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BARB TAMTE
COUNTY RECORDER
POPE COUNTY, MINNESOTA
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POPE MINNESOTA COUNTY

*Enhancing quality of life by providing innovative
services for our community every day.*

STATE OF MINNESOTA COUNTY OF POPE TOBACCO LICENSING AND REGULATION ORDINANCE NO. 2018-02

The Pope County Board does hereby **ORDAIN**:

SECTION I.

Tobacco Licensing and Regulation.

Subd. 1. Purpose. Because the County recognizes that many persons under the age of 21 years use tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery; and because young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users; and because national data show that approximately 95 percent of adult smokers begin smoking before they turn 21; and because the ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use; and, as a result, approximately 3 out of 4 teen smokers end up smoking into adulthood; and pursuant to the mandates provided in Minnesota Statutes Chapter 461 this ordinance is intended to regulate the sale of tobacco, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products for the purpose of enforcing and furthering existing laws and state mandates; this ordinance is intended to protect youth and young adults against the serious effects associated with the use of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products; and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Stat. §144.391.

Subd. 2. Definitions and Interpretations. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

- A. Child-Resistant Packaging. "Child-Resistant Packaging" is packaging that meets the definition as set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, when tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- B. Compliance Checks. "Compliance Checks" shall mean the system the County uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of persons under the age of 21 as authorized by this ordinance. Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase licensed 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 licensed products.
- C. Electronic Delivery Device. "Electronic delivery device" means 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, 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.

- D. Licensed Products. "Licensed products" means any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
- E. Moveable Place of Business. "Moveable Place of Business" shall refer to any retail business whose physical location is not permanent, including, but not limited to, any retail business that is operated from a kiosk, other transportable structure, or a motorized or nonmotorized vehicle.
- F. Nicotine or Lobelia Delivery Products. "Nicotine or Lobelia Delivery Products" are 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, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, or for other medical purposes, and is being marketed and sold solely for that approved purpose.
- G. Retail Establishment. "Retail Establishment" shall mean any place of business where licensed products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.
- H. Sale. A "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.
- I. Self-Service Merchandising. "Self-Service Merchandising" means open displays of licensed products in any manner where any person shall have access to the licensed products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the licensed products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.
- J. Tobacco or Tobacco Products. "Tobacco" means 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, and 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 components, part, or accessory of a tobacco product. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for the sale as a tobacco cessation product, as a tobacco-dependence product, or for other medical purposes, and sold solely for such an approved purpose.
- K. Tobacco Related Devices. "Tobacco Related Devices" means cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.
- L. Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or

other type of device which dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed products.

Subd. 3 License required. No person shall sell or offer to sell any licensed products without first having obtained a license to do so from the County.

- A. Application. An application for a license to sell licensed products shall be made on a form provided by the County. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the County deems necessary. Upon receipt of a completed application, the County shall forward the application to the County Board for action at its next regularly scheduled board meeting. If the application is incomplete, the application will be returned to the applicant with notice of the information necessary to make the application complete.
- B. Action. The County Board may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the board shall approve the license, the County shall issue the license to the applicant. If the board denies the license, notice of the denial shall be given to the applicant along with notice applicant's right to appeal the board's decision.
- C. Term. All licenses issued under this ordinance shall be valid from the date issued to December 31 of that calendar year.
- D. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended following the procedure provided in Section 12.
- E. Transfers. All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- F. Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.
- G. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- H. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made by the licensee at least thirty days but no more than sixty days before the expiration of the current license. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

Subd. 4. Fees. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a tobacco license shall be in a sum set by action of the County Board and may be amended from time to time.

Subd. 5. Basis for Denial of License.

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

1. The applicant is under the age of 21 years.
2. The applicant has been convicted with the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.
3. The applicant has had a license to sell licensed products suspended or revoked within the preceding twelve months of the date of application.
4. The applicant fails to provide any information required on the 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 such a license.

B. 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.

C. 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 ordinance.

Subd. 6. Prohibited Sales.

A. Persons Under 21. No person shall sell, offer to sell or otherwise provide any licensed products to any person under the age of twenty-one (21) years.

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 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.

B. Self-service Sales. No person shall sell, offer to sell or otherwise provide any licensed product in open displays which are accessible to the public without the intervention of a store employee that includes a physical exchange of the licensed product between the licensee or the licensee's employee and the customer. This shall not apply to retail establishments which derive at least 90 percent of their revenue from licensed products, and where the retailer ensures that no person younger than 21 years of age is present, or permitted to enter at any time.

C. Controlled Substances. No person shall sell, offer to sell or otherwise provide any licensed products containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances

except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.

