



MINNESOTA COUNTY RETAIL TOBACCO LICENSING ORDINANCE



Minnesota counties are required to license and regulate the sale of commercial tobacco and related devices and products in the unorganized territory of the county and within any city or town that does not license and regulate retail sales in conformance with the minimum requirements stated in Minnesota law.

This model ordinance includes all of the minimum retail tobacco sales restrictions required by Minnesota state and federal law. It also includes a number of additional provisions a county may choose to adopt to further advance public health. A county planning to adopt this model ordinance, in whole or in part, should review it with the county attorney beforehand to determine its suitability for the county's circumstances. While the model ordinance language can



be modified by adding or omitting content concerning activities that a county does or does not seek to regulate, doing so may result in an ordinance that does not conform to state law, federal law, and best public health policy practices.

Because provisions within this model ordinance are controlled by statute and rule, the county attorney should review any modifications to ensure they conform to state and federal law. In addition, because the ordinance establishes rights and responsibilities of both the county and license applicants and holders, the county attorney should review the entire ordinance before it is adopted. The Public Health Law Center provides legal technical assistance to help communities that wish to adopt commercial tobacco control ordinances. We encourage communities to contact us for assistance when considering this model language.

Notice

This ordinance is drafted in the form prescribed by federal, state, and local law. A county must publish notice in the county's official newspaper not less than ten days before the meeting at which the ordinance is to be considered pursuant to Minn. Stat. § 375.51, subd. 2. The notice shall state the subject matter and the general purpose of the proposed ordinance. Proof of publication must be attached to the ordinance and filed in the office of the county auditor.

This ordinance may affect existing license holders. Under Minn. Stat. § 461.19, a county is required to give retailers notice that it is considering adopting or substantially amending a retail tobacco licensing ordinance. The county must take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license. The notice must state the time, place, and date of the meeting and the subject matter of the proposed ordinance. A county may also consider mailing a copy of the proposed ordinance to all existing license holders to inform them of its contents and to provide them an opportunity to make their views known.

Adopted ordinances — or a summary thereof — must be published in the county's official newspaper and provided to the county law library or designated depository pursuant to Minn. Stat. § 375.52.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use. Communities differ on their readiness and willingness to adopt certain commercial tobacco control policies that are intended to help make that world a reality. As such, this model ordinance represents a balance between state and federal minimum standards, best public health policy practices, and practicality for county governments in Minnesota. This model

ordinance contains several policy components that go beyond state minimum requirements and communities may or may not choose to adopt at this time, including:

- Raising the legal purchasing age to 21;
- Prohibiting the sale of flavored tobacco products, including menthol;
- Addressing the price of commercial tobacco products, including establishing minimum prices for cigars and restricting price promotions and coupon redemptions;
- Regulating the distance between tobacco retailers, youth-oriented facilities and other retailers; and
- Prohibiting pharmacies from selling commercial tobacco products.

Context Boxes

Context boxes are included throughout this model ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A county wishing to adopt all or part of this model ordinance should keep this in mind and remove the context boxes.

While the Public Health Law Center does not lobby, advocate, or directly represent communities, adopting effective commercial tobacco control policies starts early with education, stakeholder and community engagement, and a strong advocacy plan. If a community is unaware of the resources available to them for engaging the community and developing an advocacy plan, or if a county is considering adopting an ordinance and is interested in learning about the range of resources available, the Public Health Law Center can provide assistance through our publications and referrals to experts in the field. In certain, limited circumstances, Public Health Law Center staff may be able to speak at public hearings or work sessions to provide education about particular policy options.

This retail tobacco licensing ordinance was prepared by the Tobacco Control Legal Consortium at the Public Health Law Center, located at Mitchell Hamline School of Law in St. Paul, Minnesota.

The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not lobby nor does it provide direct legal representation. This document should not be considered legal advice.

This publication represents the only Minnesota model county retailer licensing policy endorsed by the Public Health Law Center.



ORDINANCE NO. [_____]

**AN ORDINANCE REGULATING THE SALE OF TOBACCO
AND RELATED DEVICES AND PRODUCTS WITHIN
[_____] COUNTY, MINNESOTA**

**THE COUNTY BOARD OF [_____] COUNTY
DOES ORDAIN:**

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Section 1. Purpose and Intent.

