

TOBACCO ORDINANCE

Ordinance # 125

The County of Dakota ("County") hereby establishes an ordinance relating to the sale, possession and use of tobacco, tobacco products and tobacco related devices in the County and to reduce the illegal sale, possession, and use of such items to and by minors.

Section 100. Purpose. Because the County recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products and tobacco related devices, and such sales, possession and use are violations of both state and federal laws; and because smoking has been shown to be the cause of several severe health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale, possession and use of tobacco, tobacco products and tobacco related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products and tobacco related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minnesota Statutes, Section 144.391.

Section 200. Definitions and Interpretations. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

Subd. 1. Tobacco or Tobacco Products. "Tobacco" or "Tobacco Products" shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.

Subd. 2. Tobacco Related Device. "Tobacco Related Device" shall mean any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enabled the chewing, sniffing, or smoking of tobacco or tobacco products.

Subd. 3. Self Service Merchandising. "Self Service Merchandising" shall mean open displays of tobacco, tobacco products or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products or tobacco related devices, without the assistance or intervention of the licensee or the licensee's employee. Such assistance or intervention shall involve the actual physical exchange of the tobacco, tobacco product or tobacco related device between the customer and

the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 4. Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, self service device which upon the insertion of money, tokens or other form of payment dispenses tobacco products and includes vending machines equipped with manual, electric or electronic locking devices.

Subd. 5. Individually Packaged. "Individually Packaged" shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

Subd. 6. Loosies. "Loosies" shall mean the common term used to refer to a single or individually packaged cigarette.

Subd. 7. Minor. "Minor" shall mean any person who has not yet reached the age of eighteen (18) years.

Subd. 8. Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco products or tobacco related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores and restaurants.

Subd. 9. Moveable Place of Business. "Moveable Place of Business" shall refer to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

Subd. 10. Sale. A "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 11. Compliance Checks. "Compliance Checks" shall mean the system the Dakota County Sheriff uses to investigate and ensure that those authorized to sell tobacco, tobacco products and tobacco related devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products or tobacco related devices for educational, research and training purposes as authorized by state and federal laws.

Subd. 12. Treasurer/Auditor. "Treasurer/Auditor" means the Dakota County Treasurer/Auditor or designee.

Subd. 13. County Board. "County Board" means the Dakota County Board of Commissioners.

Section 300. License. No person shall sell or offer to sell any tobacco, tobacco products or tobacco related device without first having obtained a license to do so from the Dakota County Treasurer/Auditor ("Treasurer/Auditor"), or such other County office which the County Board may from time to time designate to carry out the duties of the Treasurer/Auditor otherwise set forth in this Ordinance.

Subd. 1. Application. An application for license to sell tobacco, tobacco products or tobacco related devices shall be made on a form provided by the Treasurer/Auditor. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, the name of the proposed licensed holder, and a copy of the educational materials the applicant intends to use to educate employees, and any additional information the Treasurer/Auditor deems necessary. The completed application and fee, are submitted to the Treasurer/Auditor for approval. If the Treasurer/Auditor determines that an application is incomplete, it shall be returned to the applicant with notice of the deficiencies.

Subd. 2. Action. The Treasurer/Auditor, in consultation with the Dakota County Department of Public Health, may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Treasurer/Auditor approves the license, the Treasurer/Auditor shall issue the license to the applicant. If the Treasurer/Auditor denies the license, notice of the denial shall be sent to the applicant at the business address provided on the application with the reason(s) for the denial. The notice shall also inform the applicant of the right to appeal the Treasurer/Auditor's decision to the hearing officer appointed by the Dakota County Board of Commissioners, pursuant to the process set forth in Section 1400 herein. If a license is mistakenly issued to an applicant or license holder, or renewed, it shall be revoked by the Treasurer/Auditor upon the discovery that the person, applicant, or applicant, or license holder was ineligible for the license under this section.

Subd. 3. Term. All licenses shall be issued for a period of two years. The license period is from January 1 to December 31.

