

AITKIN COUNTY TOBACCO ORDINANCE

AN ORDINANCE RELATING TO THE SALE, POSSESSION, AND USE OF TOBACCO, TOBACCO PRODUCTS, AND TOBACCO-RELATED DEVICES IN THE COUNTY AND TO REDUCE ILLEGAL SALE, POSSESSION, AND USE OF SUCH ITEMS TO AND BY MINORS.

WHEREAS, the Aitkin County Board of Commissioners recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco products, and tobacco related devices; and

WHEREAS, such sales, possession, and use of tobacco products, and tobacco-related devices to and by minors are violations of both State and Federal laws; and

WHEREAS, studies have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and

WHEREAS, smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; and

WHEREAS, this ordinance is intended to regulate the sale, possession, and use tobacco, tobacco products, and tobacco-related devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco-related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Stat. 144.391.

Now, Therefore,

THE BOARD OF COMMISSIONERS OF THE COUNTY OF AITKIN, MINNESOTA, HEREBY ORDAINS:

Section 1. Definitions and Interpretations

In this ordinance:

(a) TOBACCO or TOBACCO PRODUCTS means:

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

(b) TOBACCO-RELATED DEVICES means:

Any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

- (c) **SELF-SERVICE MERCHANDISING** means:
Any displays of tobacco, tobacco products, or tobacco-related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco-related devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of tobacco, tobacco products, or tobacco-related device between the customer and the licensee or employee.
- (d) **VENDING MACHINE** means:
Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco-related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device.
- (e) **INDIVIDUALLY PACKAGED** means:
The practice of selling any tobacco or tobacco product wrapped individually or for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco.
- (f) **LOOSIES** means:
The common term used to refer to a single or individually packaged cigarette.
- (g) **MINOR** means:
Any natural person who has not yet reached the age of eighteen (18) years.
- (h) **RETAIL ESTABLISHMENT** means:
Any place of business where tobacco, tobacco products, or tobacco-related devices is available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.
- (i) **MOVEABLE PLACE OF BUSINESS** means:
Any form of business operated out of a truck, van, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.
- (j) **SALE** means:
Any transfer of goods for money, trade, barter, or other consideration.
- (k) **COMPLIANCE CHECKS** means:
The system the County uses to investigate and ensure that those authorized to sell

tobacco, tobacco products, and tobacco-related devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco-related devices for educational, research and training purposes as authorized by the State and Federal laws. Compliance checks may also be conducted by other units of governments for the purpose of enforcing appropriate Federal, State, or local laws and regulations relating to tobacco, tobacco products, and tobacco-related devices.

(l) LICENSEE means:

A person who has been issued a license by the Board of Commissioners to sell tobacco, tobacco products, and tobacco-related devices pursuant to this ordinance.

Section 2. License.

- (a) No person shall keep for retail sale, sell at retail or otherwise dispose of any tobacco, tobacco product, or tobacco-related device at any place in the County without first obtaining a license from County Auditor Department, unless the applicable township or other municipality has assumed jurisdiction of retail-tobacco licenses within said township or municipality.
- (b) The annual license fee for a retail tobacco license shall be \$50.00 per year. All retail tobacco licenses shall be valid for one calendar year from the date that the license is issued unless said license is suspended, revoked, cancelled, or otherwise limited by the county.
- (c) Every license shall be conspicuously posted at the place for which the license is issued and shall be exhibited to any person upon request.
- (d) No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.
- (e) No new retail-tobacco licenses shall be issued to a licensee while said licensee's previous or current license is under suspension, revocation, cancellation, or other period of limitation by the county.

Section 3. Prohibited Sales.

It shall be a violation of *this* ordinance for any person to sell or offer to sell any tobacco, tobacco product, or tobacco-related device:

- (a) To any person under the age of eighteen (18) years;
- (b) By means of any type of vending machine, unless premise cannot be entered at any time by persons younger than eighteen (18) years of age;
- (c) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, or tobacco-related device and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco-related device between the licensee or the

licensee's employee and the customer. This restriction does not apply to retail stores which derive at least 90% of their revenue from tobacco, tobacco products, and tobacco-related devices and which can not be entered at any time by persons younger than eighteen (18) years of age;

- (d) By means of "loosies" as defined in this ordinance;
- (e) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process;
- (f) By any other means, to any other person, or in any other manner or form prohibited by Federal, State, County, or other local law, ordinance, or other regulation.

Section 4. Vending Machines.

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

Section 5. Self-Service Sales.

- (a) It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products, or tobacco-related devices by any means whereby the customer may have access to such items without having to request the item from the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, or the tobacco-related device between the licensee or the licensee's employee and the customer.
- (b) All tobacco, tobacco products, or tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public.
- (c) This restriction does not apply to retail stores which derive at least 90% of their revenue from tobacco, tobacco products, and tobacco-related devices and which cannot be entered at any time by persons younger than eighteen (18) years of age.