- D. Vending Machines. No person shall allow the sale of licensed products by the means of a vending machine unless persons under the age of 21 are at all times prohibited from entering the licensed establishment.
- E. Samples. No person shall distribute licensed products or other tobacco product free of charge or for nominal cost.
- F. Other Prohibitions. No person shall sell, offer or otherwise provide any licensed product by any other means, to any other person, or in any manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

Subd. 7. Liquid Packaging.

- A. The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device in packaging that is not child-resistant is prohibited. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Subd. 8. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of licensed products in 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 subdivision shall be construed as prohibiting the County from also subjecting the employee to whatever penalties are appropriate under this ordinance, state or federal law, or other applicable law or regulation.

Subd. 9. Compliance Checks and Inspections. All licensed premises must be open to inspection by law enforcement or other authorized county official during regular business hours. From time to time, but at least twice per year, the County will conduct compliance checks. The county will conduct two compliance checks: one compliance check by engaging a person between the ages of 15 and 17 to comply with state and county law and a second compliance check by engaging a person between the ages of 18 and 20 to comply with the minimum legal sales age requirement of the County to enter licensed premises to attempt to purchase licensed products. Prior written consent is required for any person under the age of 18 who participates in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

Subd. 10. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this Ordinance:

- A. Use of False Identification. It shall be a violation of this ordinance for any person under 21 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. 11. Violations.

A. Misdemeanor Prosecution. The County may prosecute any violation of this subdivision, other than Subdivision 10, as a misdemeanor. If the County elects to prosecute the license holder, no administrative penalty shall be imposed.

B. Administrative Process.

1. Notice. A person violating this ordinance may be issued, either personally or by mail, a citation that sets forth the nature of the alleged violation, his or her right to a hearing on the alleged violation and the potential penalties for a violation.

2. Hearing. A person, who receives notice of an alleged violation of this ordinance, may request a hearing on the alleged violation. The hearing request must be in writing and received by the County within two (2) weeks of the date of the notice. The person requesting the hearing shall be advised of the date, time, and place of the hearing. The hearing shall be recorded.

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

4. Decision by the Hearing Officer. The Hearing Officer shall make written findings, which shall be mailed, to the person requesting the hearing and made a part of the hearing record. If the Hearing Officer determines that a violation of this section occurred, the Hearing Officer's findings shall be forwarded to the County Board for determination of the appropriate penalty pursuant to Subdivision 12 of this section.

5. Appeal. Any person found to have violated this section, shall have the right to appeal to Pope County district court as provided by law.

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

Subd. 12. Penalties.

A. Licensee. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense at the same licensed premises within a twenty-four month period; and \$250 for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven days. These administrative penalties are the minimum mandatory penalties, and do not restrict the County from suspending or revoking a license regardless of the lack of prior violations.

B. Other Individuals. Other individuals found to be in violation of this ordinance may be charged an administrative fee of \$50. This administrative fine or other penalty may be established by ordinance and amended from time to time.

C. Persons Under the Age of 21. Persons under the age of 21 who unlawfully attempt to disguise their true age by the use of a false form of identification to purchase licensed products may be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community service, or other penalty that the County believes will be appropriate and effective. The administrative fine shall be established by the County Board upon consultation with the courts,

educators, parents, children, and other interested parties. This administrative fine or other penalty may be established by ordinance and amended from time to time.

Subd. 13. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of licensed products, to a person under 21 as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

Subd. 14. Severability and Savings Clause. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

Subd. 15. Ability to assign. The County Board may assign the duties in this ordinance to a department within the County or, upon mutual agreement, to an entity not within the County organizational structure.

Subd. 16. Effective Date and Publication. This ordinance shall take effect the day following publication in the County's official newspaper. By adoption of this Ordinance, the County Board specifically finds this Ordinance to be lengthy and shall affect publication by title and summary pursuant to Minn. Stat. §§ 375.51, subd. 3, and 331A.01, subd. 10.

SECTION II. This Ordinance shall be in effect and full force after its publication.


SECTION III. All prior ordinances pertaining to subjects treated in this Ordinance shall be deemed repealed from and after the effective date of this Ordinance, provided this repeal shall not affect any offense committed or penalty incurred, or any right established prior to the effective date of this Ordinance.

IT IS ORDERED, by the Board of County Commissioners that a full, true, and correct copy of this ordinance shall be certified to the County Auditor who shall forthwith file for record such certified copy in the office of the Recorder for Pope County, Minnesota. Such ordinance shall be a public record and available for inspection at reasonable times in the office of the Recorder.

ADOPTED by the Pope County Board this 7th day of December, 2018.


Larry Lindor, Pope County Board Chair

Attested:


Kersten Kappmeyer, Pope County Coordinator

