

**DAKOTA COUNTY
ORDINANCE NO. 125**

REGULATION OF TOBACCO SALE, POSSESSION, AND USE

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DAKOTA COUNTY ORDINANCE NO. 125

REGULATION OF TOBACCO SALE, POSSESSION, AND USE

SECTION 1.00 PURPOSE AND AUTHORITY

1.01 PURPOSE.

The purpose of this Ordinance is to regulate the sale, possession, and use of tobacco products for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, 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 Minn. Stat. § 144.391. Dakota County ("County") recognizes that many minors illegally purchase or otherwise obtain, possess, and use tobacco products in violation of both state and federal laws. Smoking has been shown to be the cause of several severe health problems that subsequently place a financial burden on all levels of government. This Ordinance is intended to serve the best interests of the County's citizens by protecting their health, safety, and general welfare.

1.02 AUTHORITY.

This Ordinance is adopted pursuant to the requirements of Minn. Stat. §§ 461.12 to 461.21, as they may be amended from time to time, or successor statutes, relating to the sale, possession, and use of tobacco products in the County's unorganized territory and in the County's cities and townships that do not license and regulate retail sales of tobacco products.

SECTION 2.00 DEFINITIONS

Except as otherwise provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Unless specifically defined herein, terms used in this Ordinance shall have the same definitions as provided in Minn. Stat. §§ 461.12 to 416.21. For purposes of this Ordinance the words "must" and "shall" are mandatory and not permissive.

- 2.01** "Compliance checks" means the system that the Dakota County Sheriff's Office uses to investigate and ensure that those authorized to sell tobacco products are following and complying with the requirements of this Ordinance. It involves the use of minors as authorized by this Ordinance and Minn. Stat. § 461.12, subd. 5. Compliance checks also means the use of minors who attempt to purchase tobacco products for educational, research, and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to tobacco products.

- 2.02 **"County Board"** means the Dakota County Board of Commissioners.
- 2.03 **"County Manager"** means the Dakota County Manager or designee.
- 2.04 **"Electronic delivery device"** means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. It includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.
- 2.05 **"Individually packaged"** means the practice of selling any tobacco wrapped individually for sale. Individually wrapped tobacco includes, but is not 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 definition shall not be considered individually packaged.
- 2.06 **"Loosies"** means the common term used to refer to a single or individually packaged cigarette including a single use electronic delivery device.
- 2.07 **"Minor"** means any person who has not yet reached the age of eighteen (18) years.
- 2.08 **"Movable place of business"** means any retail business whose physical location is not permanent, including, but not limited to, any retail business that is operated from a kiosk, other transportable structure, or motorized or non-motorized vehicle.
- 2.09 **"Nicotine or lobelia delivery products"** means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this Section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.
- 2.10 **"Public Health Department"** means the Dakota County Public Health Department.
- 2.11 **"Public Services and Revenue"** means the Dakota County Public Services and Revenue Division.
- 2.12 **"Retail establishment"** means any place of business where tobacco products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.
- 2.13 **"Sale"** means a transfer, exchange, or barter, in any manner or by any means, for consideration, and includes all sales made by any person. It also includes gifts or

samples provided for advertising or promotional purposes, made by a person engaged in the selling of tobacco products.

- 2.14** **“Self-service merchandising”** means open displays of tobacco products in any manner where any person shall have access to the tobacco products 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 products between the customer and the licensee or employee. Self-service merchandising does not include vending machines.
- 2.15** **“Self-service method”** means a method of sales of tobacco products 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 product and no physical exchange of the tobacco product occurs between the customer and the licensee, or an employee or agent of the licensee.
- 2.16** **“Sheriff”** means the Dakota County Sheriff or designee.
- 2.17** **“Smoking”** means inhaling or exhaling smoke from any lighted or heated tobacco product, or inhaling or exhaling vapor from any electronic delivery device. Smoking shall include carrying a lighted or heated tobacco product intended for inhalation.
- 2.18** **“Tobacco”** means cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- 2.19** **“Tobacco products”** means tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products as those terms are defined in this Section.
- 2.20** **“Tobacco related devices”** means cigarette papers or pipes for smoking, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco. Tobacco related devices include components of tobacco related devices which may be marketed or sold separately.
- 2.21** **“Vending machine”** means 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.

