

ORDINANCE NO. 18-01

AN ORDINANCE REGULATING THE SALE OF TOBACCO AND RELATED DEVICES AND PRODUCTS WITHIN GRANT COUNTY, MINNESOTA

The Board of Grant County does hereby ORDAIN:

Section 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 state mandates provided by 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.

In making these findings, the County Board accepts the conclusions and recommendations of: the U.S. Surgeon General reports, "E-cigarette Use Among Youth and Young Adults" (2016), "The Health Consequences of Smoking — 50 Years of Progress" (2014) and "Preventing Tobacco Use Among Youth and Young Adults" (2012); the Centers for Disease Control and Prevention in their studies, "Tobacco Use Among Middle and High School Students — United States, 2011-2015," and "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997"; and of the following scholars in these scientific journals: Xin Xu et al., Annual Healthcare Spending Attributable to Cigarette Smoking: An Update, *Am. J. Prev. Med.* 48(3): 326-33 (Mar. 2015); Giovino GA, "Epidemiology of Tobacco Use in the United States," *Oncogene* (2002) 21, 7326-40; Khuder SA, et al., "Age at Smoking Onset and its Effect on Smoking Cessation," *Addictive Behavior* 24(5):673-7, September-October 1999; D'Avanzo B, et al., "Age at Starting Smoking and Number of Cigarettes Smoked," *Annals of Epidemiology* 4(6):455-59, November 1994; Chen, J & Millar, WJ, "Age of Smoking Initiation: Implications for Quitting," *Health Reports* 9(4):39-46, Spring 1998; Everett SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," *Preventive Medicine*, 29(5):327-33, November 1999, copies of which are adopted by reference.

Section 2. Applicability and Jurisdiction.

This ordinance governs 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 Grant County and in any city or town located in Grant 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 minimum 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.

Section 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" means 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" means the system the County uses to investigate and ensure that those authorized to sell tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products are following and complying with the requirements of this ordinance. Compliance checks involve the use of minors who purchase or attempt to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products. Compliance checks may also be conducted by the County or other units of government for educational, research and training purposes or for investigating or 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" 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 aerosol or vapor from the product. Electronic delivery devices includes 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. Minor.** "Minor" means any natural person who has not yet reached the age of eighteen (18) years.
- E. Moveable Place of Business.** "Moveable Place of Business" refers 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 non-motorized vehicle.
- F. Nicotine or Lobelia Delivery Products.** "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 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.
- G. Retail Establishment.** "Retail Establishment" means 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.
- H. Sale.** "Sale" means any transfer of goods for money, trade, barter, or other consideration.
- I. Self-Service Display.** "Self-Service Display" means open displays of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products in any manner where any person has access to the products without the assistance or intervention of the licensee or the licensee's employee.
- J. Tobacco or Tobacco Products.** "Tobacco" or "Tobacco Products" means 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 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. Tobacco or tobacco products does not include any 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.
- K. Tobacco Related Devices.** "Tobacco Related Devices" means cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used with tobacco products. Tobacco related devices include components of tobacco related devices which may be marketed or sold separately

- L. Vending Machine.** "Vending Machine" means 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.

Section 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 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 County determines that an application is incomplete, he or she shall return the application 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 applicant's right to appeal the decision.
- C. Term.** All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.
- D. Revocation or Suspension.** Any license issued under this ordinance may be revoked or suspended following the procedures provided in Section 11 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. Issuance as 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.
- J. Signage.** All licensees shall post and display in plain view of the general public on the licensed premise a sign supplied by the County, which shall state that it is illegal to sell tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products to anyone under the age of 18 years, and that the possession and use of such items by minors is also illegal under both state law and local ordinance.

Section 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.

Section 6. Basis for Denial of License.

The following shall be grounds for denying the issuance or renewal of a license under this ordinance:

- A.** The applicant is under the age of 18 years.
- B.** 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.
- C.** 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.
- D.** The applicant fails to provide any information required on the application, or provides false or misleading information.
- E.** The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding such a license.

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. 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 section:

Section 7. Prohibited Acts.

- A. **Sales to 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 devices, electronic delivery devices, or nicotine or lobelia delivery products in self-service 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 products between the licensee or licensee's employee and the customer. All tobacco, tobacco related devices, electronic delivery devices and nicotine or lobelia delivery products must be stored behind the sales counter or other area not freely accessible to customers, or in a case or other store unit not left open and accessible to the general public. This prohibition 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 tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.
- E. **Distribution of Samples.** No person shall distribute samples of any tobacco product, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product free of charge.
- F. **Other Prohibitions.** No person shall sell, offer to sell 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 other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.
- G. **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 that is not contained in packaging that is child-resistant is prohibited. All licensees under this ordinance must ensure that any liquid intended for human consumption and use in an electronic delivery device is sold in child-resistant packaging. Upon request, a licensee

must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Section 8. 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 on 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 section 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.

Section 9. Compliance Checks and Inspections.

All licensed premises shall be open to inspection by the County law enforcement 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 designated law enforcement officers or other designated County personnel. Minors used for compliance checks shall not be guilty of unlawful possession 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 questioned about the minor's age asked by the license 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 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 10. 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.

Section 11. 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 will 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 alleged violation and that informs the alleged violator of his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.
 - 2. Hearing.** A person, who receives notice of an alleged violation of this section, 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, which will also be published.
 - 3. Hearing Officer.** The County Board will designate a hearing officer. The hearing officer will be an impartial employee(s) or official(s) of the County, or an impartial person(s) retained by the County to conduct the hearing.
 - 4. Decision.** A decision will be issued by the hearing officer within ten (10) business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the County and the accused violator by in-person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy provided to the County and the acquitted accused violator by in-person or mail as soon as practicable. The decision of the hearing officer is final.
 - 5. Appeal.** Appeals of any decision made by the hearing officer must be filed in Grant County district court within ten (10) business days.

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

Section 12. 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. The administrative penalties noted above are the minimum mandatory penalties, which in no way 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 12 (D) herein, found to be in violation of this ordinance shall be charged an administrative fee of \$50.
- C. **Misdemeanor.** Nothing in this section shall prohibit the County from seeking prosecution as a misdemeanor for any violation of this ordinance.
- D. **Minors.** Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the County believes will be appropriate and effective. The County will consult with the courts, educators, parents, children and other interested parties to determine an appropriate penalty for minors in the County. Any penalty may be established by ordinance and amended from time to time.

Section 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.

Section 14. 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 invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

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

