facility;
- (c) Smoke or smoking means the use or possession of a lighted cigar, cigarette, electronic cigarette, pipe, tobacco smoking device or any other lighted smoking equipment;
- (d) No person shall smoke in any public place within 100 feet of the nearest property line of a medical facility, said 100 feet measured in a straight line of constant elevation;
- (e) The prohibition of (d), above, does not apply to a person inside an enclosed motor vehicle in motion on a public street or alley. (Ord. No. 9792, 9-25-2006, § 1; Ord. No. 10242, 9-9-2013, § 2.)