Subd. 4. Transfers. All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the Treasurer/Auditor.

Subd. 5. Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

Subd. 6. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 7. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but no more than sixty days before the expiration of the current license. The issuance of a license under this ordinance shall be considered a privilege and not a right of the applicant and shall not entitle the holder to automatic renewal of the license.

Subd. 8. Instructional Program. No person shall be issued a license or renewal license to sell tobacco-related products unless an applicant or license holder has a program for instructing all employees regarding the legal requirements pertaining to the sale of tobacco-related products at the business premises for which the license was issued. The instructional program shall include, but is not limited to, reviewing the law on the sale of tobacco-related products and requiring employees to request identification from every customer who is under 27 years of age. The training shall include information that the sale of tobacco-related products to minors is illegal, explanation of what proof of age is legally acceptable, and that a sale to a minor can subject the applicant or license holder and their employees to criminal and/or civil liability.

Section 400. Fees. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be a set in accordance with a fee schedule adopted by the County Board.

Section 500. Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license under this ordinance. The following list is not exhaustive or exclusive.

- A. The applicant is under the age of eighteen (18) years.
- B. The applicant or license holder has had a license to sell tobacco, tobacco products or tobacco related devices revoked within the preceding twelve months of the date of application, or is subject to penalties under section 1300.
- C. The applicant or license holder fails to provide any information required on the application, or provides false or misleading information.
- D. The applicant or license holder is prohibited by federal, state, or other local law, ordinance or other regulation from holding such a license.
- E. The applicant or license holder has outstanding fines, penalties, or property taxes owed to the county.

Section 600. Prohibited Sales.

1. It shall be a violation of this ordinance for any person to sell, offer for sale, give away, furnish, or otherwise deliver any tobacco, tobacco product or tobacco related device:

A. To any person under the age of eighteen (18) years.

B. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

C. By means of self-service merchandising whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product or tobacco related device between the licensee or the licensee's employee and the customer. All tobacco-related products shall be stored behind a counter.

D. By means of loosies as defined in Section 200 of this ordinance.

E. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.

F. By any other means, to any other person, in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

2. Exception. This subdivision shall not apply to retail stores which derive at least 90% of their revenue for tobacco and tobacco-related products and which can not be entered at any time by persons younger than 18 years of age.

Section 700. Self Service Sales. It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products or tobacco related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product or the tobacco related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products and tobacco related devices shall either be stored behind a counter or other area not freely accessible to customers or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products or tobacco related devices at the time this ordinance is adopted shall comply with this section within 90 days. New retailers selling tobacco commencing business after the adoption of this ordinance shall comply with this section immediately.

Section 800. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco related devices on the

licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder.

Section 900. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the county official during regular business hours. From time to time, but at least once per year, a law enforcement officer or other county employee designated by the County Board, shall conduct compliance checks to ensure compliance with the provisions of this ordinance. Such compliance checks shall utilize, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premise to attempt to purchase tobacco, tobacco products or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated county personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, or the unlawful possession of tobacco, tobacco products or tobacco related devices when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit other compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

Section 1000. Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance.

Subd. 1. Illegal Sales. It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product or tobacco related device to any minor.

Subd. 2. Illegal Possession. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 3. Illegal Use. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product or tobacco related device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product or tobacco related device. This subdivision shall not apply to minors lawfully involved in compliance check.

Subd. 4. Use of False Identification. It shall be a violation of this ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with, to represent an age older than the actual age of the person.

Section 1100. Civil Enforcement. The license holder shall be responsible for the conduct of its agents or employees while they are on the licensed premises. Any violation of this Ordinance shall be considered an act of the license holder for purposes of imposing a civil penalty, license suspension, or revocation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Section 1200. Violations.

Subd. 1. Notice. Upon discovery of a suspected violation, the Dakota County Sheriff's Office shall inform the Treasurer/Auditor of the suspected violation. The Treasurer/Auditor shall then send to the license holder, by mail, a written notice of the civil violation. The notice shall inform the license holder of the penalty and the license holder's right to request a hearing regarding the violation of this ordinance pursuant to section 1400.