SECTION 3.00 LICENSES

3.01 LICENSE REQUIRED.

No person shall sell or offer to sell any tobacco products in the County without first having obtained a license to do so from the County, unless located within a town or statutory city that has retained licensing authority under Minn. Stat § 461.12, subd. 1.

3.02 LICENSE APPLICATION AND FEE.

- A. Application. An application for license to sell tobacco products must be made on a form provided by Public Services and Revenue. The application must contain the full name of the applicant, the applicant's residential and business addresses, telephone numbers, the name of the business for which the license is sought, a copy of the educational materials the applicant intends to use to educate employees, and any additional information Public Services and Revenue deems necessary. If Public Services and Revenue determines that an application is incomplete, the application will be returned to the applicant with notice of the deficiencies. Public Services and Revenue shall forward the completed application to the Administrative Coordinator to the County Board for action at a regularly scheduled County Board meeting. Public Services and Revenue may consult with Public Health and the Sheriff in making a recommendation to the County Board.

- B. Fee. The fee for a license under this Ordinance is set in accordance with a fee schedule adopted by the County Board. No license may be issued under this Ordinance until the appropriate license fee is paid in full.

3.03 ACTION.

The County Board may either approve or deny the license, or may delay action for such reasonable period of time as Public Services and Revenue deems necessary to complete an investigation of the application or the applicant. If the County Board approves the license, the County Board shall issue the license to the applicant. If the County Board denies the license, written 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 decision, pursuant to the process set forth in Section 10, and have a hearing pursuant to Section 11.

3.04 LICENSE TERM.

All licenses shall be issued for a period of two (2) years.

3.05 LICENSE TRANSFER.

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 Public Services and Revenue.

3.06 LICENSE DISPLAY.

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

3.07 LICENSE RENEWAL.

The renewal of a license is handled in the same manner as the original application. The request for a renewal must be made at least thirty (30) calendar days but no more than sixty (60) calendar days before the expiration of the current license.

3.08 ISSUANCE AS A PRIVILEGE.

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.

3.09 LICENSEE RESPONSIBILITY.

All licensees are responsible for the actions of their agents or employees in regard to the sale of tobacco products on the licensed premises. The sale of a tobacco product by an agent or employee of a licensee shall be considered a sale by the licensee. Any violation of this Ordinance shall be considered an act of the licensee for purposes of imposing an administrative penalty, license suspension, or license revocation.

3.10 LICENSE INSTRUCTIONAL PROGRAM.

No person shall be issued a license or granted a license renewal to sell tobacco products unless the applicant or licensee has a program for instructing all agents and employees regarding the legal requirements pertaining to the sale of tobacco products. The instructional program includes, but is not limited to:

- A. Reviewing the law on the sale of tobacco products;
- B. Requiring agents and employees to request identification from every customer who is under twenty-seven (27) years of age;
- C. Explaining that the sale of tobacco products to minors is illegal;
- D. Explaining what proof of age is legally acceptable; and
- E. Explaining that a sale to a minor can subject the applicant or licensee and their agents and employees to criminal and civil liability.

3.11 LICENSE DENIAL.

The following are grounds for denying the issuance or renewal of a license under this Ordinance. However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the County Board must deny the license. The following list is not exhaustive or exclusive.

- A. The applicant is a minor.
- B. The applicant or licensee had a license to sell tobacco products revoked within the preceding twelve (12) months of the date of application.
- C. The applicant or licensee has been subject to administrative penalties under Section 8.00 within the preceding twelve (12) months of the date of application.
- D. The applicant or licensee fails to provide information required on the application or provides false or misleading information.
- E. The applicant or licensee is prohibited by federal, state, or other local law, ordinance or other regulation from holding a license.
- F. The applicant or licensee has been convicted within the past five (5) years of any violation of a federal, state or local law, ordinance provision, or other regulation relating to tobacco products.
- G. The applicant or licensee has outstanding fines, penalties, or property taxes owed to the County.
- H. The license is for a moveable place of business.
- I. The licensed premises is within 1,000 feet of any school, as measured by the shortest line between the space to be occupied by the applicant or licensee and the occupied space of the school, unless the applicant or licensee has been in the business of selling tobacco products in that location for at least one (1) year before the date this Section was enacted into law.

