

Preparing For Smoke-Free Devils Lake



Tool Kit for Workplaces

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How to Go Smoke-Free In One Week

Smoke-free bar/truck stop/rentals ordinance goes into effect on July 1, 2011 at 12 A.M. in the City of Devils Lake. That doesn't allow much time, but there is no reason to panic. All bars and truck stops in Devils Lake will be smoke-free. Employees and customers are free to smoke outside.

1. Inform your employees of the time and date of the transition.
2. Remove all ashtrays before opening time on July 1.
3. Post "NO SMOKING" signs in prominent places, including restrooms.
4. Train your employees about the law, including what to say to smoking customers. Always be courteous – for example:

"I'm sorry – you will need to smoke outside. All workplaces in our city are now smoke-free. Thank you."

"City ordinance requires that our business be smoke free. Thank you for smoking outside."

Frequently Asked Questions

Q1. What does the law require me to do?

Beginning Friday, July 1 at 12 A.M. your indoor establishment must become smoke-free. If you see customers smoking, they need to be asked to smoke outside.

Q3. Are businesses required to post no smoking signs?

No, signs are not required. However, signs are recommended to encourage compliance with the law. You may contact the Tobacco Prevention Coordinator at Lake Region District Health to get signs.

Q2. What about smoking in the outdoor section of a bar?

That answer depends upon the provisions of your city liquor license. There are many definitions of “licensed premises”. If in doubt, please check with the Devils Lake City Auditor’s Office, 423 6th Street, 701-662-7600.

Q3. Do smokers need to be a distance away from an entryway in order to smoke?

No. The law states that smoking is not permitted on public property or right of way, and smoke does not enter any area where smoking is prohibited.

Q4. Can I build a smoking shelter?

Given the number of communities and states passing comprehensive smoke-free laws, it is likely that smoke-free areas will become the North Dakota Statewide standard in the future. While building a smoking shelter is an option for your business, we do not recommend that businesses invest resources into building these shelters.

Q5. How do I deal with people who want to smoke?

Remind them that all bars and truck stops in the City of Devils Lake are now smoke-free due to the new city ordinance. Let them know they are welcome to smoke outside.

Q6. What do I do about a customer who refuses to comply?

Use common sense. Smokers are not criminals. The purpose of the law is to protect others from the harmful effects of secondhand smoke. If you see customers smoking, you must ask them not to smoke indoors. Tell them that you are simply complying with the law. You need ***not*** call the police unless the violator is threatening physical harm or is being belligerent in the process.

Q7. Many of my employees are smokers. Can I provide an indoor break room for them?

No. The law requires that all enclosed areas of public places and places of employment be completely smoke free.

Q8. Are there any penalties if my business allows smoking?

Yes. There is a penalty clause in the North Dakota Century Code, on Page 10 of this Tool Kit. We are optimistic that enforcement complaints can be handled through Lake Region District Health and that no penalties need be assigned.

Q9. How can I help my employees to quit smoking if they are interested?

Please refer those employees to the Tobacco Prevention Coordinator at Lake Region District Health Unit, 701-662-7035, or North Dakota Quitline, 1-800-QUIT-NOW (1-800-784-8669). Both are affordable options with opportunities for free Nicotine Replacement Therapy. Call for details.

Benefits of Being Tobacco-Free

**From: Make It Your Business: A Tobacco-Free Workplace
North Dakota Department of Health**

1. Protect your employee's health.

- Employees exposed to secondhand smoke on the job are 34% more likely to get lung cancer.
- A smoke-free workplace will attract more employees since four out of five adults in North Dakota do not smoke.

2. Lower your costs.

- The CDC puts a \$3,383 price tag on each employee who smokes: \$1,760 in lost productivity and \$1,623 in excess medical expenditures.
- The Environmental Protection Agency (EPA) estimates that smoke-free restaurants can expect to save about \$190 per 1,000 square feet each year in lower cleaning and maintenance costs.
- Businesses pay an average of \$2,189 in workers' compensation costs for smokers, compared with \$176 for nonsmokers.
- The National Fire Protection Association found that in 1998 smoking materials caused 8,700 fires in nonresidential structures, resulting in direct property damage of \$60.5 million.
- Fire insurance is commonly reduced 25 percent to 30 percent in smoke-free businesses.
- The American Cancer Society reports that employees who smoke have an average insured payment for health care of \$1,145, while non smoking employees average \$762.

3. Increase productivity and morale.

- Employee morale suffers when nonsmoking employees are forced to be exposed to secondhand smoke.
- Smoking in the workplace causes inefficiency, errors, eye irritation and lower attentiveness.
- Employees who take four 10-minute breaks a day to smoke actually work one month less per year than workers who don't take smoking breaks.

4. Reduce absenteeism.

- Smokers, on average, miss 6.16 days of work per year due to sickness, compared to nonsmokers, who miss 3.86 days of work per year.

