

RETAIL TOBACCO SALES ORDINANCE 17

REGULATING THE SALE OF TOBACCO, TOBACCO-RELATED DEVICES, ELECTRONIC DELIVERY DEVICES, AND NICOTINE AND LOBELIA PRODUCTS

1. TITLE

This ordinance shall be known, cited, and referred to as the Scott County Retail Tobacco Sales Ordinance and shall be referred to herein as the Ordinance.

2. PURPOSE

The purpose of this Ordinance is to regulate the sale of licensed products for the purpose of enforcing and furthering existing laws, to protect persons under the age of 21 against the serious health effects associated with the use of tobacco, 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.

Scott County ("County") recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates state and federal law. Smoking has been shown to be the cause of several severe health problems that subsequently place a financial burden on all levels of government.

This Ordinance is intended to serve the best interests of the County's citizens by protecting their health, safety, and general welfare.

3. AUTHORITY

This Ordinance is adopted pursuant to the requirements of Minn. Stat. §§ 461.12 to 461.22, as they may be amended from time to time, or successor statutes, relating to the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in the County's unorganized territory and in the County's cities and townships that do not license and regulate retail sales of licensed products.

4. DEFINITIONS

Except as otherwise provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Unless specifically defined herein, terms used in this Ordinance shall have the same definitions as provided in Minn. Stat. §§ 461.12 to 461.22. For purposes of this Ordinance the words "must" and "shall" are mandatory and not permissive.

- a. "Compliance checks" means the system that the Scott County Sheriff's Office uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this Ordinance. It involves the use of persons under the age of 21 to purchase or attempt to purchase licensed products as authorized by this Ordinance and Minn. Stat. § 461.12, subd. 5. Compliance checks also means the use of persons under the age of 21 to 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.
- b. "County Board" means the Scott County Board of Commissioners.
- c. "County Administrator" means the Scott County Administrator or designee.
- d. "Electronic delivery device" means 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.
- e. "Flavored product" means any licensed product that contains a taste or smell, other than the taste or smell of tobacco or menthol, 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, 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.
- f. "Licensed products" means any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

- g. "Loosies" means the common term used to refer to a single or individually packaged cigarette including a single use electronic delivery device or any other licensed product.
- h. "Movable place of business" means 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 motorized or non-motorized vehicle.
- i. "Nicotine or lobelia delivery products" means 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, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.
- j. "Public Health Department" means the Scott County Public Health Department.
- k. "Community Services" means the Scott County Community Services Department.
- l. "Retail establishment" means 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, licensed product shops, convenience stores, gasoline service stations, bars and restaurants.
- m. "Sale" means a transfer, exchange, or barter, in any manner or by any means, for consideration, and includes all sales made by any person. It also includes gifts or samples provided for advertising or promotional purposes, made by a person engaged in the selling of licensed products.
- n. "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. Such assistance or intervention shall involve the actual physical exchange of the licensed products between the customer and the licensee or employee. Self-service merchandising does not include vending machines.
- o. "Self-service method" means a method of sales of licensed products 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 licensed product and no physical exchange of the licensed product occurs between the customer and the licensee, or an employee or agent of the licensee.
- p. "Sheriff" means the Scott County Sheriff or designee.

- q. "Smoking" means inhaling or exhaling smoke from any lighted or heated licensed product or inhaling or exhaling vapor from any electronic delivery device. Smoking shall include carrying or using an activated electronic delivery device or a lighted or heated licensed product intended for inhalation.
- r. "Tobacco" means cigarettes 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 component, part, or accessory of a licensed product including but not limited to 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 excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- s. "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 aerosol or vapors of licensed products. Tobacco related devices include components of tobacco related devices which may be marketed or sold separately.
- t. "Vending machine" means any mechanical, electric or electronic, self-service device which upon the insertion of money, tokens or other form of payment dispenses licensed products and includes vending machines equipped with manual, electric, or electronic locking devices.

5. LICENSES

a. LICENSE REQUIRED

No person shall sell or offer to sell any licensed products in the County without first having obtained a license to do so from the County, unless located within a town or statutory city that has retained licensing authority under Minn. Stat § 461.12, subd. 1.

b. LICENSE APPLICATION AND FEE.

- 1) Application. An application for license to sell licensed products must be made on a form provided by Community Services. The application must contain the full name of the applicant, the applicant's residential and business addresses, telephone numbers, the name of the business for which the license is sought, a copy of the educational materials the applicant intends to use to educate employees, and any additional information Community Services deems necessary. If Community Services

determines an application is incomplete, the application will be returned to the applicant with notice of the deficiencies. Community Services may consult with Public Health and the Sheriff in deciding on approval of an application.

- 2) Fee. The fee for a license under this Ordinance is set in accordance with a fee schedule adopted by the County Board. No license may be issued under this Ordinance until the appropriate license fee is paid in full.

c. ACTION.