SECTION 4.00 MINNESOTA CLEAN INDOOR AIR ACT

All licensees shall comply with The Minnesota Clean Indoor Air Act, Minn. Stat. §§ 144.411 – 144.417, as it may be amended from time to time.

SECTION 5.00 PROHIBITED SALES

It is a violation of this Ordinance for anyone to sell or offer to sell any tobacco products:

- 5.01** By the means of a vending machine, unless minors are at all times prohibited from entering the licensed premises.

- 5.02 By means of self-service merchandising and self-service methods. All tobacco products shall be stored behind a counter. This prohibition does not apply to retail stores which derive at least ninety (90) percent of their revenue from tobacco products, and where the retailer ensures that no minor is present, or permitted to enter, at any time.
- 5.03 By means of a movable place of business.
- 5.04 By means of loosies.
- 5.05 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.
- 5.06 In the form of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and used in an electronic delivery device that is not contained in child-resistant packaging, as defined in Minn. Stat. § 461.20, as it may be amended from time to time. All licensees must ensure that any such liquid is sold in child-resistant packaging.
- 5.07 In any circumstance when no license was issued, when a license was denied, when a license was not renewed, when a license was suspended, or when a license was revoked, regardless of whether the applicant or licensee requested a hearing under Section 11.00.
- 5.08 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.

SECTION 6.00 COMPLIANCE CHECKS AND INSPECTIONS

All licensed premises shall be open to inspection by local law enforcement, the Sheriff or other County officials during regular business hours. From time to time, but at least once per year, a Sheriff's deputy shall conduct unannounced compliance checks to ensure compliance with this Ordinance. Such compliance checks shall utilize minors over the age of fifteen (15) years but less than eighteen (18) years, with the written consent of their parents or guardians, to enter a licensed premise to attempt to purchase tobacco products. Minors used for the purpose of compliance checks must 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 products 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 agent or employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Section prohibits 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 7.00 OTHER ILLEGAL ACTS

Unless otherwise provided, the following acts shall be a violation of this Ordinance:

7.01 ILLEGAL SALES.

It is a violation of this Ordinance for any person to sell or otherwise provide any tobacco products to any minor.

7.02 ILLEGAL POSSESSION.

It is a violation of this Ordinance for any minor to have in his or her possession any tobacco product. This Subdivision does not apply to minors lawfully involved in a compliance check or to a licensee's agents or employees under the age of eighteen (18) years while stocking tobacco products in the licensed premises.

7.03 ILLEGAL PROCUREMENT.

It is a violation of this Ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco products, and it is a violation of this Ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It is a further violation of this Ordinance for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco products. This subdivision does not apply to minors lawfully involved in a compliance check under Section 6.00.

7.04 USE OF FALSE IDENTIFICATION.

It is 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 8.00 ADMINISTRATIVE PENALTIES

8.01 LICENSEES.

- A. Any licensee found to have violated the terms of this Ordinance shall be charged:
1. An administrative fine of \$75 for the first violation of this Ordinance;
 2. An administrative fine of \$200 and a one-day suspension of the license for a second violation at the same location within a twenty-four (24) month period after the first violation;
 3. An administrative fine of \$250 and a seven (7) day suspension for a third violation at the same location within a twenty-four (24) month period after the first violation; and

4. Revocation of the license for a fourth violation at the same location within a twenty-four (24) month period after the first violation.
- B. If the administrative fines authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from those established in this Section, then the statutory administrative fines prevail.
- C. If a license is mistakenly issued to an applicant or renewed for a licensee, the license will be administratively revoked upon the discovery that the applicant or licensee was ineligible for the license under Section 3.00.

8.02 OTHER INDIVIDUALS.

Other Individuals found to be in violation of the terms of this Ordinance will be charged an administrative fine of \$50.