5. Protect yourself from possible liability.

- Reduce the risk of lawsuits being filed by employees who become ill from working in the smoking section and breathing secondhand smoke.
- Eliminate disability claims based on secondhand smoke exposure.
- Prevent violations of the Americans with Disabilities Act that result from limiting access by people with respiratory problems who cannot patronize or work in your business due to tobacco smoke pollution.

The bottom line: Being tobacco-free adds up. It's the right thing to do – for the health of your employees and customers AND for the wealth of your business.

Local Resources

Devils Lake City Administrator

Terry Johnston 701-662-7600 ext.1

Lake Region District Health

Tobacco Prevention Coordinator 701-662-7035

Visit: <http://www.lakeregiontobaccofree.com>



www.nd.quitnet.com

ORDINANCE NO. 892

AN ORDINANCE, WHICH UPON ADOPTION, SHALL BE CODIFIED AS CHAPTER 8.30 OF THE DEVILS LAKE MUNICIPAL CODE.

BE IT ORDAINED, by the City Commission of the City of Devils Lake, North Dakota, pursuant to the Home Rule Charter of the City of Devils Lake, that Ordinance No. 892 shall be codified as Chapter 8.30 of the Municipal Code, shall be adopted to provide as follows:

8.30.010 SMOKING IN PUBLIC INDOOR WORKPLACES PROHIBITED:

A. The provisions of Sections 23-12-09 through 23-12-11 of the North Dakota Century Code as now enacted, are hereby adopted, except as provided in Section B, and shall govern the regulation of smoking in public places and places of employment as if set out in this Chapter.

B. The exemptions from the prohibition of smoking in public places set forth in Section 23-12-10 (2) f, g, and h, as set out below, are deleted, and smoking is also prohibited in those places within the city limits:

- f. Bars.
- g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.
- h. Separately enclosed areas in truck stops which are accessible only to adults.

C. Any business in which smoking is not permitted may construct a smoking shelter for customers or employees to smoke outside the enclosed premises for which smoking is prohibited. Provided, if the smoking shelter has a roof, at least three walls of the smoking shelter must provide an opening of at least 25% of the surface area of each such wall. No other wall, fence, roof overhang or other obstruction of any kind may be located within five feet of the openings if they have the effect of blocking the free flow of air through the required openings. The percentage of the opening is calculated based on the surface area below the ceiling. Combination glass/screen windows or doors that may be "open" or "closed" will not be counted toward the open space of a shelter. If one wall of the shelter is also a wall for the business, that wall must be a solid wall with no openings other than a solid door, which door must be closed at all times except for people entering or exiting the shelter. In addition, if the shelter has a roof and is attached to the business, a power ventilator must be installed in the shelter at its highest point and used whenever smoking is occurring in the shelter. A proper building permit must be obtained for each shelter. If the smoking shelter area is added to the licensed liquor premises, customers may bring alcoholic beverages and food into the shelter, but no service of alcoholic beverages or food will be allowed in the smoking shelter. At least one entrance of a licensed liquor premises must not require a customer to go through a smoking shelter to enter the licensed premises.

D. Smoking is permitted on outdoor patios, terraces, decks, courtyards, sidewalks, or porches of a bar, provided it is not on public property or right of way, and smoke does not enter any area where smoking is prohibited. The outdoor patio, terrace, deck, courtyard, sidewalk, or porch must comply with all building codes. Alcoholic beverages or food are allowed to be consumed, but not served, on the outdoor patio, terrace, deck, courtyard, sidewalk, or porch, provided it is included as part of the licensed premises of the bar.

8.30.020 **Penalty**

A. An individual who smokes in an area in which smoking is prohibited by this Chapter is guilty of an infraction.

B. An owner or other person with the general supervisory responsibility over a public place or place of employment who willfully fails to comply with this chapter is guilty of an infraction, subject to a fine not to exceed one hundred dollars for the first violation, to a fine not to exceed two hundred dollars for the second violation within one year, and a fine not to exceed five hundred dollars for each additional violation within one year of a preceding violation.

**NORTH DAKOTA CENTURY CODE
CHAPTER 23-12
PUBLIC HEALTH, MISCELLANEOUS PROVISIONS**

23-12-09. Smoking in public places and places of employment - Definitions.

In sections 23-12-09 through 23-12-11, unless the context or subject matter otherwise requires:

