

ORDINANCE NO. 2024-01

**AN ORDINANCE REGULATING TOBACCO SALES
FOR THE COUNTY OF REDWOOD, MINNESOTA**

THE REDWOOD COUNTY COMMISSIONERS HEREBY ORDAIN AS FOLLOWS: Redwood County Ordinance Chapter 112, which was enacted through Resolution on December 30, 2008, by the Redwood County Board of Commissioners, is hereby repealed and this is enacted in its stead.

CHAPTER 112: TOBACCO SALES

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GENERAL PROVISIONS

§ 112.01 PURPOSE.

The purpose of this chapter is to regulate the sale of tobacco products for the purpose of enforcing and furthering existing laws, to protect persons under the age of 21 against the known serious health effects associated with the use of tobacco, and to further the public policy of the State of Minnesota as stated in Minn. Stat. 144.391. The County recognizes the sale of commercial tobacco, tobacco-related devices, and nicotine or lobelia delivery products to persons under the age of 21 violates state and federal law. It has been shown smoking causes several severe health problems that subsequently place a financial burden on all levels of government including the County. This chapter is intended to serve the best interests of the citizens of the County by protecting their health, safety, and general welfare.

§ 112.02 AUTHORITY.

This chapter is enacted pursuant to the requirements of Minn. Stat. 461.12 through Minn. Stat. 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, nicotine or lobelia delivery products in the County's unorganized territory and in a town, home rule charter or statutory city of the town or city does not license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, nicotine or lobelia delivery products.

§ 112.03 DEFINITIONS AND INTERPRETATIONS

Except as otherwise provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Unless specifically defined herein, terms used in this Chapter shall have the same definitions as provided in Minn. Stat. 461.12 through Minn. Stat. 461.22. The terms “shall” and “must” are mandatory and the term “may” is permissive.

COMPLIANCE CHECKS. The system that the county uses to investigate and ensure that those authorized to sell tobacco, tobacco – related devices, electronic delivery devices, and nicotine and lobelia delivery products are following and complying with the requirements of this Chapter. **COMPLIANCE CHECKS** shall involve the use of persons under the age of 21 who purchase or attempt to purchase tobacco products as authorized by this Chapter and Minn. Stat. 461.12, subd. 5. **COMPLIANCE CHECKS** shall also mean the use of persons under the age of 21 who attempt to purchase tobacco products for educations, 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 products.

ELECTRONIC DELIVERY DEVICE. 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.

LOOSIES. The common term used to refer to a single or individually packaged cigarette including a single use electronic delivery device or any other tobacco product.

MOVEABLE PLACE OF BUSINESS. 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.

NICOTINE OR LOBELIA DELIVERY PRODUCTS. Any product containing or delivering nicotine or lobelia intended for human consumption, whether natural or synthetic, or any part of such a product, that is not tobacco or an electronic delivery device as defined by this Section, if the product is a drug, device, or combination product, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that is authorized for sale by the United States Food and Drug Administration.

RETAIL ESTABLISHMENT. Any place of business where tobacco products are available for sale to the general public. **RETAIL ESTABLISHMENTS** shall include but not be limited to, grocery stores, convenience stores, tobacco product shops, liquor stores, gas stations, golf courses, bowling alleys, bars and restaurants.

SALE. Any 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 cigarettes or tobacco products.

SELF-SERVICE MERCHANDISING. Open displays of tobacco products in any manner where any person shall have access to the tobacco products without the assistance or

intervention of the licensee or the licensee's employee. Assistance or intervention shall include the actual physical exchange of the tobacco products between the customer and the licensee or employee. **SELF-SERVICE MERCHANDISING** shall not include vending machines.

SMOKING. Inhaling or exhaling smoke from any lighted or heated tobacco product exhaling vapor from any electronic delivery device. **SMOKING** also includes carrying or using an activated electronic delivery device or a lighted or heated tobacco product intended for inhalation.

TOBACCO. 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 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.

TOBACCO PRODUCTS. Any tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products as those terms are defined in this Section.

TOBACCO-RELATED DEVICES. 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 vapor of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

VENDING MACHINES. Any mechanical, electrical or electronic, or self-service device which dispenses tobacco products upon the insertion of money, tokens or other forms of payment directly into the machine and includes vending machines equipped with manual, electric, or electronic locking devices.

§ 112.04 PROHIBITED SALES

It shall be a violation of this Chapter for any person to sell or offer to sell any tobacco products:

(A) To a person under the age of 21.

