



MORRISON COUNTY

“HOME OF LINDBERGH”

**ORDINANCE REGULATING TOBACCO AND
RELATED DEVICES**

AN ORDINANCE REGULATING THE POSSESSION, PROCUREMENT, & SALE
OF TOBACCO AND RELATED DEVICES AND PRODUCTS IN MORRISON
COUNTY

BY AND THROUGH

**MORRISON COUNTY
DEPARTMENT OF PUBLIC HEALTH**

EFFECTIVE JULY 1st 2021

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**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MORRISON COUNTY, MINNESOTA;**

SECTION 1. PURPOSE

- 1.1** 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.
- 1.2** 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:
 - 1.2.1** Most smokers begin smoking before they have reached the age of 21 years,
 - 1.2.2** Those persons who reach the age of 21 years without having started smoking are significantly less likely to begin smoking,
 - 1.2.3** 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
 - 1.2.4** Smoking rates for persons under 21 are higher in communities where the law is not actively enforced.
- 1.3** 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 2. JURISDICTION

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

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.

- 3.1 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.
- 3.2 ADMINISTRATIVE PENALTY-** The fees that are assessed to individuals for violation of the Ordinance as authorized by the Ordinance.
- 3.3 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.
- 3.4 CIGAR-** Any toll of tobacco that is wrapped in tobacco leaf or any substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette.
- 3.5 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.
- 3.6 COUNTY BOARD-** The Morrison County Board of Commissioners.

3.7 ELECTRONIC DELIVERY DEVICES- Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic delivery device includes but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, 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 excludes drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

3.8 FLAVORED PRODUCT- Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by the 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.

3.9 IMITATION TOBACCO PRODUCT- Any edible non-tobacco product designed to resemble a tobacco product, or any non-edible non-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.

3.10 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.

3.11 LICENSED PRODUCT- Tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.

3.12 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.

3.13 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.

3.14 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.

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

3.16 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.

3.17 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.

3.18 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.

3.21 TOBACCO HEARING BOARD- The Tobacco Hearing Board shall be appointed by the Board and members will consist of; two County Commissioners, two members of the Morrison County Public Health Advisory Committee, and Public Health Director. The Tobacco Hearing Board shall elect its own chair. The Tobacco Hearing Board may act if a simple majority of its members are present and participate in the decision.

SECTION 4. LICENSING PROVISIONS

4.1 LICENSE

4.1.1 LICENSE REQUIRED- 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. No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the County Board.

4.1.2 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. All licenses shall be valid upon approval by the Morrison County Board. The license shall terminate each year on January 31st. The length of the license time may be modified from time-to-time by resolution of the County Board.

4.1.3 FEE- The fee for a license shall be set by the County Board. No license will be issued until the proper license fee is paid in full. This annual fee may be adjusted as the Board deems appropriate.

4.1.4 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 as outlined in Section 8.3.

4.1.5 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.

4.1.6 REVOCATION OR SUSPENSION- Any license issued under this section may be revoked or suspended as provided in this Ordinance.

4.1.7 POSTING REQUIREMENT- 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.

4.1.8 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.

4.1.9 **MINIMUM CLERK AGE-** If an establishment has repeat offenses selling to a person under 21, the minimum clerk age for employees selling tobacco must be 18 years or for the remainder of the current licensed year.

4.1.10 **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 tobacco, tobacco-related devices, or electronic delivery devices is prohibited.

4.2 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:

- 4.2.1 The applicant is under the age of 21 years.
- 4.2.2 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.
- 4.2.3 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.
- 4.2.4 The applicant fails to provide any information required on the application, or provides false or misleading information.
- 4.2.5 The applicant is prohibited by federal, state, or other local law, Ordinance, or other regulation, from holding a license.
- 4.2.6 The business for which the license is requested is a moveable place of business. A movable place of business includes any business operated out of a truck, van, kiosk, or other type of vehicle or transportable shelter without a fixed address store front. Only fixed location retail establishments shall be eligible to be licensed under this Ordinance.
- 4.2.7 The applicant is delinquent in payment of federal, state, or local taxes, fines and fees.

- 4.2.8 The applicant, or employee or agent of the applicant, has interfered with a compliance check.
- 4.2.9 The applicant has failed to pay an administrative penalty.
- 4.2.10 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.
- 4.2.11 This licensee is entitled to a hearing with the Tobacco Hearing Board as outlined in Section 8.3 of this Ordinance.

SECTION 5. PROHIBITED SALES AND ACTS

- 5.1 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:
 - 5.1.1 At a moveable place of business.
 - 5.1.2 By means of loosies.
 - 5.1.3 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.
 - 5.1.4 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.
 - 5.1.5 Licensees are required to follow any federal and state requirements regarding minimum pack pricing on any licensed product.

5.1.6 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.

5.1.7 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.

5.2 LEGAL AGE No person shall sell, give, or furnish, any licensed product to any person under the age of 21.

5.2.1 **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.

5.2.2 **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, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

5.3 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 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.

5.4 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. 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 that seizes a form of identification as authorized under this subdivision shall deliver it to a law enforcement agency within 24 hours of seizing it.

SECTION 6 RESPONSIBILITY

All licensees under this Ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco-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 7 COMPLIANCE CHECKS

All licensed premises shall be open to inspection by authorized County officials during regular business hours. From time to time, but at a minimum of once per year, the County shall 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 shall be supervised by law enforcement or other designated personnel. No person used in compliance checks shall attempt to use false identification misrepresenting the person's age, and all persons lawfully engaged in compliance check shall answer all questions about their age asked by the licensee or his or her employee and shall produce any identification for which they are asked. Nothing in this Section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

SECTION 8 VIOLATIONS AND PENALTIES

8.1 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 a hearing. No license shall be suspended nor other penalty take effect until the person has received notice, either by being served personally or by mail, of the alleged violation and has had an opportunity for hearing.