1. "Bar" means a retail alcoholic beverage establishment licensed under chapter 5-02 that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages. The term includes a bar located within a hotel, bowling center, or restaurant that is not licensed primarily or exclusively to sell alcoholic beverages if the bar is in a separately enclosed area.
2. "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or other business entity, either for profit or not for profit, including retail establishments where goods or services are sold and professional corporations and other entities where professional services are delivered.
3. "Employee" means an individual who is employed by an employer in consideration for direct or indirect monetary wages or profit, or an individual who volunteers services for an employer.
4. "Employer" means an individual, business, or the state and its agencies and political subdivisions that employs the services of one or more individuals.
5. "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.
6. "Health care facility" means any office or institution providing health care services, including a hospital; clinic; ambulatory surgery center; outpatient care facility; nursing, basic, or assisted living facility; and laboratory.
7. "Health care services" include medical, surgical, dental, vision, chiropractic, and pharmaceutical services.
8. "Place of employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including work areas, auditoriums, classrooms, conference rooms, elevators, employee cafeterias, employee lounges, hallways, meeting rooms, private offices, restrooms, and stairs.
9. "Public place" means an enclosed area to which the public has access or in which the public is permitted, including a publicly owned building or office, and enclosed areas available to and customarily used by the general public in businesses and nonprofit entities patronized by the public, including bars; bingo facilities; child care facilities subject to licensure by the department of human services, including those operated in private homes when any child cared for under that license is present; convention facilities; educational facilities, both public and private; facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance; financial institutions; health care facilities; hotels and motels; laundromats; any common areas in apartment buildings, condominiums, mobile home parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; museums, libraries, galleries, and aquariums; polling places; professional offices; public transportation facilities, including buses and taxicabs, and ticket, boarding, and waiting areas of public transit depots; reception areas; restaurants; retail food production and marketing establishments; retail service establishments; retail stores; rooms, chambers, places of meeting or public assembly, including school buildings; service lines; shopping malls; sports arenas, including enclosed places in outdoor arenas; theaters; and waiting rooms.
10. "Publicly owned building or office" means a place owned, leased, or rented by any state or political subdivision, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of taxes.
11. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith that are kept, used, maintained, advertised, or held out to the public as a place where food is served, including coffee shops, cafeterias, private and public school cafeterias, kitchens, and

catering facilities in which food is prepared on the premises for serving elsewhere, and a bar area within a restaurant.

12. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

13. "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional businesses.

14. "Smoking" means possessing a lighted cigar, cigarette, pipe, weed, plant, or any other lighted tobacco product in any manner or in any form.

15. "Sports arena" means any facility or area, whether enclosed or outdoor, where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling centers.

16. "Truck stop" means a roadside service station and restaurant that caters to truck drivers.

23-12-10. Smoking restrictions - Exceptions - Retaliation - Application.

1. In order to protect the public health and welfare and to recognize the need for individuals to breathe smoke-free air, smoking is prohibited in all enclosed areas of:

a. Public places; and

b. Places of employment.

2. The following areas are exempt from subsection 1:

a. Private residences, except when operating as a child care facility subject to licensure by the department of human services and when any child cared for under that license is present in that facility.

b. Hotel and motel rooms, and other places of lodging, that are rented to guests and are designated as smoking rooms.

c. Retail tobacco stores, provided that smoke from these places does not infiltrate into areas where smoking is prohibited under this section.

d. Outdoor areas of places of employment, except a sports arena.

e. Any area that is not commonly accessible to the public and which is part of an owner-operated business having no employee other than the owner-operator.

f. Bars.

g. Any place of public access rented or leased for private functions from which the general public and children are excluded and arrangements for the function are under the control of the function sponsor.

h. Separately enclosed areas in truck stops which are accessible only to adults.

3. Smoking as part of a traditional American Indian spiritual or cultural ceremony is not prohibited.

4. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or other person because that person asserts or exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.

5. This section may not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

23-12-10.1. Responsibility of proprietors. Repealed by S.L. 2005, ch. 239, § 7.

23-12-10.2. Complaints and enforcement - City and county ordinances and home rule charters.

1. State agencies with statutory jurisdiction over a state-owned building or office shall enforce section 23-12-10. These agencies include the fire marshal department, state department of health, department of human services, legislative council, and office of management and budget. The agencies may mutually agree as to the manner in which enforcement is to be accomplished and may adopt administrative rules to ensure compliance with section 23-12-10, including referral of violations to an appropriate law enforcement agency for enforcement pursuant to section 23-12-11.

2. A city or county ordinance, a city or county home rule charter, or an ordinance adopted under a home rule charter may not provide for less stringent provisions than those provided under sections 23-12-09 through 23-12-11. Nothing in this Act shall preempt or otherwise affect any other state or local tobacco

control law that provides more stringent protection from the hazards of environmental tobacco smoke. This subsection does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.

23-12-10.3. Exceptions - Medical necessity.

1. Notwithstanding the provisions of any other state or local law, a patient may smoke in a hospital licensed by the state or on the grounds of a hospital licensed by the state if the patient's attending physician authorizes the activity based on medical policies adopted by the hospital organized medical staff.
2. Notwithstanding the provisions of any other state or local law, a resident of a licensed basic care facility or a licensed nursing facility may smoke in the facility or on the grounds of the facility if approved by the board of the facility.

23-12-11. Penalty.

1. An individual who smokes in an area in which smoking is prohibited under section 23-12-10 is guilty of an infraction.
2. An owner or other person with general supervisory responsibility over a public place or place of employment who willfully fails to comply with section 23-12-10 is guilty of an infraction, subject to a fine not to exceed one hundred dollars for the first violation, to a fine not to exceed two hundred dollars or a second violation within one year, and a fine not to exceed five hundred dollars for each additional violation within one year of the preceding violation.