(B)

i. Age verification. The licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age. Verification is not required if the purchaser or person attempting to make the purchase is 30 years of age or older. It shall not constitute a defense to a violation of this subdivision that the person appeared to be 30 years of age or older.

ii. Signage. The licensee shall display a sign in plain view to provide public notice that selling any of tobacco products to any person under the age of 21 is illegal and subject to penalties. The notice shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase these products. The sign shall provide notice that all persons responsible for selling these products must verify, by means of photographic identification containing the bearer's date of birth, the age of any person under 30 years of age.

(C) By means of a vending machine.

(D) By means of self-service merchandising and self-service methods. All tobacco products shall be stored behind

a counter. This prohibition does not apply to retail stores which derive at least 90 percent of their revenue from tobacco products, and where the retailer ensures that no person under the age of 21 is present or permitted to enter at any time.

(E) By means of loosies.

(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) In any circumstance when no license was issued, when a license was denied, when a license was suspended or when a license was revoked, regardless of whether the applicant or licensee requested a hearing pursuant to Section 112.45.

(H) By means of a moveable place of business.

(I) In the form of any liquid, whether or not such liquid contains nicotine, intended for human consumption and used in an electronic delivery devices 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.

(J) 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.

§ 112.05 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.

(A) *Procedure.* From time to time, but at least once per year, a Sheriff's Deputy shall conduct unannounced compliance checks of each licensed retail establishment to ensure compliance with this Chapter. This shall be accomplished, in accordance with state law, by engaging persons between the age of 17 and 20 to enter the licensed premises to attempt to purchase tobacco products. Should the person be under the age of 18 written consent of their parents or legal guardians shall be required prior to use in a compliance check. Persons used for the purpose of compliance checks shall be allowed to enter the licensed retail establishments to attempt to purchase tobacco products and shall be supervised at all times by the designated law enforcement agent of the county. Persons used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase of tobacco products when the items are obtained or attempted to be obtained as a part of a compliance check. No person used in compliance checks shall attempt to use a false identification misrepresenting the person's age. All persons lawfully engaged in a compliance check shall produce any identification, if any exists, for which he or she is asked.

(B) *Non-exclusion.* 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.

LICENSING PROCEDURES

§ 112.20 LICENSE REQUIRED.

No person shall sell or offer to sell any tobacco products 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.

§ 112.21 APPLICATION.

(A) An application for a license to sell tobacco products shall be made on a form provided by the County. Applications shall be made available to the general public by the County Auditor-Treasurer.

(B) The application shall contain the full name of the applicant, the date of birth of the applicant, the applicant's residential and business addresses and 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, any additional information the County deems necessary, and an affirmation by the applicant that he or she shall abide by this Chapter. The applicant shall declare whether or not he or she has been convicted or administratively penalized within the previous five years for a violation of a federal, state or local law, ordinance provision or other regulation relating to tobacco. The applicant shall also declare whether or not there exists any pending criminal or administrative proceeding, at the time the application is submitted, regarding his or her alleged violation of a federal, state or local law, ordinance provision or other regulation relating to tobacco.

(C) Upon receipt of a completed application, the County Auditor-Treasurer shall determine if the application is complete. If an application is determined to be incomplete, it will be returned to the applicant with notice of the deficiencies. If the County Auditor-Treasurer determines the application to be complete, it will be forwarded to the County Board of Commissioners for action at its next regularly scheduled meeting.

(D) The County Auditor-Treasurer may consult with the Sheriff, Southwest Health and Human Services, or the County Attorney in deciding whether an application is complete.

§ 112.22 ACTION.

The County Board of Commissioners may either approve or deny the license, or it may delay action for such reasonable period of time as it deems necessary to complete an investigation of the application or the

applicant. If the County Board of Commissioners approves the license, the County Auditor-Treasurer shall issue the license to the applicant. If the County Board of Commissioners 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 denial. The notice shall also inform the applicant of the right to appeal the decision pursuant to Section 112.45, and have a hearing pursuant to Section 112.46.

§ 112.23 TERM.

All licenses issued under this chapter shall be valid for one calendar year beginning January 1 and ending December 31 of the applicable year. Licenses applied for after January 1 shall be charged a prorated fee. A portion of a month shall be considered a whole month for the purpose of calculating the prorated fee; provided, however, that, in no case shall a license fee be prorated below an amount equal to one-half of the original fee. There shall be no refunds for portions of unused tobacco licenses.

§ 112.24 REVOCATION OR SUSPENSION.

Any license issued under this chapter may be revoked or suspended as provided in § 112.51 of this chapter.

§ 112.25 TRANSFERS.

All licenses issued under this Chapter 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 the County Board of Commissioners.

§ 112.26 LICENSEE RESPONSIBILITY.