Community Services, acting as County Board designee, may either approve or deny the license, or may delay action for such reasonable period of time as Community Services deems necessary to complete an investigation of the application or the applicant. The applicant may apply for direct review by the County Board if their application is denied, in which case, Community Services shall forward the completed application to the Clerk to the County Board for action at a regularly scheduled County Board meeting. If the County Board, or its designee, approves the license, Community Services shall issue the license to the applicant. If the County Board, or its designee, denies the license, written notice of the denial shall be sent to the applicant at the business address provided on the application with the reason(s) for the denial. The notice shall also inform the applicant of the right to appeal the decision, pursuant to the process set forth in Section 11, and have a hearing pursuant to Section 12.

d. LICENSE TERM.

All licenses shall be issued for a period of one (1) year.

e. LICENSE TRANSFER.

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. No transfer of any license to another location or person shall be valid without the prior approval of Community Services.

f. LICENSE DISPLAY.

All licenses shall be posted and displayed in plain view of the public on the licensed premise.

g. LICENSE RENEWAL.

The renewal of a license is handled in the same manner as the original application. The request for a renewal must be made at least thirty (30) calendar days but no more than sixty (60) calendar days before the expiration of the current license.

h. ISSUANCE AS A PRIVILEGE.

The issuance of a license under this Ordinance shall be considered a privilege and not a right of the applicant and shall not entitle the holder to automatic renewal of the license.

i. LICENSEE RESPONSIBILITY.

All licensees are responsible for the actions of their agents or employees regarding the sale of licensed products on the licensed premises. The sale of a licensed product by an agent or employee of a licensee shall be considered a sale by the licensee. Any violation of this Ordinance shall be considered an act of the licensee for purposes of imposing an administrative penalty, license suspension, or license revocation.

j. LICENSE INSTRUCTIONAL PROGRAM.

No person shall be issued a license or granted a license renewal to sell licensed products unless the applicant or licensee has a program for instructing all agents and employees regarding the legal requirements pertaining to the sale of licensed products. The instructional program includes, but is not limited to:

- 1) Reviewing the law on the sale of licensed products;
- 2) Requiring agents and employees to request identification from every customer who is under thirty (30) years of age;
- 3) Explaining that the sale of licensed products to persons under the age of 21 is illegal;
- 4) Explaining what proof of age is legally acceptable; and
- 5) Explaining that a sale to a person under the age of 21 can subject the applicant or licensee and their agents and employees to criminal and civil liability.

k. LICENSE DENIAL.

The following are grounds for denying the issuance or renewal of a license under this Ordinance. However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the County Board must deny the license. The following list is not exhaustive or exclusive.

- 1) The applicant is a person under the age of 21.
- 2) The applicant or licensee had a license to sell licensed products revoked within the preceding twelve (12) months of the date of application.
- 3) The applicant or licensee has been subject to administrative penalties under Section 9 of this Ordinance within the preceding twelve (12) months of the date of application.
- 4) The applicant or licensee fails to provide information required on the application or provides false or misleading information.
- 5) The applicant or licensee is prohibited by federal, state, or other local law, ordinance or other regulation from holding a license.
- 6) The applicant or licensee has been convicted within the past five (5) years of any violation of a federal, state or local law, ordinance provision, or other regulation relating to licensed products.
- 7) The applicant or licensee has outstanding fines, penalties, or property taxes owed to the County.
- 8) The license is for a moveable place of business.

6. MINNESOTA CLEAN INDOOR AIR ACT

All licensees shall comply with The Minnesota Clean Indoor Air Act, Minn. Stat. §§ 144.411-144.417, as it may be amended from time to time.

7. PROHIBITED SALES

It is a violation of this Ordinance for anyone to sell or offer to sell any licensed products:

- a. To any person under the age of 21.
 - 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.
 - 2) Signage. Notice of the legal sales age and age verification requirement, and application of possible penalties 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.
- b. By the means of a vending machine.
- c. By means of self-service merchandising and self-service methods. All licensed products shall be stored behind a counter. This prohibition does not apply to retail stores which derive at least ninety (90) percent of their revenue from licensed products, and where the retailer ensures that no person under the age of 21 is present, or permitted to enter, at any time.
- d. By means of a movable place of business.
- e. By means of loosies.
- f. 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.
- g. In the form of any liquid, whether or not such liquid contains nicotine, intended for human consumption and used in an electronic delivery device not contained in child-resistant packaging, as defined in Minn. Stat § 461.20, as it may be amended from time to time. All licensees must ensure any such liquid is sold in child-resistant packaging.
- h. In any circumstance when no license was issued, when a license was denied, when a license was not renewed, when a license was suspended, or when a license was revoked, regardless of whether the applicant or licensee requested a hearing under Section 12.00.
- i. By any other means, to any other person, in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.
- j. No person shall sell or offer for sale any electronic delivery device that constitutes a flavored product.