SECTION 9.00 MISDEMEANOR PROSECUTION

Nothing in this Ordinance shall prohibit prosecution of 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 administrative penalty under this Ordinance.

SECTION 10.00 CITATION AND NOTICE

Upon discovery of a violation or upon license denial, the alleged violator or applicant must be issued, either personally or by mail, a written citation or notice of license denial. The citation or notice of license denial must provide notice that a hearing must be requested by the alleged violator or applicant and received by Public Services and Revenue within ten (10) business days of issuance of the citation or notice of license denial, and that failure to request the hearing within the ten (10) business days forfeits the right to a hearing. The citation or notice of license denial must provide information on how and where to request a hearing, including an address and contact information for Public Services and Revenue. A citation must also inform the alleged violator of the violation and the administrative penalty under Section 8.00 of this Ordinance.

SECTION 11.00 HEARINGS

11.01 DEFAULT.

Failure to request a hearing within the ten (10) business days will terminate the alleged violator or applicant's right to a hearing on the violation or license denial, and the violation and administrative penalty imposed under Section 8.00 of this Ordinance or license denial will be conclusive.

11.02 SCHEDULING.

Public Services and Revenue shall set the time and place for the hearing. Written notice of the hearing time and place will be mailed or personally delivered to the alleged violator or applicant at least ten (10) business days prior to the hearing.

11.03 HEARING OFFICER.

The County Manager shall appoint a hearing officer. The hearing officer may be an impartial employee of the County or an impartial person retained by the County to conduct the hearing.

11.04 DECISION.

The hearing officer shall issue a written decision within ten (10) business days after the hearing. If the hearing officer determines that a violation of this Ordinance did occur or that the license denial is upheld, that decision, along with the hearing officer's reasons and the administrative penalty to be imposed under Section 8.00 of this Ordinance, if any, shall be recorded in writing, a copy of which shall be provided to the violator or applicant. If the hearing officer finds that no violation occurred, finds other grounds for not imposing any administrative penalty, or overturns the license denial, such findings shall be recorded and a copy provided to the acquitted violator or applicant.

11.05 APPEAL.

Any appeal of the hearing officer's decision must be filed in the Dakota County District Court.

SECTION 12.00 CONTINUED VIOLATIONS

Each violation shall constitute a separate offense, and every day in which a violation continues shall constitute a separate offense.

SECTION 13.00 EXCEPTIONS AND DEFENSES

Nothing in this Ordinance shall prevent a person from providing tobacco products to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this Ordinance for a person to have reasonably and in good faith relied upon proof of age as described by state law.

SECTION 14.00 SEVERABILITY

If any section or subsection of this Ordinance is adjudged unconstitutional, invalid, or unconstitutional by a court of competent jurisdiction, that finding shall not invalidate or otherwise affect the validity and enforceability of other sections or subsections of this Ordinance.

SECTION 15.00 REMEDIES CUMULATIVE

No remedy set forth in this Ordinance is intended to be exclusive but each such remedy is cumulative and in addition to other remedies now or hereafter existing at law or in equity. No delay in the exercise of any remedy for violation of this Ordinance shall later impair or waive any such right or power of the County.

SECTION 16.00 EFFECTIVE DATE

This Ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, which meets the requirements of Minn. Stat. § 331A.01, subd. 10.

SECTION 17.00 REPEALER

Dakota County Ordinance No. 125, which was enacted through Resolution 99-191 on March 29, 1999, by the Dakota County Board of Commissioners, is hereby repealed and this enacted in its stead.

ATTEST:

COUNTY OF DAKOTA, STATE OF MINNESOTA

Kathleen A. Gaylord
Kathleen A. Gaylord, Chair
Dakota County Board of Commissioners

Date 2-27-18

Jennifer Reynolds
Jennifer Reynolds
Administrative Coordinator to the Board

Date 2-27-18

Lucie O'Neill
Approved as to Form
Lucie O'Neill
Assistant Dakota County Attorney

Date February 13, 2018

Lucie O'Neill
Approved as to Execution
Lucie O'Neill
Assistant Dakota County Attorney

Date February 28, 2018