

AITKIN COUNTY ORDINANCE REGULATING THE SALE, PROCUREMENT, AND POSSESSION OF TOBACCO AND RELATED DEVICES

AN ORDINANCE RELATING TO THE SALE, PROCUREMENT, AND POSSESSION OF COMMERCIAL TOBACCO, AND RELATED DEVICES AND PRODUCTS IN THE COUNTY OF AITKIN, MINNESOTA

WHEREAS, the Aitkin County Board of Commissioners recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 years are violations of both State and Federal laws; and

WHEREAS, studies have shown that 90% of people who smoke begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and

WHEREAS, 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

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

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

Now, Therefore,

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

Section 1. 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 Aitkin County and in any city or town located in Aitkin 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 2. Definitions and Interpretations in this Ordinance

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:

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.

ADMINISTRATIVE PENALTY. The fees that are assessed to individuals for violation of the Ordinance as authorized by the Ordinance.

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 it 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 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.

COUNTY BOARD. The Aitkin County Board of Commissioners.

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 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.

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; or a cooling or numbing sensation distinguishable by an ordinary consumer either prior to or during the consumption of such tobacco product.

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.

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

LOOSIES. The common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale.

LOOSIES does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

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 that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

NICOTINE OR LOBELIA DELIVERY PRODUCT. Any product containing or delivering nicotine or lobelia intended for human consumption, whether natural or synthetic, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section.

NICOTINE OR LOBELIA DELIVERY PRODUCT does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. **RETAIL ESTABLISHMENT** includes but is not limited to grocery stores, tobacco products shops, convenience stores, liquor 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 a retail establishment 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 and where a physical exchange of the licensed product from the licensee or the licensee's employee to the customer is not required in order to access the licensed products.

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.

SYNTHETIC NICOTINE PRODUCT. Any product containing, made, or derived from non-tobacco nicotine that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. **SYNTHETIC NICOTINE**

PRODUCT does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

TOBACCO PRODUCT. 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 PRODUCT does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

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 payment by any form 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 3. License Provisions

(A) License required. No person shall sell or offer to sell any licensed product at any place in the County without first obtaining a license from County Auditor's Office, unless the applicable township or other municipality has assumed jurisdiction of retail tobacco licenses within said township or municipality.

(B) Fees. No license will be issued until the proper license fee is paid in full. The fees will be established by the County's fee schedule and may be amended from time to time.

(C) Term. All retail tobacco licenses shall be valid for one calendar year from the date that the license is issued unless said license is suspended, revoked, canceled, or otherwise limited by the county.

(D) Display. Every license shall be conspicuously posted and displayed at the place for which the license is issued and shall be exhibited to any person upon request.

(E) 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.

(F) Youth-orientated facility. No new license will be granted to any person for a retail establishment location not already established as of the date of this ordinance that is within 500 feet of a youth-orientated 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 the school or playground.

(G) 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.

(H) Revocation or suspension. Any license issued under this section may be revoked or suspended as provided in this ordinance. No new retail tobacco licenses shall be issued to a licensee while said licensee's previous or current license is under suspension, revocation, cancellation, or other period of limitation by the county.

(I) Issuance as a 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.

(J) Smoking prohibited. 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 licensed products is prohibited.

(K) Samples prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited.

Section 4. Basis for Denial of License

(A) 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:

- (1) The applicant is under the age of Twenty-one (21) years.
- (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 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 a license.
- (6) The business for which the license is requested is a moveable place of business. Only fixed location retail establishments shall be eligible to be licensed under this Ordinance.
- (7) The applicant is delinquent in payment of federal, state, or local taxes, fines and fees.
- (8) The applicant, or employee or agent of the applicant, has interfered with a compliance check.
- (9) The applicant has failed to pay an administrative penalty.

(10) Any other suitable reason that the granting of a license to the applicant is inconsistent with public health, safety, and welfare, including the applicant's history of noncompliance with this ordinance and other laws relating to the sale of licensed products.

(B) 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. The licensee is entitled to a hearing with the Tobacco Hearing Board as outlined in Section 8 of this ordinance.

Section 5. Prohibited Sales and Acts

(A) It shall be a violation of this ordinance for any person to sell or offer to sell any licensed product:

- (1) To any person under the age of twenty-one (21) years;
- (2) By means of self-service display. All licensed products 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;
- (3) Vending machine. By means of any type of vending machine, unless premise cannot be entered at any time by persons younger than twenty-one (21) years of age;
- (4) By means of "loosies" as defined in this ordinance;
- (5) Containing opium, morphine, jimsonweed, belladonna, 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;
- (6) By any other means, to any other person, or in any other manner or form prohibited by Federal, State, County, or other local law, ordinance, or other regulation;
- (7) 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;
- (8) Licensees are required to follow any federal and state requirements regarding minimum pack pricing on any licensed product;

(B) Legal age. No person shall sell, give, or furnish, any licensed product to any person under the age of Twenty-one (21).

(1) 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.

(2) 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, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

(3) 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 a 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 a person under the age of 21 to purchase or attempt to purchase any licensed product.

(4) 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. A licensee may seize a form of identification, if the licensee has reasonable grounds to believe that the form of identification has been altered or falsified or is being used to violate any law. A licensee who seizes a form of identification as authorized under this subdivision shall deliver it to a law enforcement agency within 24 hours of seizing it.

(C) Possession. It shall be a violation of this ordinance for any person under age 21 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.

Section 6. Responsibility

All licensees are responsible for the actions of their employees regarding 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.

