

ORDINANCE NO.

13

**AN ORDINANCE OF STEVENS COUNTY REGARDING
TOBACCO LICENSING AND REGULATION**

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

SECTION I.

Tobacco Licensing and Regulation.

Subd. 1. Purpose. This ordinance is intended to regulate the sale of tobacco, tobacco related devices, electronic delivery devices, or nicotine and lobelia delivery products for the purpose of enforcing and furthering existing laws and state mandates; this ordinance is intended to protect youth and young adults against the serious, negative health effects associated with the use of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products; and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke.

Subd. 2. Definitions and Interpretations. The following terms shall have the definitions given to them:

- A. Child-Resistant Packaging. "Child-Resistant Packaging" is packaging that meets the definition as set forth in the current 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, and its successors.
- B. Compliance Checks. "Compliance Checks" shall mean the system the County uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of persons under the age of 21 as authorized by this ordinance. Compliance checks shall also mean the use of persons under the age of 21 who attempted to purchase licensed products for educational, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to licensed products.
- C. Electronic Delivery Device. "Electronic delivery device" means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through 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 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.

- D. Licensed Products. "Licensed products" means any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
- E. Moveable Place of Business. "Moveable Place of Business" shall refer to any retail business whose physical location is not permanent, including, but not limited to, any retail business that is operated from a kiosk, other transportable structure, or a motorized or nonmotorized vehicle.
- F. Nicotine or Lobelia Delivery Products. "Nicotine or Lobelia Delivery Products" are any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, or for other medical purposes, and is being marketed and sold solely for that approved purpose.
- G. Retail Establishment. "Retail Establishment" shall mean any place of business where licensed products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.
- H. Sale. A "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.
- I. Self-Service Merchandising. "Self-Service Merchandising" means open displays of licensed products in any manner where any person shall have access to the licensed products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the licensed products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.
- J. Tobacco or Tobacco Products. "Tobacco" means cigarettes; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means or any components, part, or accessory of a tobacco product. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for the sale as a tobacco cessation product, as a tobacco-dependence product, or for other medical purposes, and sold solely for such an approved purpose.

- K. Tobacco-Related Devices. "Tobacco-Related Devices" means cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately
- L. Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed products.

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

- A. Application. An application for a license to sell licensed products shall be made on a form provided by the County. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the County deems necessary. Upon receipt of a completed application, the County shall forward the application to the County Board for action at its next regularly scheduled board meeting. If the application is incomplete, the application will be returned to the applicant with notice of the information necessary to make the application complete.
- B. Action. The County Board may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the board shall approve the license, the County shall issue the license to the applicant. If the board denies the license, notice of the denial shall be given to the applicant along with notice applicant's right to appeal the board's decision.
- C. Term. All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.
- D. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended following the procedure provided in Section 12.
- E. Transfers. All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- F. Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

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

H. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

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

Subd. 5. Basis for Denial of License.

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

1. The applicant is under the age of 21 years.

2. The applicant has been convicted with the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.

3. The applicant has had a license to sell licensed products suspended or revoked within the preceding twelve months of the date of application.

4. The applicant fails to provide any information required on the application, or provides false or misleading information.

5. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding such a license.

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

C. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this ordinance.

Subd. 6. Prohibited Sales.

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

B. Age verification. All persons or licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age.

Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subdivision.

- C. Signage. Notice of the legal sales age and age verification requirement must be posted at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the county, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- D. Self-service Sales. No person shall sell, offer to sell or otherwise provide any licensed product in open displays which are accessible to the public without the intervention of a store employee that includes a physical exchange of the licensed product between the licensee or the licensee's employee and the customer. This shall not apply to retail establishments which derive at least 90 percent of their revenue from licensed products, and where the retailer ensures that no person younger than 21 years of age is present, or permitted to enter at any time.
- E. Controlled Substances. No person shall sell, offer to sell or otherwise provide any licensed products containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.
- F. Vending Machines. No person shall allow the sale of licensed products by the means of a vending machine unless persons under the age of 21 are at all times prohibited from entering the licensed establishment.
- G. Sampling. No person shall distribute licensed products, or other tobacco product free of charge or for nominal cost.
- H. Other Prohibitions. No person shall sell, offer or otherwise provide any licensed product by any other means, to any other person, or in any manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

Subd. 7. Liquid Packaging. The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device in packaging that is not child-resistant is prohibited. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Subd. 8. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of licensed products in the licensed

premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this subdivision shall be construed as prohibiting the County from also subjecting the employee to whatever penalties are appropriate under this ordinance, state or federal law, or other applicable law or regulation.

Subd. 9. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the law enforcement or other authorized County official during regular business hours. From time to time, but at least once per year, the County will conduct compliance checks to ensure compliance with state, county, and federal law. One annual compliance check shall be conducted with the assistance of a person older than 14 but younger than 18 years of age. Additional compliance checks may be conducted with the assistance of a person older than 14 but younger than 21 years of age.