Because the 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 18 violates both state and federal laws; and because studies, which the county accepts and adopts, have shown that youth use of any commercial tobacco products has increased to 26.4% in Minnesota ; and because nearly 90% of smokers begin smoking before they have reached 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 many serious health problems which subsequently place a financial 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 to prevent young people from starting to smoke as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

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* (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, 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. (2018). *Data Highlights from the 2017 Minnesota Youth Tobacco Survey*. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). *The Verdict Is In: Findings from United States v. Phillip 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.

Purpose and Findings

A Purpose and Findings section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies and demonstrates the county’s reasoning for adopting specific provisions. This Purpose and Findings section reflects language appropriate for all provisions suggested. The Public Health Law Center can provide support for communities to determine which Purpose and Findings statements and references should be retained in a final ordinance depending on which provisions from the model ordinance the county chooses to adopt.

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 [_____] County and in any city or town located in [_____] 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. § 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.

Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this ordinance, the following definitions apply unless the context clearly indicates or requires a different meaning:

CHILD-RESISTANT PACKAGING. 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.

CIGAR. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

COMPLIANCE CHECKS. 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 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.

ELECTRONIC DELIVERY DEVICE. 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 product that has been approved or certified by the U.S. 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.

FLAVORED PRODUCT. Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

IMITATION TOBACCO PRODUCT. Any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. IMITATION TOBACCO PRODUCT includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. IMITATION TOBACCO PRODUCT does not include electronic delivery devices or nicotine or lobelia delivery products.

INDOOR AREA. 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. A standard window screen (0.011 gauge with an 18 by 16 mesh count) is not considered a wall.

LICENSED PRODUCTS. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

LOOSIES. The common term used to refer to single or individually packaged cigars or cigarettes, or any other licensed product that has been removed from its intended retail packaging and offered for sale. LOOSIES does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least [\$4.00] per cigar.

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a kiosk, truck, van, automobile 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.

NICOTINE OR LOBELIA DELIVERY PRODUCT. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco or an electronic delivery device as defined in this section. NICOTINE OR LOBELIA DELIVERY PRODUCT does not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

PHARMACY. A place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. The phrase includes but is not limited to grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants.

SALE. Any transfer of goods for money, trade, barter or other consideration.

SELF-SERVICE DISPLAY. The open display of licensed products in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee.

SMOKING. 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.

TOBACCO. 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 does not include any product that has been approved by the U.S. 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.

TOBACCO-RELATED DEVICE. Any rolling papers, wraps, pipes, 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.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device that 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.

YOUTH-ORIENTED FACILITY. Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. Youth-oriented facility includes, but is not limited to, schools, playgrounds, recreation centers, and parks.

Section 4. License.

(A) **License required.** No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the county.

- (B) **Application.** An application for a license to sell licensed products must be made on a form provided by the County. The application must 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 Auditor will forward the application to the County Board for action at its next regularly scheduled board meeting. If the Auditor determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.
- (C) **Action.** The County Board may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the County Board approves the application, the County Auditor will issue the license to the applicant. If the County Board denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
- (D) **Term.** All licenses issued are valid for one calendar year from the date of issue.
- (E) **Revocation or suspension.** Any license issued may be suspended or following the procedure set forth in Section 12.
- (F) **Transfers.** All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- (G) **Moveable place of business.** No license will be issued to a moveable place of business. Only fixed location businesses are eligible to be licensed.
- (H) **Display.** All licenses must be posted and displayed at all times in plain view of the general public on the licensed premises.
- (I) **Renewals.** The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days but no more than 60 days before the expiration of the current license.
- (J) **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.
- (K) **Minimum clerk age.** Individuals employed by a licensed retail establishment under this ordinance must be at least [18 or 21] years of age to sell licensed products.

Minimum Age for Clerks

Counties may be interested in establishing a minimum age for employees that work for licensed tobacco retailers. Doing so ensures that employees are of or above the minimum legal sales age for commercial tobacco sales. If a county chooses to raise the minimum legal sales age to 21, but leave the minimum clerk age at 18, clerks between the ages of 18 and 20 can legally sell licensed products within the purview of their employment, but would be unable to purchase them.

