

**ORDINANCE NO. 20201117\_20**

**AN ORDINANCE REGULATING THE POSSESSION, SALE, AND CONSUMPTION OF TOBACCO AND RELATED DEVICES AND PRODUCTS WITHIN THE COUNTY OF TODD, MINNESOTA**

**THE COUNTY BOARD OF THE COUNTY OF TODD, MINNESOTA ORDAINS:**

**Section 1. Title.** This ordinance shall be known and referenced as the Todd County Tobacco Sales and Access Ordinance.

**Section 2. Purpose.** The County Board recognizes that:

- I. Sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 years are violations of both Minnesota and Federal laws.
- II. Publications by the National Cancer Institute, U.S. Center for Disease Control and Prevention, the Minnesota Department of Health, Minnesota Department of Human Services, Minnesota Attorney General's Office, and the University of Minnesota summarizing state and national research show that:
  - Most smokers begin smoking before they have reached the age of 21 years,
  - Those persons who reach the age of 21 years without having started smoking are significantly less likely to begin smoking,
  - Commercial tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government, and
  - Smoking rates for persons under 21 are higher in communities where the law is not actively enforced.
- III. This ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws; to protect minors against the serious effects associated with the illegal use of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products; and to further 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, as it may be amended from time to time.

**Section 3. Jurisdiction.**

**Subd. 1.** The Todd County Tobacco Sales and Access Ordinance shall apply to all incorporated and unincorporated areas within Todd County that do not have a municipal tobacco license and active regulation, which meet the intent and minimum requirements of Minnesota law, in effect.

**Subd. 2.** All requirements of this ordinance are applicable within a city or town that licenses retail establishments but fails to actively regulate retail sales according to Minnesota law.

#### **Section 4. Definitions and Interpretations.**

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

**Subd. 1. Administrative Fee.** The license and service fees that are assessed to individuals, as authorized by the ordinance. Administrative fees are not penalties assigned in a criminal court.

**Subd. 2. Administrative Penalty.** The fees that are assessed to individuals for violation of the ordinance as authorized by the ordinance.

**Subd. 3 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.

**Subd. 4. Compliance Checks.** The system the county uses to investigate and ensure that those authorized to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of persons under the age of 21 as authorized by this ordinance. Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products for educational, research, and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products.

**Subd. 5. County Board.** The Todd County Board of Commissioners.

**Subd. 6. County Official.** The person or persons authorized to administer and enforce this ordinance.

**Subd. 7. Electronic Delivery Device.** Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any 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.

**Subd. 8. 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 0.011 gauge window screen is not considered a wall.

**Subd. 9. Loosies.** The common term used to refer to single cigarettes, cigars, and any other tobacco products, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery 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.

**Subd. 10. Moveable Place of Business.** Any business operated out of a truck, van, automobile, kiosk, or other type of vehicle or transportable shelter without a fixed address store front or other permanent type of structure authorized for sales transactions.

**Subd. 11. 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 tobacco or an electronic delivery device as defined in this section. 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.

**Subd. 12. Retail Establishment.** Any place of business where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are available for sale to the general public. Retail establishments shall include, but not be limited to, tobacco shops, grocery stores, service stations, convenience stores, restaurants, taverns, and drug stores.

**Subd. 13. Sale.** Any transfer of goods for money, trade, barter, or other consideration.

**Subd. 14. Self-Service Merchandising.** Open displays of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco-related devices, electronic-delivery devices, or nicotine or lobelia delivery products, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco-related device, electronic-delivery device, or nicotine or lobelia delivery device between the customer and the licensee or licensee's employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

**Subd. 15. Smoking.** The inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other tobacco or plant 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.

**Subd. 16. Tobacco or Tobacco Products.** 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 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 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.

**Subd. 17. Tobacco-Related Devices.** Any pipes, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco-related devices shall include accessories or components of tobacco-related devices which may be marketed separately.

**Subd. 18. Vending Machine.** Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

## **Section 5. License.**

No retail establishment shall sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product without first having obtained a license to do so from the county, unless such person obtained a license from a city or town which is responsible for licensing and within its jurisdiction.

**Subd. 1. Application.** An application for a license to sell shall be made on a form provided by the county. The application shall contain the full name of the applicant, 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. If it is determined that an application is incomplete, it shall be returned to the applicant with notice of the information necessary to complete the application.

**Subd. 2. Action.** The County Board may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant. Investigation may include, but is not limited to, a background check. If the County Board approves, the license shall be issued to the applicant. If the County Board denies the license, notice of the denial shall be given to the applicant along with the notice of the applicant's rights and the appeal process.

**Subd. 3. Term.** All licenses shall be valid upon approval by the Todd County Board. The license shall terminate each year on December 31<sup>st</sup>. The length of the license time may be modified from time-to-time by resolution of the County Board.

**Sub. 4. Revocation or Suspension.** Any license issued under this section may be revoked or suspended as provided in this ordinance.

**Subd. 5. Renewals.** The renewal of a license shall be handled in the same manner as the original application. The applicant's request for a renewal shall be made at least thirty days but no more than sixty days before the expiration of the current license.

**Subd. 6. Issuance as privilege and not a right.** The issuance of a license issued under this section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

**Subd. 7. Transfers.** All licenses shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of the license to another location or person shall be allowed.

**Subd. 8. Moveable Place of Business.** No license shall be issued to a movable place of business. Only fixed-location businesses shall be eligible to be licensed.

**Subd. 9. Display.** All licenses shall be posted and displayed on the licensed premise in plain view of the general public and shall be exhibited to any person upon request.

