

Washington County Tobacco Ordinance #XXX



Adopted
XXXXXX
by the
Washington County Board

**WASHINGTON COUNTY TOBACCO ORDINANCE
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WASHINGTON COUNTY DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT TOBACCO ORDINANCE

An ordinance relating to the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in Washington County, and to reduce the illegal sale of such items to persons under the age of 21. This ordinance is enacted pursuant to the authority contained in Minnesota Statute §§ 145A.05, 375.51 and 461.12 to 461.18.

Section 1 Findings of Fact and Purpose; Scope

1.1 Findings of Fact and Purpose. Because Washington County recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates both state and federal laws; and because studies, which are hereby accepted and adopted¹, have shown that high school use of any commercial tobacco product has increased to 27.6% in Minnesota; and because nearly 90% of people who smoke begin smoking before they reach the age of 18 years, and that almost no one starts smoking after age 25; and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial

¹ Washington County has relied upon the following sources: 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* (2016), and *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997(1998)*; and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. *Health Reports*, 9(4), 39-46; D'Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at starting smoking and number of cigarettes smoked. *Annals of Epidemiology*, 4(6), 455–459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. (1999). Initiation of cigarette smoking and subsequent smoking behavior among U.S. high school students. *Preventive Medicine*, 29(5), 327–333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. *Oncogene*, 21(48), 7326–7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673–677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, June 2020 www.publichealthlawcenter.org Minnesota City Retail Tobacco Licensing Ordinance 6 L. (2017). *Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density*. *American Journal of Public Health*, 107(5), 740–746; Minnesota Department of Health. (2020). *Data Highlights from the 2019 Minnesota Youth Tobacco Survey*. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). *The Verdict Is In: Findings from United States v. Philip Morris, The Hazards of Smoking*. University of California San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. *American Journal of Preventive Medicine*, 48(3), 326–333, copies of which are adopted by reference.

burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, 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 Statute § 144.391, as it may be amended from time to time.

- 1.2 Scope.** This ordinance is applicable in any unorganized territory of the county and in any town or home rule charter or statutory city which does not license and regulate retail tobacco sales. Retail establishments licensed by a town or city to sell tobacco are not required to obtain a second license for the same location pursuant to this ordinance.

Section 2 Definitions and Interpretations

For the purpose of this ordinance the following words shall have the following meanings:

- 2.1 Child-Resistant Packaging** means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- 2.2 Compliance Checks** means the system the county uses to investigate and ensure that those authorized to sell Licensed Products are following and complying with the requirements of this ordinance. Compliance Checks shall involve the use of persons under the age of 21 who purchase or attempt to purchase licensed 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 enforcing federal, state or local laws and regulations relating to Licensed Products.
- 2.3 Delivery Sale** means the sale of any Licensed Product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. Delivery Sale includes but is not limited to the sale of any Licensed Product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery Sale includes delivery by licensees or third parties by any means, including curbside pick-up.
- 2.4 Electronic Delivery Device** means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic Delivery Device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. Electronic Delivery Device includes any component part of a product, whether or not marketed or sold separately. Electronic Delivery Device does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.
- 2.5 Indoor Area** means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- 2.6 Licensing Authority** means the Washington County Department of Public Health and Environment.

- 27 Licensed Products** means the term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
- 2.8 Loosies** means the common term used to refer to single cigarettes, cigars, and any other Licensed Products that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.
- 2.9 Moveable Place of Business** means any form of business operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address or other permanent type of structure authorized for over-the-counter sales transactions.
- 2.10 Nicotine or Lobelia Delivery Product** 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 section. Nicotine or Lobelia Delivery Product does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.
- 2.11 Retail Establishment** means any place of business where licensed products are available for sale to the general public. Retail establishment includes but is not limited to grocery stores, convenience stores, tobacco products shops, convenience stores, liquor stores, gasoline service stations, bars, and restaurants.
- 2.12 Sale** means any transfer of goods for money, trade, barter or other consideration.
- 2.13 Self-service Merchandising** means the open display of Licensed Products in a retail establishment in any manner where any person shall have access to the Licensed Products without the assistance or intervention of the licensee or the licensee's employee and where a physical exchange of the Licensed Product between the customer and the licensee or employee is not required in order to access the Licensed Products. Self-service Merchandising shall not include vending machines.
- 2.14 Smoking** means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device.
- 2.15 Tobacco** 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; little cigars; cheroots;

stogies; periques; 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 does not include any nicotine cessation product that has been authorized by the United States Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

2.16 Tobacco-Related Device means any wraps, pipes, rolling papers, or other device intentionally designed or intended to be used with tobacco products. Tobacco-Related Device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco-Related Devices may or may not contain tobacco.

2.17 Vending Machine means any mechanical, electric or electronic, or other type of device which dispenses Licensed Products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed product. Vending Machine includes, but is not limited to, those machines equipped with manual, electric or electronic locking devices which may only be activated by the Licensee for each individual sale.

Section 3 License

It shall be illegal for anyone to sell or offer to sell any Licensed Products in Washington County without first having obtained a license to do so from the Licensing Authority.