- (L) **Maximum number of licenses.** The maximum number of licenses issued by the county at any time is limited to [see context box below]. When the maximum number of licenses has been issued, the county may place persons seeking licensure on a waiting list and allow them to apply on a first-come, first-served basis as licenses are not renewed or are revoked. A new applicant who has purchased a business location holding a valid county license will be entitled to first priority, provided the new applicant meets all other application requirements in accordance with this ordinance.

Licensing Cap

Communities with a higher density of commercial tobacco retailers expose more youth and young adults to commercial tobacco industry marketing and make it easier for youth and young adults to obtain licensed products. This encourages commercial tobacco initiation, use, and brand choice. One way to address retailer density issues is to place a cap on the number of tobacco retailer licenses that may be issued by the county. The above provision would set the maximum number of licenses available.

Counties can choose how to structure a licensing cap to meet the needs of their communities. Potential options include setting the cap at the number of existing licensed retailers or limiting the number of licensed retailers based on population density. A county may also want to limit licenses to those that currently exist and reduce the number of available licenses over time, as licenses are revoked or expire and are not renewed. Counties are encouraged to work with local public health departments, county attorneys, and the Public Health Law Center to determine the appropriate licensing cap provision for their community.

Licensing Cap (continued)

A county may also want to include sunset language, which would limit licenses to those that currently exist and reduce over time, as licenses are revoked or expire and not renewed. For more information on retailer density, review our publication, *Location, Location, Location: Regulating Tobacco Retailer Locations for Public Health*.

- (M) **Proximity to youth-oriented facilities.** No license will be granted to any person for a retail establishment location that is within [1,000] feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a youth-oriented facility. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in the same location for at least one year before the date this section was enacted into law.
- (N) **Proximity to other licensed retailers.** No license will be granted to any person for a retail establishment location that is within [2,000] feet of any other existing licensed retail establishment , as measured by the shortest line from the property line of the space to be occupied by the applicant for a license to the nearest property line of the existing licensee. This restriction does not apply to an applicant who has been licensed to sell licensed products in the same location for at least one year before the date this section was enacted into law.

Proximity Restrictions

Research has demonstrated that policies requiring set distances between retailers and between retailers and youth-oriented facilities help to reduce commercial tobacco retailer density and increase prices for commercial tobacco products. These proximity buffers have the largest impact in urban, low-income neighborhoods, which have been historically targeted by the tobacco industry with pervasive marketing and price promotions at the point-of-sale. The greatest public health impacts are seen when these policies are combined with a cap on the number of licenses issued.

Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740-746; Myers, A. E., Hall, M. G., Isgett, L. F., & Ribisl, K. M. (2015). A Comparison of Three Policy Approaches for Tobacco Retailer Reduction. *Preventive Medicine*, 74, 67-7; and Ribisl, K. M., Luke, D. A., Bohannon, D. L., Sorg, A. A., & Moreland-Russell, S. (2017). Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales near Schools. *Nicotine & Tobacco Research: Official Journal of the Society for Research on Nicotine and Tobacco*, 19(2), 239-244.



- (O) **Pharmacies ineligible for licensure.** No existing license will be eligible for renewal to any pharmacy, including any retail establishment that operates or contains an on-site pharmacy, and no pharmacy or any retail establishment that operates an on-site pharmacy will be granted a new license.

Pharmacy Prohibitions

Several communities have adopted laws prohibiting pharmacies from selling commercial tobacco products. These laws have been shown to significantly reduce commercial tobacco retailer density when compared to communities without similar laws. These gains have had the greatest impact on neighborhoods with higher median income, education, and proportion of non-Hispanic white residents. Although pharmacy restrictions alone are unlikely to address health disparities, some studies have shown that these policies are most effective when combined with proximity restrictions.

Giovenco, D. P., Spillane, T. E., Mauro, C. M., & Hernández, D. (2018). Evaluating the Impact and Equity of a Tobacco-free Pharmacy Law on Retailer Density in New York City Neighbourhoods. *Tobacco Control*, tobaccocontrol-2018-054463.
Jin, Y., Lu, B., Klein, E. G., Berman, M., Foraker, R. E., & Ferketich, A. K. (2016). Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts. *American Journal of Public Health*, 106(4), 679–685.

- (P) **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.
- (Q) **Samples prohibited.** No person shall distribute samples of any licensed product free of charge or at a nominal cost.
- (R) **Instructional program.** Licensees must ensure that all complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the county. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the county at the time of renewal, or whenever requested to do so during the license term.