**Subd. 10. Smoking.** Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco, tobacco-related devices, or electronic delivery devices is prohibited.

### **Section 6. Administrative Fees.**

No license shall be issued under this ordinance until the appropriate administrative fee is paid in full. The administrative fee for a license under this ordinance shall be established and may be modified, from time to time, through county ordinance.

### **Section 7. Basis for Denial of License.**

Grounds for the County Board to deny the issuance or renewal of a license under this ordinance include, but are not limited to, the following:

**Subd. 1.** The applicant is under the age of 21 years.

**Subd. 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 tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.

**Subd. 3.** The applicant has had a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products suspended or revoked within the preceding 12 months of the date of application.

**Subd. 4.** The applicant fails to provide any information required on the application, or provides false or misleading information.

**Subd. 5.** The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding a license.

However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the County must deny the license. Additionally, if a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

**Section 8. Prohibited Sales.**

**Subd. 1. In general.** It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product:

- A. By means of any type of vending machine.
- B. At a moveable place of business.
- C. By means of loosies as defined in Section 4 of this ordinance.
- D. 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, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device between the licensee, or the licensee’s employee, and the customer.
- 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, or other local law, ordinance provision, or other regulation.

**Subd. 2. Legal age.** No person shall sell any licensed product to any person under the age of 21.

- A. Age verification. Licensees must verify by means of government-issued photographic identification containing the bearer’s date of birth 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.
- B. Signage. Notice of the legal sales age, age verification requirement, and possible penalties for underage sales 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.

**Section 9. Self-Service Sales.**

It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products by any means whereby the customer may have access to those items without having to request the items from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product between the licensee or his or her clerk and the customer. All tobacco, tobacco-related devices, electronic delivery devices, and nicotine or

lobelia delivery 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.

### **Section 10. Responsibility.**

All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products on the licensed premises, and the sale of such an item by any 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 11. Compliance Checks and Inspections.**

All licensed premises under this ordinance shall be open to inspection by the Todd County Sheriff's Department 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 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 premises 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 will be supervised by law enforcement or other designated personnel.

### **Section 12. Other Prohibited Acts.**

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

**Subd. 1. Procurement.** It shall be a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain such items on behalf of a person under the age of 21. It shall further be a violation for any person 21 years of age or older to coerce or attempt to coerce a person under age 21 to purchase or otherwise obtain or use any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product. This subdivision shall not apply to persons under age 21 lawfully involved in a compliance check.

**Subd. 2. Possession.** It shall be a violation of this ordinance for any persons under age 18 to have in his or her possession any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product. This subdivision shall not apply to minors lawfully involved in a compliance check.

**Subd. 3. Use.** It shall be a violation of this ordinance for any persons under age 18 to smoke, chew, sniff, or otherwise use any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

**Subd. 4. 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 one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

**Subd. 5. Liquid Packaging.** It shall be a violation of this ordinance to sell any liquid, whether or not such liquid contains nicotine, intended for human consumption and use in an electronic

delivery device, in packaging that is not child-resistant. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

### **Section 13. Violations.**

**Subd. 1. Notice.** A person violating this ordinance may be issued, either personally or by mail, a citation that sets forth the alleged violation and administrative penalty. The notice shall inform the alleged violator of the right to an administrative hearing.

**Subd. 2. Hearings.** Upon issuance of a citation, a person accused of violating this ordinance may request a hearing on the matter, and a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. A hearing request by the accused must be requested in writing within 30 days of the violation date to the Todd County Sheriff's Department. If a violation is found to have occurred, the violator shall be responsible for the cost of conducting the administrative hearing.

**Subd. 3. Hearing Officer.** An Administrative Law Judge shall serve as the hearing officer.

**Subd. 4. 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 Section 14 of 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, those findings shall be recorded and a copy provided to the acquitted accused violator.

**Subd. 5. Appeals.** Appeals of any decision made by the hearing officer shall be filed in Todd County District Court within 30 days.

**Subd. 6. Continued Violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

### **Section 14. Administrative Penalties.**

**Subd. 1. Licensees.** Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative penalty of \$300 for a first violation of this ordinance; \$600 for a second offense at the same licensed premises within a 36-month period; and \$1,000 for a third or subsequent offense at the same location within a 36-month period. In addition, after the third offense, the license shall be suspended for not less than seven consecutive days.

**Subd. 2. Other Individuals.** Other individuals, other than minors regulated by Subd. 3 of this section, found to be in violation of this ordinance shall be charged an administrative penalty of \$50.

**Subd. 3. Persons under the age of 21.** Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to noncriminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the county determines to be appropriate. The County Board will consult with educators, parents, guardians, persons

under the age of 21, public health officials, court personnel, and other interested parties to determine an appropriate remedy for persons under the age of 21 in the county in the best interest of the underage person. The remedies for persons under 21 who use a false identification to purchase or attempt to purchase licensed products may be established by ordinance and amended from time to time.

**Subd. 4. Misdemeanor.** Nothing in this section prohibits the county from seeking prosecution as a misdemeanor for an alleged second violation of this ordinance by a person 21 years of age or older within five years of a previous conviction under the ordinance.

**Section 15. Exceptions and Defenses.**

Nothing in this ordinance shall prevent the provision of tobacco or tobacco-related devices, to a person under age 21 as a 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 16. Severability and Savings Clause.**

If any section or provision of this ordinance shall be found invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

**Section 17. Effective Date.**

This ordinance shall be in full force and effect from and after its passage and approval, as provided by law.

Passed and approved this 17<sup>th</sup> day of November, 2020 by the County of Todd.

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David Kircher  
Todd County Board Chairperson