Section 3 License

- 3.1 Application.** An application for a license to sell Licensed Products shall be made on a form provided by the Licensing Authority. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name and location of the business for which the license is sought and any additional information the Licensing Authority deems necessary. If the Licensing Authority shall determine 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.
- 3.2 Action.** The Licensing Authority may either approve or deny the license or it may delay action for such reasonable period of time as is necessary to complete any investigation of the application or the applicant. If the designated Licensing Authority shall approve the license, the designated official shall issue the license to the applicant. If the designated Licensing Authority denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.
- 3.3 Term.** All licenses issued under this ordinance shall be valid for one calendar year from January 1 through December 31.
- 3.4 Revocation or Suspension.** Any license issued under this ordinance may be revoked or suspended as provided in the violations and penalties section of this ordinance.
- 3.5 Transfers.** All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the applicant 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 Licensing Authority.
- 3.6 Display.** All licenses shall be posted and displayed at all times in plain view of the general public on the licensed premise.
- 3.7 Renewals.** The renewal of a license issued under this section shall be done in the same manner as the original application. A request for a renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license.
- 3.8 Issuance as privilege and not a right.** The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.
- 3.9 Minimum clerk age.** Individuals employed by a licensed retail establishment under this ordinance must be at least 18 years of age to sell Licensed Products.
- 3.10 Smoking prohibited.** Smoking, including smoking for the purpose of the sampling of Licensed Products, is prohibited within the indoor area of any retail establishment

licensed under this ordinance, in accordance with the Minnesota Clean Indoor Air Act Minn Stat, § 144.411-144.417.

- 3.11 Samples prohibited.** No licensee or their agent shall distribute samples of any Licensed Product free of charge or at a nominal cost. The distribution of Licensed Products as a free donation is prohibited.

Section 4 Fees

No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The license fee will be established annually by the County Board.

Section 5 Basis for Denial of License

The following shall be 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 Licensing Authority 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.

- 5.1 The applicant is under the age of 21 years.
- 5.2 The applicant has been convicted within the past five years of any violation of a Federal, State or local law, ordinance provision or other regulation relating to Licensed Products.
- 5.3 The applicant has had a license to sell Licensed Products suspended or revoked within the preceding 12 months of the date of application.
- 5.4 The applicant fails to provide any information required on the application or provides false or misleading information.
- 5.5 The applicant is prohibited by Federal, State or other local law, ordinance or other regulation from holding such a license.
- 5.6 The business for which the license is requested is a moveable place of business. Only fixed location retail establishments are eligible to be licensed.

Section 6 Prohibited Sales

- 6.1 **Standards Adopted.** This ordinance adopts by reference the requirements specified in Minnesota Statute § 461.
- 6.2 **Additional Standards.** No person shall sell or offer for sale any Licensed Product in the following ways:
 - (1) By means of Loosies or any type of vending machine or
 - (2) Containing adulterants or contaminants, such as illegal controlled substances, except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other products subject to this ordinance or
 - (3) By means of delivery sales. All sales of Licensed Products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions or

- (4) By any other means, to any other person or in any other manner or form prohibited by Federal, State or other Washington County ordinance provision or other regulation.

Section 7 Responsibility

All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of Licensed Products on the licensed premises. The sale, offer to sell, or furnishing of any Licensed Product by an employee shall be considered an act of the license holder. Nothing in this section shall be construed as prohibiting the county from also subjecting the clerk or employee to whatever penalties are appropriate under this ordinance, State or Federal law or other appropriate law or regulation.

Section 8 Compliance Checks and Inspections

All licensed premises shall be open to inspection by local law enforcement or other authorized county official during regular business hours. From time to time, but at least twice per year, the Licensing Authority shall conduct Compliance Checks. In accordance with state law, the Licensing Authority shall conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premise to attempt to purchase Licensed Products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of Compliance Checks shall be supervised by law enforcement or other designated county personnel. No person used in Compliance Checks shall attempt to use a false identification misrepresenting the person's age and all persons lawfully engaged in a Compliance Check shall answer all questions about their age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which they are 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 9 Other Prohibited Acts

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

- 9.1 Prohibited Furnishing or Procurement.** It shall be a violation of this ordinance for:
- (1) Any person 21 years of age or older to purchase or otherwise obtain any Licensed Product on behalf of a person under the age of 21.
 - (2) Any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product.
- 9.2 Use of False Identification.** It shall be a violation of this ordinance for any person 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 has been modified or tampered with to represent an age older than the actual age of the person using that identification.

Section 10 Enforcement and Penalties

- 10.1 Enforcement.** All provisions of this ordinance relating to licensing may be enforced pursuant to the Washington County Administrative Ordinance.
- 10.2 Misdemeanor Prosecution.** Nothing in this section shall prohibit Washington County from seeking prosecution as a misdemeanor for any violation of this ordinance. If Washington County elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.
- 10.3 Continued Violations.** Each violation and every day in which a violation occurs or continues, shall constitute a separate offense.
- 10.4 Administrative Penalties.** The Licensing Authority may issue the administrative penalties outlined in Minnesota Statute § 461.12 for any violation of this ordinance.
- 10.5 License Suspension and Revocation.** In addition to administrative penalties outlined in section 10.4 of this ordinance, a third offense within a 36 month period after the first offense, or as outline in Minnesota Statute § 461.12, subd. 2a, the license shall be suspended for not less than thirty (30) consecutive days. After the fourth offense within a 36 month period, the license shall be revoked.

Section 11 Exceptions and Defenses

Nothing in this ordinance shall prevent the providing of Tobacco, Tobacco Products, Nicotine Delivery Products 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 12 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 affect the validity and enforceability of any other section or provision of this ordinance.

Section 13 Repeal of Washington County Youth Access to Tobacco Ordinance #133, #135, and #185

Washington County Youth Access to Tobacco Ordinance #133, 135, #185 as adopted on June 9, 1998, September 22, 1998, and December 21, 2010, respectively, are hereby repealed and superseded by this Ordinance.

Section 14 Effective Date

This Ordinance shall become effective immediately upon passage by the County Board and publication according to law.

Passed by the Board of County Commissioners of Washington County, Minnesota, XXXX

Gary Kriesel Chair
Board of County Commissioners

Attest:

Approved as to form and legality:

Kevin Corbid, County Administrator

XXX Assistant County Attorney

Ordinance prepared by:

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