8.2 ADMINISTRATIVE PENALTIES

8.2.1 LICENSEES- Any licensee found to have violated this Ordinance, or whose employee shall have violated this Ordinance, shall be charged an administrative penalty following the Morrison County Fee Schedule determined annually by the Morrison County Board of Commissioners. Penalties will increase if a second offense occurs at the same licensed premises within a 24-month period. Penalties will increase again 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 and may be revoked. Additionally, after the 3rd offense, the establishment would have to show proof all staff have completed an educational training on selling tobacco products.

8.2.2 EMPLOYEES OF LICENSEES AND OTHER INDIVIDUALS- Other individuals, other than minors regulated by Section 8.2.3, found to be in violation of this Ordinance shall be charged an administrative penalty following the Morrison County Fee Schedule determined annually by the Morrison County Board of Commissioners.

8.2.3 **ALTERNATIVE PENALTIES**- Persons under the age of 21 who possess, use and/or procure licensed products may only be subject to non-criminal, non-monetary civil penalties or remedies. Law enforcement and court system representatives may consult, as applicable, with interested persons, including but not limited to parents, guardians, educators, and persons under the age of 21 years, to develop alternative civil penalties for persons under the age of 21 years who violate this section. Consulting participants shall consider a variety of alternative civil penalties including but not limited to tobacco-free education programs, community service, court diversion programs, and tobacco cessation programs, and for persons under the age of 18 years, notice to schools and to parents or guardians. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.

8.2.4 **PAYMENT OF PENALTY**- The administrative penalty must be paid by a person and/or the licensee within 10 days from mailing or personal delivery of the notice of violation unless a hearing is requested as provided in Section 8.3. If administrative penalty is not paid and no hearing is requested within time limits provided, the person or licensee will then have 10 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 bases for denial of license under Section 4.

8.3 REQUEST FOR HEARING Any person affected by a notice of violation shall be granted a hearing on the matter before the Tobacco Hearing Board upon submitting to the Health Department a written request for such hearing which sets forth a brief statement explaining the licensee's defense to the action. Said request shall be filed within 10 days after the notice of violation was served. If a person or the licensee fails to request a hearing within the time limits, the person or licensee's right to a hearing will be terminated and they will be required to pay the administrative penalty or serve the suspension or revocation.

8.3.1 **DATE OF HEARING**- A hearing shall be held not more than 30 days after the date on which the request was filed. The Chair of the Tobacco Hearing Board may postpone the date of the hearing for a reasonable time beyond such 30-day period if, in his/her judgment, a good and sufficient reason exists for such postponement.

8.3.2 **NOTICE OF HEARING**- The Health Department shall cause ten days written notice of the hearing to be given to the licensee by personal service, or service by certified mail of the notice, to the licensee's last known address, or the address of the establishment.

8.4 PROCEEDINGS At such hearing, the licensee, his agent, or attorney shall be given an opportunity to be heard, and to show why the administrative penalties issued by the Health Department should be modified or withdrawn. The Health Department shall present a detailed written statement, and testimony subject to cross-examination, regarding its findings and decision to the Tobacco Hearing Board at the time of the hearing.

8.5 DECISION If the Tobacco Hearing Board determines that a violation of the Ordinance occurred, that decision, along with the statement of the facts supporting the violation and the penalty imposed, shall be recorded in writing and a copy shall be provided to the violator. A Tobacco Hearing Board will have the authority to determine the deadline for payment of the administrative penalty and/or the days in which the license is suspended or revoked. The Tobacco Hearing Board has the authority to increase, decrease, or otherwise modify any penalty imposed, and further, has the authority to determine the deadline for payment of the administrative penalty and/or the days in which the license is suspended or revoked. If the Tobacco Hearing Board determines that no violation occurred or that no penalty shall be imposed, such findings shall be recorded in writing and a copy provided to the accused individual.

8.6 APPEAL Appeals of any decision made by the Tobacco Hearing Board shall be filed in Morrison County District Court/ Such appeals must be filed within 10 days of the date the Tobacco Hearing Board's decision was mailed.

8.7 CONTINUED VIOLATION Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

SECTION 9 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 10 SEVERABILITY

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 12 LEGISLATIVE CHANGES

Any federal and/or state law changes regarding tobacco sales, access, and possession are automatically adopted in this Ordinance to be in accordance with the law and will be enforceable to that degree.

SECTION 13 REPEAL OF PREVIOUS ORDINANCES

This Ordinance, adopted July 1st, 2021 hereby repeals and replaces in its entirety the following list of Morrison County Ordinances;

13.1 Morrison County Ordinance Regulating the Sale of Tobacco and Related Devices and Products dated September 13th, 2016.

SECTION 14 EFFECTIVE DATE

This Ordinance shall be in full force and effect upon passage and shall apply to all establishments licensed as required by this Ordinance, existing at the time of passage and all establishments started thereafter.

Motion: Commissioner Lemieux
Second: Commissioner Wonscher
Ayes: 5 Nays: 0
Adopted this 22 day of June, 2021

ATTEST:


Chairman of the Morrison County Board of Commissioners

6/22/21
Date


County Administrator

6/22/21
Date