

**ORDINANCE NO.
101816**

**AN ORDINANCE OF DOUGLAS COUNTY REGARDING
TOBACCO LICENSING AND REGULATION**

The Douglas County Board does hereby **ORDAIN**:

SECTION I.

Tobacco Licensing and Regulation.

Subd. 1. Purpose. Because the County recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products and such sales, possession, and use are violations of both state and federal laws, and pursuant to the mandates provided in Minn. Stat. ch. 461, this ordinance is intended to regulate the sale, possession, and use of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws and state mandates, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products, 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.

Subd. 2. Applicability and Jurisdiction. This ordinance shall govern the licensing and regulation of the sale of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products in the unorganized territory of the County and in any city or town located in the County that does not license and regulate retail sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in conformance with the requirements of Minn. Stat. ch. 461. Retail establishments licensed by a city or town are not required to obtain a second license for the same location under this ordinance.

Subd. 3. 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 neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

- A. Child-Resistant Packaging. "Child-Resistant Packaging" shall mean packaging that meets the definition as set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, when tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- B. Compliance Checks. "Compliance Checks" shall mean the system the County uses to investigate and ensure that those authorized to sell tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products 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 attempted to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery 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, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products.
- C. Electronic Delivery Devices. "Electronic Delivery Devices" shall mean 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 aerosol or vapor from the product. Electronic delivery devices shall include any component part of a product, whether or not marketed or sold separately. Electronic delivery devices 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.
- D. Loosies. "Loosies" shall mean a single or individually packaged cigarette, or any other licensed product that has been removed from its intended retail packaging and offered for sale.

- E. Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.
- F. Moveable Place of Business. "Moveable Place of Business" shall refer to 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 a motorized or nonmotorized vehicle.
- G. Nicotine or Lobelia Delivery Products. "Nicotine or Lobelia Delivery Products" shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this subdivision, 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, or for other medical purposes, and is being marketed and sold solely for that approved purpose.
- H. Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.
- I. Sale. A "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.
- J. Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products in any manner where any person shall have access to the tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.
- K. Tobacco or Tobacco Products. "Tobacco" or "Tobacco Product" shall mean cigarettes; 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, 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 components, part, or accessory of a tobacco product. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for the sale as a tobacco cessation product, as a tobacco-dependence product, or for other medical purposes, and sold solely for such an approved purpose.
- L. Tobacco Related Devices. "Tobacco Related Devices" shall mean 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 or tobacco products. Tobacco-related devices shall include components of tobacco-related devices which may be marketed or sold separately
- M. Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco related device, electronic delivery device, or nicotine and lobelia delivery product.

Subd. 4 License. No person shall sell or offer to sell any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product without first having obtained a license to do so from the County.

- A. Application. An application for a license to sell tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products shall be made on a form provided by the County. 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, and any additional information the County deems necessary. Upon receipt of a completed application, the County

shall forward the application to the County Board for action at its next regularly scheduled board meeting. If the application is incomplete, the application will be returned to the applicant with notice of the information necessary to make the application complete.

- B. Action. The County Board 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 board approves the license, the County shall issue the license to the applicant. If the board denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the board's decision.
- C. Term. All licenses issued under this ordinance shall be valid for one calendar year from the date of issue, expiring on December 31 of each year.
- D. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended for a violation of any provision of this ordinance.
- E. 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.
- F. 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.
- G. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- H. 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 by the licensee at least thirty days but no more than sixty days before the expiration of the current license.
- I. Privilege and Not a Right. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

Subd. 5. Fees. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a tobacco license shall be set by ordinance and may be amended from time to time.

Subd. 6. Basis for Denial of License.

- A. The following shall be grounds for denying the issuance or renewal of a license under this ordinance.
 - 1. The applicant is under the age of 18 years.
 - 2. The applicant has been convicted with the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products.
 - 3. The applicant has had a license to sell tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products suspended or revoked within the preceding twelve months of the date of application.
 - 4. The applicant fails to provide any information required on the application, or provides false or misleading information.
 - 5. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding such a license.
- B. However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the County must deny the license.
- C. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this ordinance.

Subd. 7. Prohibited Sales.