Section 6. Responsibility.

All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco-related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the County from also subjecting the clerk to whatever penalties are appropriate under this ordinance, State or Federal law, or other applicable law or regulation.

Section 7. Compliance Checks.

- (a) All licensed premises shall be open to inspection by the County Sheriff or other authorized County official during regular business hours.

- (b) From time to time, but at least once per year, the County shall cause to be conducted unannounced compliance checks by engaging, with written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco-related devices.
- (c) Minors used for the purpose of compliance checks shall be supervised by County designated law enforcement officers or other designated personnel.
- (d) Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, or tobacco-related devices when such items are obtained as a part of the compliance check.
- (e) No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in compliance checks shall answer all questions about the minor's age asked by the licensee or the licensee's employee and shall produce identification, if any exists, for which he or she is asked.
- (f) Nothing in this section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for enforcement of a particular State or Federal law.

Section 8. Violations.

- (a) Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail:
 1. A citation that sets forth the alleged violation; and
 2. Notice of the penalty including the dates of license suspension; and
 3. Notice which shall inform the alleged violator of his/her right to be heard on the accusation.The alleged violator shall have ten (10) days from the date the citation was mailed or if the citation was issued personally, ten (10) days from receipt, to provide a written request for a hearing before the hearing officer.
- (b) Hearings. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. The requested hearing shall be held within thirty (30) days upon receipt of the written request for a hearing. If good cause is shown, the hearing officer may extend the time for the hearing for up to an additional thirty (30) days. The hearing officer must give reasonable notice for the hearing to the alleged violator and the public.
- (c) Hearing Officer. The Aitkin County Board of Commissioners shall serve as the hearing officer.
- (d) Decision. 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 under this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded in writing and a copy provided to the acquitted-accused violator.

- (e) Appeals. All decisions of the hearing officer shall be final, except that any person or entity with the right to appeal may appeal the hearing officer's decision within thirty (30) days to the district court for the County in which the alleged violation occurred. The licensee, other aggrieved persons, any municipality, county or state and any officer, department or subdivision thereof shall have the right to appeal the hearing officer's decision. An appeal to the district court stays all proceedings in furtherance of the action appealed from, unless the hearing officer certifies that a stay would cause imminent peril to the public health, safety, and general welfare.
- (f) Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
- (g) Effect of Minnesota Statutes. Pursuant to Minnesota Statutes section 609.685, subdivision 4, in determining what law shall be followed the more stringent law shall be followed in all cases. A criminal prosecution is deemed to be more stringent than an administrative sanction in all cases.

Section 9. Penalties.

(a) Licensees.

1. First Violation. Any licensee found to have violated this ordinance shall be charged an administrative fine of \$100.00 for a first violation of this ordinance.
2. Second Violation. Any licensee found to have violated this ordinance a second time within thirty-six (36) months at the same licensed premises shall be charged an administrative fine of \$200.00. In addition, for the second offense, the license shall be suspended for 7 days.
3. Third and Subsequent Violation. A \$500.00 administrative fine shall be charged for a third or subsequent violation within thirty-six (36) months at the same licensed premises. In addition, for the third offense, the license shall be suspended for 30 days. Furthermore, for the fourth offense and subsequent offenses, the license shall be suspended for 90 days.
4. All penalties shall run consecutively.
5. Dates of license suspension shall be determined by the County Auditor unless a hearing is requested. If a hearing is requested, the dates of license suspension shall be determined by the hearing officer.

(b) Other Individuals. Other individuals found to be in violation of this ordinance shall be charged an administrative fee of \$50.00.

(c) Misdemeanor. Nothing in this Section shall prohibit the County from seeking prosecution as a misdemeanor for any violation of this ordinance or any Federal, State, County, or local law, statute, rule, or regulation.

Section 10. Exceptions and Defenses.

- (a) Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, or tobacco-related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony as defined in Minnesota Statutes, section 609.685, subdivision 5.

- (b) It shall be an affirmative defense to the violation of this ordinance for a person to have a reasonably relied on proof of age as described by State law.

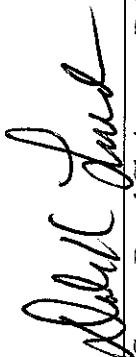
Section 11. Terms.

The terms and provisions of this ordinance are severable. If any provision of this ordinance is, for any reason, held to be invalid, such decision shall not effect the validity of the remaining portion of this ordinance.

Section 12. Effective Date.

- (a) This ordinance shall be referred to as the Tobacco Ordinance.
- (b) This Ordinance shall take effect immediately from and after its passage and publication according to law.

Adopted by the Aitkin County Board of Commissioners this 8th day of August, 2006.



Aitkin County Board Chairperson Dale Lueck

Attest:

