

MCLEOD COUNTY TOBACCO ORDINANCE

PREAMBLE

An ordinance relating to the sale, possession, and use of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in the County and to reduce the illegal sale, possession, and use of such items to and by minors.

THE COUNTY BOARD OF MCLEOD COUNTY ORDAINS:

ARTICLE 1

PURPOSE

Because the County recognizes that many persons under the age of eighteen (18) years purchase or otherwise obtain, possess, and use tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products, and the sales, possession, and use are in violation of both state and federal laws; and because studies have shown that most smokers begin smoking before they have reached the age of eighteen (18) years and that those persons who reach the age of eighteen (18) years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; 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 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.

The terms of this ordinance shall apply throughout McLeod County except for those areas within a municipality that has adopted its own ordinance pursuant to Minn. Stat. 461.12.

ARTICLE 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:

Section 2.01 CHILD-RESISTANT PACKAGING

“Child-resistant Packaging” shall mean 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.

Section 2.02 COMPLIANCE CHECKS

"Compliance Checks" shall mean the system McLeod 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 minors as authorized by this ordinance. Compliance Checks shall also mean the use of minors who attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, and 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.

Section 2.03 ELECTRONIC DELIVERY DEVICES

“Electronic Delivery Devices” shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified 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 marketed and sold for such an approved purpose.

Section 2.04 LOOSIES

“Loosies” shall mean the common term used to refer to a single or individually packaged cigar or cigarette, or any other tobacco product that has been removed from its packaging and sold individually. The term “loosies” does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.

Section 2.05 MINOR

"Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

Section 2.06 MOVABLE PLACE OF BUSINESS

“Moveable Place of Business” shall mean 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 non-motorized vehicle.

Section 2.07 NICOTINE OR LOBELIA DELIVERY PRODUCTS

“Nicotine or Lobelia Delivery Products” shall mean 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.

Section 2.08 RETAIL ESTABLISHMENT

"Retail Establishment" shall mean any place of business where tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products are available for sale to the general public. Retail establishment shall include, but not be limited to, grocery stores, convenience stores, restaurants, bars, and liquor outlets.

Section 2.09 SALE

A "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Section 2.10 SELF-SERVICE MERCHANDISING

"Self-Service Merchandising" shall mean open displays of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in any manner where any person may have access to the tobacco, tobacco-related devices, electronic delivery devices, nicotine or lobelia delivery products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Section 2.11 TOBACCO OR TOBACCO PRODUCTS

"Tobacco" or "Tobacco Products" shall mean 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 tobacco 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.

Section 2.12 TOBACCO-RELATED DEVICES

"Tobacco-related devices" shall mean any tobacco product as well as a pipe, rolling papers, 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 include components of tobacco-related devices which may be marketed or sold separately.

Section 2.13 VENDING MACHINE

"Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco-related devices, electronic delivery devices, nicotine or lobelia delivery products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products.

ARTICLE 3 LICENSE

No person shall sell or offer to sell any tobacco, tobacco products, electronic delivery devices, or nicotine or lobelia delivery products without first having obtained a license to do so from McLeod County.

Section 3.01 APPLICATION

An application for a license to sell tobacco, tobacco products, electronic delivery devices, and nicotine or lobelia delivery products shall be made on a form provided by McLeod 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, McLeod County Auditor/Treasurer shall determine whether the applicant is eligible for a license and forward the application to the McLeod County Board of Commissioners for action at its next regularly scheduled board meeting. If McLeod County Auditor/Treasurer determines that an application is incomplete, the application will be returned to the applicant with notice of the information necessary to make the application complete.

Section 3.02 ACTION

The McLeod County Board of Commissioners 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 County Board shall approve the license McLeod County Auditor/Treasurer shall issue the license to the applicant. If the McLeod County Board of Commissioners denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.

Section 3.03 TERM

The term of all licenses issued hereunder shall be from January 1 to the following December 31 or any part thereof.

Section 3.04 REVOCATION OR SUSPENSION

Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

Section 3.05 TRANSFERS

All licenses issued under the 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.

Section 3.06 MOVEABLE PLACE OF BUSINESS

No license shall be issued to a movable place of business. Only fixed location business shall be eligible to be licensed under this ordinance.

Section 3.07 DISPLAY

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

Section 3.08 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 at least twenty (20) days but no more than sixty (60) 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.

ARTICLE 4
FEEES

No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The County Board shall annually set the license fee by ordinance. License fees shall not be prorated for a partial year.

ARTICLE 5
BASIS FOR DENIAL OF LICENSE

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

- A. The applicant is under the age of eighteen (18) years.
- B. The applicant 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 tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.
- C. The applicant has had a license to sell tobacco, tobacco-related devices, electronic cigarettes, or nicotine or lobelia delivery products suspended or revoked within the preceding twelve (12) months of the date of application.
- D. The applicant fails to provide any information required on the application, or provides false or misleading information.
- E. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding such a license.

However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that McLeod County must deny the license. 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:

ARTICLE 6
PROHIBITED SALES

It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products:

- A. Without first obtaining a license from McLeod County.
- B. To any person under the age of eighteen (18) years.
- C. By means of any type of vending machine, except as may otherwise be provided in this ordinance.
- D. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product and whereby there is not a physical exchange of the tobacco, tobacco related-device, electronic delivery device, or nicotine or lobelia delivery product, between the licensee or the licensee's employee, and the customer.
- E. By means of loosies as defined in Article 2 of this Ordinance.
- F. 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.
- G. 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.

ARTICLE 7
VENDING MACHINES

It shall be unlawful for a person licensed under this ordinance to allow the sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices products by means of a vending machine unless minors are at all times prohibited from entering the licensed establishments.

ARTICLE 8
SELF-SERVICE SALES

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

ARTICLE 9
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, and nicotine or lobelia delivery products on 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 section shall be construed as prohibiting McLeod County from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, State or Federal law, or other applicable law or regulation.

ARTICLE 10
COMPLIANCE CHECKS AND INSPECTIONS

10.1 All licensed premises shall be open to inspection by the local law enforcement agencies or other authorized McLeod County official during business hours. From time to time, but at least once per year, McLeod County shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premises to attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products. Minors used for the purposes of compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery and products when such items are obtained or attempted to be obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Article 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.

10.2 Conducting compliance checks shall be the responsibility of the Sheriff's Department and Public Health department, acting in concert. For all compliance checks, the supervising adult shall be a licensed peace officer. All minor participants shall receive training prior to engaging in compliance check activities. Transportation shall be provided by the supervising adult, or other adult employee of the County as designated by the Sheriff's department. Participating minors shall be considered "volunteers" subject to receipt of a per diem payment in an amount established for other county boards and commissions.

ARTICLE 11 OTHER ILLEGAL ACTS

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

Section 11.01 ILLEGAL SALES

It shall be a violation of this ordinance for any person to sell, give, or otherwise provide any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product to any minor.

Section 11.02 ILLEGAL POSSESSION

It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia and delivery product. This Section shall not apply to minors lawfully involved in a compliance check.

Section 11.03 ILLEGAL USE

It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia related delivery product.

Section 11.04 ILLEGAL PROCUREMENT

It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco-related devices, electronic delivery devices, or nicotine and lobelia delivery products. This Section shall not apply to minors lawfully involved in a compliance check.

Section 11.05 USE OF FALSE IDENTIFICATION

It shall be a violation of this ordinance for any minor 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.

Section 11.06 LIQUID PACKAGING

It shall be a violation of this ordinance to sell 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.

ARTICLE 12 VIOLATIONS

Section 12.01 NOTICE

Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

Section 12.02 HEARINGS

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.

Section 12.03 HEARING OFFICER/PANEL

The McLeod County Board of Commissioners shall appoint the Hearing Officer.

Section 12.04 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 Article 13 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the Hearing Officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Section 12.05 APPEALS

Appeals of any decision made by the Hearing Officer shall be filed in the District Court for the jurisdiction of McLeod County in which the alleged violation occurred.

Section 12.06 MISDEMEANOR PROSECUTION

Nothing in this Article shall prohibit McLeod County from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If McLeod County elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Section 12.07 CONTINUED VIOLATION

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

ARTICLE 13 PENALTIES

Section 13.01 NON-LICENSED PERSONS/RETAIL ESTABLISHMENTS

Non-licensed persons/retail establishments found to have sold any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product to a person without obtaining a license shall be charged an administrative fee of one hundred fifty dollars (\$150.00).

Section 13.02 LICENSEES

Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of seventy-five dollars (\$75.00) for a first violation of this ordinance; two hundred dollars (\$200.00) for a second offense at the same licensed premises within a twenty-four (24) month period; and two hundred fifty dollars (\$250.00) for a third or subsequent offense at the same location within a twenty-four (24) month period. In addition, after the third offense, the license shall be suspended for not less than seven (7) days.

Section 13.03 OTHER INDIVIDUALS

Other individuals, other than minors regulated by Section 13.03 of this Article, found to be in violation of this ordinance shall be charged an administrative fee of fifty dollars (\$50.00).

Section 13.04 MINORS

Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products shall be:

- A. First time offense. Be referred to a diversion program operated by the McLeod County Attorney's Office, McLeod County Court Services Department.
- B. Second time offense. Be petitioned or ticketed into juvenile court as a petty offender, and receive any disposition authorized by law for petty offenders.

Section 13.05 MISDEMEANOR

Nothing in this Article shall prohibit McLeod County from seeking prosecution as a misdemeanor for any violation of this ordinance.

ARTICLE 14
EXCEPTIONS AND DEFENSES

Nothing in this ordinance shall prevent the providing of tobacco or tobacco-related devices to a minor 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.

ARTICLE 15
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 an invalidation or effect the validity and enforceability of any other Article or provision of this ordinance.