Section 5. Fees.

No license will be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the county's fee schedule and may be amended from time to time.

Licensing Fees

Fees provide revenue for the administration and enforcement of the ordinance and for retailer and community education. Periodic review and adjustment of licensing fees will ensure that they are sufficient to cover all administration, implementation, and enforcement costs, including compliance checks. Our publication, *Retail License Fees*, provides more information about retail licensing fees and a license fee checklist.

Section 6. Basis for Denial of License.

- (A) Grounds for denying the issuance or renewal of a license include but are not limited to the following:
- (1) The applicant is under 21 years of age.
 - (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.
 - (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.
 - (4) The applicant fails to provide any of the information required on the licensing 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 a license.
- (B) Except as may otherwise be provided by law, the existence of any particular ground for denial does not compel the county to deny the license.
- (C) If a license is mistakenly issued or renewed to a person, it will be revoked upon the discovery that the person was ineligible for the license under this ordinance. The county will provide the license holder with notice of the revocation, along with information on the right to appeal.



Section 7. Prohibited Acts.

(A) **In general.** No person shall sell or offer to sell any licensed product:

- (1) By means of any type of vending machine.
- (2) By means of loosies as defined.
- (3) 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. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other products subject to this ordinance.
- (4) By any other means, to any other person, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

(B) **Legal age.** No person shall sell any licensed product to any person under the age of 21.

- (1) **Age verification.** Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
- (2) **Signage.** Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the county, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

Raising the Minimum Legal Sales Age (MLSA) to 21

In 2015, the Institute of Medicine (now the Health and Medicine Division of the National Academies of Sciences, Engineering, and Medicine) (IOM) released a report containing compelling evidence of the significant public health benefits of raising the minimum legal sales age (MLSA) for tobacco products. The IOM concluded that raising the MLSA today to 21 would result in a 12 percent decrease in tobacco use, approximately 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019. Based on studies showing the effectiveness of enforced youth access laws, increasing the MLSA is likely to be particularly effective in reducing tobacco usage among high school-aged youth by reducing their access to commercial tobacco products. Studies have also indicated that older underage youth (i.e. those who are closer to age 18) are more likely to succeed in buying tobacco in stores. Further, high school friends and peers of legal age are an important social source of commercial tobacco products for underage youth.

Under Minnesota state law, it is unlawful to sell licensed products to any person under the age of 18. Minn. Stat. § 609.685, Minn. Stat. § 609.6855. State law does not prohibit local jurisdictions from enacting a higher minimum legal sales age.

DiFranza, J R, Savageau, J. A., & Aisquith, B. F. (1996). Youth access to tobacco: the effects of age, gender, vending machine locks, and "it's the law" programs. *American Journal of Public Health*, 86(2), 221-224. DiFranza, Joseph R., & Coleman, M. (2001). Sources of tobacco for youths in communities with strong enforcement of youth access laws. *Tobacco Control*, 10(4), 323-328. DiFranza, Joseph R., Savageau, J. A., & Fletcher, K. E. (2009). Enforcement of underage sales laws as a predictor of daily smoking among adolescents — a national study. *BMC Public Health*, 9(1), 107. Institute of Medicine. (2015). *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products: Health and Medicine Division*.

- (C) **Self-service sales.** No person shall allow the sale of licensed products by any self-service displays where the customer may have access to those items without having to request the item from the licensee or the licensee's employee and where there is not a physical exchange of the licensed product from the licensee or the licensee's employee to the customer. All licensed products must be stored behind the sales counter, in another area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.
- (D) **Flavored products.** No person shall sell or offer for sale any flavored products. This prohibition does not apply to retail establishments that:



- (1) Prohibit persons under 21 from entering at all times;
- (2) Derive at least 90 percent of their gross revenues from the sale of licensed products; and
- (3) Meet all of the following building or structural criteria:
 - (a) Shares no wall with and has no part of their structure adjoined to any other business or retailer unless the wall is permanent, completely opaque, and without doors, windows, and pass-throughs to the other business or retailer;
 - (b) Shares no walls with and has no part of their structure directly adjoined to another licensed tobacco retailer; and
 - (c) Is accessible by the public only by an exterior door.

Any retail establishment that sells flavored products must provide financial records documenting its annual sales, upon request by the county.

Sales of Flavored Products

Research demonstrates that flavored tobacco products are especially attractive to youth. These products increase initiation among all populations by masking the harsh taste of tobacco and nicotine. Flavors like menthol and clove also provide a numbing effect that lead to longer breath-holding. This makes quitting flavored tobacco products difficult. Overwhelmingly, youth begin using tobacco with flavored products. Restricting the sale of flavored tobacco products to stores that youth and young adults cannot enter can reduce youth access to, and advertisements for, flavored products.

Many Minnesota jurisdictions have restricted the sale of flavored tobacco products by using the exemptions above. In response, some tobacco retailers have divided their establishment into two stores, separated by a wall or other structural divider. This results in a 21 year+ licensed tobacco retailer on one side that sells flavored tobacco products and a licensed tobacco retailer on the other side that sells only unflavored tobacco products. Adding structural requirements, as suggested in this model ordinance, would place limitations upon such practices.

For more information, please review our publication: [*Regulating Flavored Tobacco Products*](#).



- (E) **Cigars.** No person shall sell or offer to sell any cigar that is not within its intended retail packaging containing a minimum of [five] cigars and for a sales price, after any discounts are applied and before sales taxes are imposed, of less than [\$12.50] per package. This provision does not prohibit the sale of a single cigar with a sales price, after any discounts are applied and before sales taxes are imposed, of at least [\$4.00].
- (F) **Imitation tobacco products.** No person shall sell, offer to sell, or otherwise distribute any imitation tobacco products within the county.
- (G) **Liquid packaging.** No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the county, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.
- (H) **Price promotion and coupon redemption.** No person shall accept or redeem any coupon or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any licensed products to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

Product Discounts

The price of commercial tobacco products directly affects the consumption levels, particularly among price-sensitive consumers, including youth, young adults, and those with limited financial means. The commercial tobacco industry uses innovative pricing strategies to entice new customers to purchase their products, to discourage current users from quitting, and to reduce the effectiveness of tobacco tax increases in decreasing tobacco sales and increasing users' quit attempts. These pricing strategies include "buy-one-get-one" coupons, cents- or dollar-off promotions, and multi-pack offers, which are often marketed and redeemed at the point-of-sale. Jurisdictions can prohibit the redemption of these price discounts to negate the sophisticated discounting strategies of the commercial tobacco industry. Please see our publication, *Death on a Discount: Regulating Tobacco Product Pricing*, for more information on product pricing.

Section 8. Responsibility.

All licensees are 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 licensee. Nothing in this section shall be construed as prohibiting the county from also subjecting the employee to any civil penalties that the county deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation.

Section 9. Compliance Checks and Inspections.

All licensed premises must be open to inspection by law enforcement or other authorized county officials during regular business hours. From time to time, but at least [twice] per year, the county will conduct compliance checks. In accordance with state law, the county will conduct [at least one compliance check that involves the participation of two persons: one person between the ages of 15 and 17 and one person between the ages of 18 and 20] [at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between the ages of 18 and 20] to enter licensed premises to attempt to purchase licensed products. Prior written consent is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

Compliance Checks

State law requires every local licensing authority to conduct at least one compliance check each year. This state-mandated compliance check “must involve minors over the age of 15, but under the age of 18.” It appears that counties with T21 laws can conduct this annual compliance check to both satisfy state law and to enforce its local T21 policy. To do so, counties could either conduct at least one compliance check with a person between the ages of 15 and 17 *and* a person between the ages of 18 and 20, *or* conduct more than one compliance check — at least one check with a person between the ages of 15 and 17 and at least one additional check with a person between the ages of 18 and 20. Above, the bracketed language identifies the two options that the county could choose and only one option should be retained in a final licensing ordinance.

Section 10. Other Prohibited Acts.

Unless otherwise provided, the following acts are an administrative violation of this ordinance:

- (A) **Prohibited furnishing or procurement.** It is a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce person under the age of 21 to illegally purchase or attempt to purchase any licensed product.
- (B) **Use of false identification.** It is a violation of this ordinance for any person use any form of a false 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.

Penalizing Underage Purchase, Use, & Possession & the Use of a False Identification

Prohibiting the attempted and actual possession, use, and purchase (PUP) of licensed products by underage persons or the use of a false ID to purchase tobacco products is a part of many local Minnesota ordinances. However, this model ordinance does not include penalties for underage PUP and only provides non-criminal, non-monetary penalties for the use of false IDs.

At its core, a licensing ordinance is intended to regulate the behavior of licensees. Penalizing underage persons detracts from the focus of the licensing code and siphons enforcement resources away from the licensees to young consumers, many of whom are addicted to nicotine. A *2017 Minnesota Annual Synar Report* on youth access enforcement found that underage persons were cited 3.6 times and assessed a fine 2.6 times more often than retailers. It is important to note that, even if PUP provisions are not included in an ordinance, retailers have the authority to ask underage persons to leave the premises if they attempt to purchase products.

There is no strong evidence to support an assertion that PUP penalties are effective in significantly reducing youth smoking. Historically, these laws were lobbied for by the commercial tobacco industry to punish youth users while the industry simultaneously targeted, and continues to target, youth to replace a dying consumer base and maintain profits in a dwindling market.

Penalizing Underage Purchase, Use, & Possession & the Use of a False Identification *(continued)*

Furthermore, many advocates are concerned that PUP penalties open the door to selective enforcement against youth from certain racial, ethnic, and socio-economic groups. Evidence suggests that youth of color in Minnesota are disproportionately over-represented in similar status-level offenses, increasing their interactions with law enforcement and resulting in their introduction to the criminal justice system. Finally, Minnesota law currently penalizes PUP and the use of false IDs and no further enforcement is needed at the local level.

Some of these concerns may be alleviated by offering alternative non-criminal, non-monetary penalties as suggested below in Section 12(B)(3).

For further reading on the history of PUP laws and the disproportionate enforcement of laws against youth of color and indigenous youth, please see Minnesota Juvenile Justice Advisory Committee's report, *2016 Annual Report to Governor Mark Dayton and the Minnesota State Legislature* (2016) and Wakefield, M., & Giovino, G. (2003). Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tobacco Control*, 12(suppl 1), i6-i13.

Section 11. Exceptions and Defenses.

- (A) **Religious, Spiritual, or Cultural Ceremonies or Practices.** Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- (B) **Reasonable Reliance.** It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

Section 12. Violations and Penalties.

(A) Violations.

- (1) **Notice.** A person violating this ordinance may be issued, either personally or by mail, a citation from the county 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) **Hearings.**

(a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the County Auditor or other designated county officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The County Auditor or other designated county officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.

(3) **Hearing Officer.** The County Board will designate a hearing officer. The hearing officer will be an impartial employee of the county or an impartial person retained by the county to conduct the hearing.

(4) **Decision.** A decision will be issued by the hearing officer within 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. 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 will be provided to the county and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in section 12, division (A)(6) of this section.

(5) **Costs.** If the citation is upheld by the hearing officer, the county's actual expenses in holding the hearing up to a maximum of [\$1,000] must be paid by the person requesting the hearing.

(6) **Appeals.** Appeals of any decision made by the hearing officer must be filed in [_____] County district court within 10 business days of the date of the decision.

(7) **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(B) **Administrative penalties.**

(1) **Licensees.** Any licensee found to have violated this ordinance, or whose employee violated this ordinance, will be charged an administrative fine of [\$200] for a first



violation; [\$500] for a second offense at the same licensed premises within a 24-month period; and [\$750] for a third or subsequent offense at the same location within a 24-month period. Upon the third violation, the license will be suspended for a period of not less than [30] consecutive days. Upon a fourth violation, the license will be revoked.

- (2) **Other individuals.** Individuals, other than persons under the age of 21 regulated by division (B)(3) of this section, who are found to be in violation of this ordinance will be charged an administrative fine of [\$50].
- (3) **Persons under the Age of 21.** Persons under the age of 21 who use false identification to purchase or attempt to purchase licensed products may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the county determines to be appropriate. The County Board will consult with court personnel, educators, parents, children, and other interested parties to determine an appropriate consequence for persons under the age of 21 in the county. The penalty may be established by ordinance and amended from time to time.
- (4) **Statutory penalties.** If the administrative penalty authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.

(C) **Misdemeanor prosecution.** Nothing in this section prohibits the county from seeking prosecution as a misdemeanor for any alleged violation of this ordinance by a person 21 years of age or older.

Section 13. Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Section 14. 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. § 375.51, subd. 3, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.