- A. Minors. No person shall sell, offer to sell or otherwise provide any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product to any person under the age of eighteen (18) years.
- B. Self-service Sales. No person shall sell, offer to sell or otherwise provide any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product in open displays which are accessible to the public without the intervention of a store employee that includes a physical exchange of the tobacco product, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product between the licensee or the licensee's employee and the customer. This shall not apply to retail establishments which derive at least 90 percent of their revenue from tobacco and tobacco related devices and where the retailer ensures that no person younger than 18 years of age is present, or permitted to enter at any time.
- C. Controlled Substances. No person shall sell, offer to sell or otherwise provide any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product 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.
- D. Vending Machines. No person shall allow the sale of any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.
- E. Sampling. No person shall distribute any tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia products free of charge or for nominal cost.
- F. Loosies. No person shall sell, offer to sell or otherwise distribute any loosies, as defined in Subd. 3.
- G. Other Prohibitions. No person shall sell, offer or otherwise provide any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product by any other means, to any other person, or in any manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

Subd. 8. Liquid Packaging. The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device in packaging that is not child-resistant is prohibited. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Subd. 9. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products in the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this subdivision shall be construed as prohibiting the County from also subjecting the employee to whatever penalties are appropriate under this ordinance, state or federal law, or other applicable law or regulation.

Subd. 10. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the County Sheriff or other authorized County official during regular business hours. From time to time, but at least once per year, the County shall conduct compliance checks by engaging, 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 related devices, electronic delivery devices, or nicotine or lobelia delivery products. Minors used for the purpose of compliance checks shall be supervised by County law enforcement officers or other designated County personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products when such items are obtained as a part of the compliance check. Nothing in this subdivision shall prohibit 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.

Subd. 11. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this Ordinance:

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

B. Illegal Use. It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product.

C. Illegal Procurement. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product 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 related device, electronic delivery device, or nicotine or lobelia delivery product. This shall not apply to minors lawfully involved in a compliance check.

D. 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.

Subd. 12. Violations.

A. Misdemeanor Prosecution. The County may prosecute any violation of this ordinance as a misdemeanor. If the County elects to prosecute the license holder, no administrative penalty shall be imposed.

B. Administrative Process.

1. Notice. A person violating this ordinance may be issued, either personally or by mail, a citation that sets forth the nature of the alleged violation, his or her right to a hearing on the alleged violation and the potential penalties for a violation.

2. Hearing. A person, who receives notice of an alleged violation of this ordinance, may request a hearing on the alleged violation. The hearing request must be in writing and received by the County within two (2) weeks of the date of the notice. The person requesting the hearing shall be advised of the date, time, and place of the hearing.

3. Hearing Officer. The County Board shall designate 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.

4. Decision by the Hearing Officer. The Hearing Officer shall make written findings, which shall be mailed, to the person requesting the hearing and made a part of the hearing record. If the Hearing Officer determines that a violation of this section occurred, the Hearing Officer's findings shall be forwarded to the County Board for determination of the appropriate penalty pursuant to Subd. 13 of this section.

5. Appeal. Any person found to have violated this section, shall have the right to appeal to Douglas County district court as provided by law.

C. Continued Violation. Each violation and each day a violation occurs shall constitute a separate offense or violation.

Subd. 13. Penalties.

A. Licensee. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense at the same licensed premises within a twenty-four month period; and \$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. These administrative penalties are the minimum mandatory penalties, and do not restrict the County from suspending or revoking a license regardless of the lack of prior violations.

B. Other Individuals. Other individuals, other than minors regulated by, Subd. 13. C herein, found to be in violation of this ordinance shall be charged an administrative fee of \$50.

C. Minors. Minors found in unlawful possession of or who unlawfully purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products may be required to attend and complete tobacco education classes and may be required to submit to other chemical evaluations, perform community service, or pay an administrative penalty in an amount not to exceed \$200.

D. Misdemeanor. Nothing in this subdivision shall prohibit the County from seeking prosecution as a misdemeanor for any violations of this ordinance.

Subd. 13. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco or tobacco related devices 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 relied on proof of age as described by State law.

Subd. 14. Severability and Savings Clause. If any section or portion of this ordinance is unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

Subd. 15. Effective Date. This ordinance shall take effect the day following publication in the County's official newspaper.

SECTION II. This Ordinance shall be in effect and full force after its publication.

ADOPTED by the Douglas County Board this 18th day of October, 2016 by the following vote:

YES: Meyer, Miller, Stratton, Bales and Johnson

NO: None

ABSENT: None

James Stratton

James Stratton, Chair

ATTEST: Heather Schlangen

Clerk of the Board

Douglas County, Minnesota