Section 7. Compliance Checks and Inspections

All licensed premises shall be open to inspection by authorized County officials during regular business hours. From time to time, the County will conduct compliance checks to ensure compliance with all provisions of this ordinance. 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 8. Violations

(A) Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail:

- (1) A citation that sets forth the alleged violation; and
- (2) Notice of the administrative penalty including the dates of license suspension; and
- (3) Notice which shall inform the alleged violator of his/her right to be heard on the accusation.

(B) Hearings. The alleged violator shall have ten (10) calendar days from the date the citation was mailed or if the citation was issued personally, ten (10) calendar days from receipt, to provide a written request for a hearing before the hearing officer. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. The requested hearing shall be held within thirty (30) days upon receipt of the written request for a hearing. If good cause is shown, the hearing officer may extend the time for the hearing for up to an additional thirty (30) days. The hearing officer must give reasonable notice for the hearing to the alleged violator and the public.

(C) Hearing Officer. The Aitkin County Board of Commissioners shall serve as the hearing officer.

(D) Decision. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded in writing and a copy provided to the acquitted-accused violator.

(E) Appeals. All decisions of the hearing officer shall be final, except that any person or entity with the right to appeal may appeal the hearing officer's decision within thirty (30) days to the district court for the County in which the alleged violation occurred. The licensee, other aggrieved persons, any municipality, county or state and any officer, department or subdivision thereof shall have the right to appeal the hearing officer's decision. An appeal to the district court stays all proceedings in furtherance of the action appealed from, unless the hearing officer certifies that a stay would cause imminent peril to the public health, safety, and general welfare.

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

(G) Effect of Minnesota Statutes. Pursuant to Minnesota Statutes section 609.685, subdivision 4, in determining what law shall be followed the more stringent law shall be followed in all cases. A criminal prosecution is deemed to be more stringent than an administrative sanction in all cases.

Section 9. Administrative Penalties

(A) Licensees

(1) First Violation. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative penalty of \$300.00 for a first violation of this ordinance. Upon a first violation, proof the licensee has completed an instructional program regarding the requirements of tobacco retail licensing and sales must be submitted to the Aitkin County Public Health Department within 10 calendar days.

(2) Second Violation. Penalties will increase if a second offense occurs at the same licensed premises within a 36-month period to \$600. In addition, for the second offense, the license shall be suspended for 7 calendar days, and proof the licensee and all staff have completed an instructional program regarding the requirements of tobacco retail licensing and sales must be submitted to the Aitkin County Public Health Department within 10 calendar days.

(3) Third and Subsequent Violation. Penalties will increase again for a third or subsequent offense at the same location within a 36-month period to \$1000. In addition, for the third offense, the license shall be suspended for 30 consecutive days and may be revoked. The licensee and all staff must complete an instructional program regarding the requirements of tobacco retail licensing and sales and proof of such training shall be submitted to the Aitkin County Public Health Department within 10 calendar days. Furthermore, for the fourth offense and subsequent offenses, the license shall be suspended for 90 calendar days and may be revoked.

(4) All penalties shall run consecutively.

(5) Dates of license suspension or revocation shall be determined by the County Auditor unless a hearing is requested. If a hearing is requested, the dates of license suspension or revocation shall be determined by the hearing officer.

(B) Employees of licensee

Employees of licensee found to be in violation of this ordinance will, within 10 calendar days, be required to provide proof of completion for an instructional program regarding the requirements of tobacco retail licensing and sales to the Aitkin County Public Health Department and may be charged an administrative fine of no more than \$50.

(C) Other individuals

Other individuals, other than individuals under the age of 21 regulated by Subd. E of this section, found to be in violation of this ordinance shall be charged an administrative penalty of no more than \$50.

(D) Misdemeanor

Nothing in this Section shall prohibit the County from seeking prosecution as a misdemeanor for a second violation of this ordinance within five years of a first violation or any Federal, State, County, or local law, statute, rule, or regulation.

(E) Persons under the age of 21.

(1) 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 or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the legal and licensing authority determine to be appropriate. Law Enforcement, Court System, and Public Health representatives may consult, as applicable, with interested persons, including, but not limited to, 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.

(2) Persons under the age of 21 who has in his or her possession any tobacco, tobacco-related devices, electronic delivery device, nicotine or lobelia delivery product may be subject to non-criminal, non-monetary civil penalties or remedies such as tobacco-related education

classes, diversion programs, community services, another non-monetary, civil penalty or may be charged with an administrative penalty of no more than \$50, whichever the legal authority determines to be appropriate. Law Enforcement, Court System, and Public Health representatives may consult, as applicable, with interested persons, including, but not limited to, 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 and is in the best interest of the underage person.

(F) Payment of Penalty

The administrative penalty must be paid by a person and/or the licensee within 10 calendar days from mailing or personal delivery of the notice of violation unless a hearing is requested as provided in Section 8(B). If an administrative penalty is not paid and no hearing is requested within the time limits provided, the person or licensee will then have 10 calendar days to pay the fine plus a late fee established by the County Board. If payment is not received after the second notification deadline, this would constitute the basis for denial of license under Section 4(A) of this ordinance.

Section 10. Exceptions and Defenses

(A) Religious, spiritual, or cultural ceremonies or practices. Nothing in this ordinance shall prevent the providing of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony as defined in Minnesota Statutes, section 609.685, subdivision 5.

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

Section 11. Terms

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


Section 12. Effective Date

Effective date. This ordinance shall be referred to as the Aitkin County Ordinance Regulating the Sale, Procurement, and Possession of Tobacco and Related Devices. 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.

Adopted by the Aitkin County Board of Commissioners this 13th day of August, 2024.


Chairperson
Aitkin County Board of Commissioners

Attest:


Jessica Seibert
Aitkin County Administrator

Approved as to Form:


Jim Ratz
Aitkin County Attorney