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

A. Prohibited 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 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 person under the age of 21 to illegally purchase or attempt to purchase any licensed product.

B. Use of False Identification. It shall be a violation of this ordinance for any person under age 21 to attempt to disguise his or her true age by the use of a false form of identification to purchase any licensed products, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Subd. 11. Enforcement.

A. Petty Misdemeanor Prosecution. Violations of this ordinance are a petty misdemeanor offense punishable by up to a \$300 fine.

B. Administrative Process. As an alternative or in addition to petty misdemeanor prosecution, the County may use an administrative process for penalizing a violator. The County Coordinator or other designee of the County Board is authorized to enforce the Administrative Process.

1. Violation Notice. A violator subject to administrative penalties must be notified in writing and served personally, by U.S. mail, or by publication, with a letter setting forth the nature of the alleged violation(s), advised of the right to a hearing on the alleged violation and the penalties for the violation, which shall include the due date for payment of fines, which shall be not less than 30 days from the date of service of the letter (adding three days for service by U.S. mail), and state that failure to pay a fine by a licensee by the due date will result in loss of license until the fine is paid.

2. Hearing. A violator who receives notice of an alleged violation of this ordinance, may request a hearing on the alleged violation. The hearing request must be in writing and received by the County within two (2) weeks of the date of the notice. The violator requesting the hearing shall be advised of the date, time, and place of the hearing. The hearing shall be recorded. Suspension of license, where applicable, shall be tolled when a request for a hearing is made by a licensee.

3. Hearing Officer. The County Board may designate a hearing officer. The Hearing Officer shall be an impartial employee of the county or an impartial person retained by the county to conduct the hearing. If no hearing officer is designated, the Administrator of Horizon Public Health, or the Administrator's designee(s) shall be the hearing officer.

4. Decision by the Hearing Officer. If it is determined that a violation occurred, the Hearing Officer shall make written findings, which shall be mailed to the violator. The fines and other penalties stated in the original notice, unless modified by the hearing officer, shall be due within 10 days (adding three days for service by U.S. mail) of mailing the decision.

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

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

Subd. 12. Administrative Penalties. The following penalties shall apply to violators when the County elects to use the administrative process:

A. Licensee. Any licensee found to have violated this ordinance, or whose employee or agent shall have violated this ordinance, shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense at the same licensed premises within a twenty-four month period; and \$250 and suspension of license for seven days for a third offense at the same location within a twenty-four month period; and \$300 and revocation of license for a fourth offense within a twenty-four month period. A license shall be suspended when a licensee fails to pay an administrative fine when due. The license shall remain suspended until the fine is paid.

B. Individuals. Individuals found to be in violation of this ordinance shall be charged an administrative fine of \$50.

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

Subd. 14. Severability and Savings Clause. If any section or portion of this ordinance

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

Subd. 15. Ordinance number 13, Licensing of the Retail Sale of Tobacco products enacted on June 18, 1998 is hereby repealed.

SECTION II. This ordinance shall take effect on ~~8/1~~ 2019, following publication in the County's official newspaper.

ADOPTED by the Stevens County Board of Commissioners this 2 day of July, 2019.

By Jeanne Ennen
Jeanne Ennen, Chair

Attest: Rebecca Young
Rebecca Young, County Coordinator
Board Clerk

STEVENS COUNTY, MINNESOTA

DATE: July 2, 2019

RESOLUTION NO. 20

Motion by Commissioner Kopitzke

Seconded by Commissioner Staples

RESOLUTION NO. 190702-20

ORDINANCE NO. 13
AN ORDINANCE OF STEVENS COUNTY REGARDING
TOBACCO LICENSING AND REGULATION:

WHEREAS, the Stevens County Board of Commissioners has committed to tobacco prevention effects for youth in Stevens County; and

WHEREAS, the T21 Ordinance prohibits the sale of tobacco and tobacco related products to persons under the age of 21; and

WHEREAS, the Stevens County Board of Commissions held public hearings and took public testimony on June 18 and July 2, 2019 unanimously in support of the T21 Ordinance,

NOW, THEREFORE BE IT RESOLVED, that the Stevens County Board of Commissioners has here by ordained the T21 Ordinance to take effect on August 1, 2019

Table with 6 columns: Staples, Aye, Ennen, Aye, Wohlers, Aye; Kopitzke, Aye, Wiese, Aye

STATE OF MINNESOTA)
) ss.
COUNTY OF STEVENS)

I, Rebecca Young, County Coordinator and Clerk To The Board, for the County of Stevens, State of Minnesota, do hereby certify that I have compared the foregoing copy of a resolution with the original minutes of the proceedings of the Board of County Commissioners, Stevens County, Minnesota at their session held on the 2nd day of July, 2019, now stored electronically on the County's M-Files storage system, and have found the same to be a true and correct copy thereof.

Handwritten signature of Rebecca Young
Rebecca Young, County Coordinator