8. COMPLIANCE CHECKS AND INSPECTIONS

All licensed premises shall be open to inspection by local law enforcement, the Sheriff or other County officials during regular business hours. From time to time, but at least once per year, a Sheriff's deputy shall conduct unannounced compliance checks to ensure compliance with this Ordinance. In accordance with state law, the County will conduct a compliance check that involves participation of a person who is at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Persons used for compliance checks who are under the age of 18 years must have the written consent of their parents or guardians, persons used for the purpose of compliance checks must be supervised by designated law enforcement officers or other designated County personnel.

No person under the age of 21 used in compliance checks shall attempt to use a false identification misrepresenting the person's age, and all persons lawfully engaged in a compliance check shall answer all questions about the person's age asked by the licensee or his or her agent or employee and shall produce any identification, if any exists, for which he or she is asked.

Nothing in this Section prohibits other 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.

9. ADMINISTRATIVE PENALTIES

a. LICENSEES

- 1) Any licensee found to have violated the terms of this Ordinance or whose employee has violated the terms of this ordinance shall be charged:
 - a) An administrative fine of \$300 for the first violation of this Ordinance;
 - b) An administrative fine of \$600 for a second violation at the same location within a thirty-six (36) month period after the first violation;
 - c) An administrative fine of \$1,000 and a minimum seven (7) day suspension of the license for a third violation at the same location within a thirty-six (36) month period after the first violation and said license may be revoked; and
- 2) If the administrative penalties authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from those established in this Section, then the more severe administrative penalty will prevail.

b. OTHER INDIVIDUALS

Other individuals age 21 and older found to be in violation of the terms of this Ordinance may be charged an administrative fine of \$50.

10. MISDEMEANOR PROSECUTION

Nothing in this Ordinance shall prohibit the County from seeking prosecution for an alleged second violation of this Ordinance by a person 21 years of age or older within five years of a previous violation under the Ordinance, or from enforcing any other applicable state or federal law or regulation in addition to or instead of any administrative penalty under this Ordinance.

11. CITATION AND NOTICE

Upon discovery of a violation or upon license denial, the alleged violator or applicant must be issued, either personally or by mail, a written citation or notice of license denial. The citation or notice of license denial must provide notice that a hearing must be requested by the alleged violator or applicant and received by Community Services within ten (10) business days of issuance of the citation or notice of license denial, and that failure to request the hearing within the ten (10) business days forfeits the right to a hearing. The citation or notice of license denial must provide information on how and where to request a hearing, including an address and contact information for Community Services. A citation must also inform the alleged violator of the violation and the administrative penalty under Section 9 of this Ordinance.

12. HEARINGS

a. DEFAULT

Failure to request a hearing within the ten (10) business days will terminate the alleged violator or applicant's right to a hearing on the violation or license denial, and the violation and administrative penalty imposed under Section 9 of this Ordinance or license denial will be conclusive.

b. SCHEDULING

For timely requests received, Community Services shall set the time and place for the hearing. Written notice of the hearing time and place will be mailed or personally delivered to the alleged violator or applicant at least ten (10) business days prior to the hearing.

c. HEARING OFFICER

The County Administrator shall appoint 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.

d. DECISION

The hearing officer shall issue a written decision within ten (10) business days after the hearing. If the hearing officer determines that a violation of this Ordinance did occur or that the license denial is upheld, that decision, along with the hearing officer's reasons and the administrative penalty to be imposed under

Section 9 of this Ordinance, if any, shall be recorded in writing, a copy of which shall be provided to the violator or applicant. If the hearing officer finds that no violation occurred, finds other grounds for not imposing any administrative penalty, or overturns the license denial, such findings shall be recorded in writing and a copy provided to the acquitted violator or applicant.

e. **APPEAL**

Any appeal of the hearing officer's decision must be filed in the Scott County District Court.

13. CONTINUED VIOLATIONS

Each violation shall constitute a separate offense, and every day in which a violation continues shall constitute a separate offense.

14. EXCEPTIONS AND DEFENSES

Nothing in this Ordinance shall prevent a person from providing licensed products to a person under the age of 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 and in good faith relied upon proof of age as described by state law.

15. SEVERABILITY

If any section or subsection of this Ordinance is adjudged unconstitutional, invalid, or unconstitutional by a court of competent jurisdiction, that finding shall not invalidate or otherwise affect the validity and enforceability of other sections or subsections of this Ordinance.

16. REMEDIES CUMULATIVE

No remedy set forth in this Ordinance is intended to be exclusive, but each such remedy is cumulative and in addition to other remedies now or hereafter existing at law or in equity. No delay, in the exercise of any remedy for violation of this Ordinance shall later impair or waive any such right or power of the County.

17. EFFECTIVE DATE

This Ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance.

18. REPEALER

Scott County Ordinance No. 17, which was previously enacted on by the Scott County Board of Commissioners, is hereby repealed and this enacted in its stead.

Adopted this _____ day of _____, 2021, by the Scott County Board of Commissioners

SCOTT COUNTY

By _____
Jon Ulrich, Chair
Scott County Board of Commissioners

Date: _____, 2021

Attest:

Lezlie Vermillion
Scott County Administrator

Date: _____, 2021