Section 1300. Penalties.

Subd. 1. Licensees. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine as set forth below:

a. First Violation. The first violation of this ordinance shall be punishable by a civil penalty of \$75.

b. Second Violation. The second violation of this ordinance shall be punishable by a civil penalty of \$200 for a second offense and a one day suspension of license where the second violation occurs at the same licensed premises as the first violation, within a twenty-four month period.

c. Third or Subsequent Violations. The third violation of this ordinance shall be punishable by a civil penalty of \$250 for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven days.

Subd. 2. Other Individuals. Individuals found to be selling tobacco to minors in violation of this ordinance shall be charged an administrative fee of \$50.

Subd. 3. Misdemeanor and other Prosecution. Nothing in this section shall prohibit the County Attorney from seeking prosecution as a misdemeanor for any violation of this ordinance, or from enforcing any other applicable state or federal law or regulation in addition to or instead of any civil enforcement remedy that may be sought under this Ordinance.

Section 1400. Hearings and Appeals.

a. General. Following receipt of a notice of denial issued under section 300 or a notice of violation and penalty issued under section 1300 or a notice of revocation, an applicant or

license holder may request hearing before the appointed hearing officer by the County Board, or his designee. A request for a hearing shall be made by the applicant or license holder in writing and filed with the Treasurer/Auditor within 10 days of the mailing of the notice of desired or alleged violation. Following receipt of a written request for hearing, the applicant or license holder shall be afforded an opportunity for a hearing before the hearing officer.

b. Findings. If after the hearing the application license holder is found ineligible for a license, or in violation of this ordinance, the hearing officer may affirm the denial, impose a fine, issue a suspension or revocation, or impose any combination therefore. The decision shall be in writing and set forth the reasons for the findings of the hearing officer. A copy shall be provided to the applicant or license holder. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the applicant or license holder.

c. Decision. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officers reasons for finding a violation and the penalty to be imposed under Section 1300 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

d. Default. If the applicant or license holder has been provided written notice of the denial or violation and if no request for a hearing is filed within the ten (10) day period, then the denial, penalty, suspension and/or revocation imposed pursuant to this ordinance shall take immediate effect by default. The Treasurer/Auditor shall mail the notice of the denial, fine, suspension, and/or revocation to the applicant or license holder.

e. Hearings. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

f. Hearing Officer. Such hearing shall be held before a hearing examiner as determined by the County Board, and shall be open to the public.

g. Appeals. Any appeal of the decision of the hearing officer must be filed with the District Court within 10 days of the mailing of the hearing officer's decision.

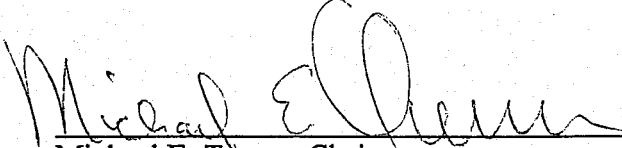
Section 1500. Exceptions and Defenses.

Subd. 1. Religious, Spiritual or Cultural Ceremony. Nothing in this ordinance shall prevent the providing of tobacco, tobacco products of tobacco related devices to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony.

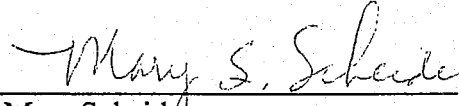
Subd. 2. Reliance on Proof of Age. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

Section 1600. Severability and Savings Clause. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this ordinance.

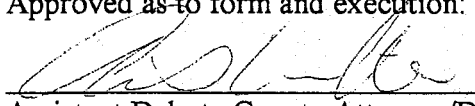
Section 1700. Effective Date. This ordinance shall take effect July 1, 1999.



Michael E. Turner, Chair
Dakota County Board of Commissioners
Date 4-8-99

Attest: 

Mary Scheide
Clerk to the County Board
Date 4-6-99

Approved as to form and execution:
 4/7/99

Assistant Dakota County Attorney/Date