All licensees are responsible for the actions of their agents and employees regarding the sale of tobacco products on the licensed premises. The sale of a tobacco product shall be considered a sale by the licensee. Any violation

of this Chapter shall be considered an act of the licensee for purposes of imposing an administrative penalty, license suspension, or license revocation.

§ 112.27 DISPLAY OF LICENSE.

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

§ 112.28 LICENSE RENEWAL.

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 30 days, but no more than 60 days, before the expiration of the current license.

§ 112.29 ISSUANCE AS A PRIVILEGE.

The issuance of a license under this Chapter shall be considered a privilege and not an absolute right, contract or entitlement of the applicant and shall not entitle the holder to an automatic renewal of the license.

§ 112.30 FEE.

(A) No license shall be issued under this Chapter until the appropriate license fee is paid in full. The fee shall be set in accordance with a fee schedule adopted by the County's Board of Commissioners. The County Auditor-Treasurer shall be authorized to accept payment of this license fee. If an applicant elects to pay the appropriate license fee by check or money order, the check or money order shall be made payable to "Redwood County Auditor-Treasurer".

§ 112.31 LICENSE DENIAL.

(A) The following shall be grounds for denying the issuance or renewal of a license under this Chapter. However, except as may otherwise be provided by law, the existence of any particular ground for denial does not require the County Board of Commissioners to deny the license.

(B) The following is a non-exclusive list of bases for denial of a license under this chapter:

(1) *Age of applicant.* The applicant is a person under the age of 21.

(2) *Prior conviction.* 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 tobacco products.

(3) *Prior administrative penalty.* The applicant or licensee has been subject to administrative penalties under Section 112.51 within the preceding 12 months of the date of application.

(4) *Prior license revocation.* The applicant or licensee has had a license to sell tobacco products revoked within the preceding 12 months of the date of application.

(5) *Incomplete or misleading information.* The applicant or licensee fails to provide any information required on the application or provides false or misleading information.

(6) *Prohibition.* The applicant or licensee is prohibited by federal, state or other local law, ordinance or other regulation, from a license.

(7) *Outstanding Fees, Fines, or Pearlites.* The applicant or licensee has outstanding fees, fines, penalties, or property taxes owed to the County.

(8) *Moveable Place of Business.* The license is for a moveable place of business.

(9) *Location.* The licensed premises is within 1,000 feet of any school, as measured by the shortest line between the space to be occupied by the applicant or licensee and the occupied space of the school, unless the applicant or licensee has been in the business of selling tobacco products in that location for at least one (1) year before the date this Section was enacted into law.

§ 112.32 LICENSE INSTRUCTIONAL PROGRAM.

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

- A. Reviewing the law, including this Chapter, on the sale of tobacco products;
- B. Requiring agents and employees to request identification from every customer who is under 30 years of age;
- C. Explaining that the sale of tobacco products to persons under the age of 21 is illegal;
- D. Explaining what proof of age is legally acceptable; and
- E. 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 penalties.

§ 112.40 MINNESOTA CLEAN INDOOR AIR ACT

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

Administration and Enforcement

§ 112.45 NOTICE.

Upon discovery of a violation or notice of license denial, the licensee or applicant shall 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 may be requested in writing by the licensee or applicant but must be received by the County Board of Commissioners within ten (10) business days of issuance of the citation or notice of license denial, and that failure to follow said process 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 the County Board of Commissioners. A citation must also inform the alleged violator of the violation and the administrative penalty under Section 112.51.

§ 112.46 HEARINGS.

(A) Failure to request a hearing as outlined in Section 112.45 will terminate the alleged violator or applicants right to a hearing on the violation or the license denial, and the violation and administrative penalty imposed under Section 112.51 of this Chapter or the license denial will become final.

(B) Upon receipt of a timely request, the County Board of Commissioners shall set the time and place for the hearing. The accused violator or applicant shall be informed in writing, sent to the business address of the licensee or applicant, of the time and place of the hearing at least ten (10) business days prior to the hearing.

§ 112.47 HEARING OFFICER.

(A) The County Board of Commissioners shall appoint a hearing officer. The hearing officer shall be an impartial person retained by the County to conduct the hearing.

(B) In making its determination of whether or not a violation has occurred, the hearing officer shall consider only facts obtained at the hearing.

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

§ 112.49 APPEALS.

Appeals of any decision made by the hearing officer shall be filed in Redwood County District Court within 30 days of written notice of the hearing officer's decision.

§ 112.50 EXCEPTIONS AND AFFIRMATIVE DEFENSES.

(A) Nothing in this chapter shall prevent the provision of tobacco products to a person under the age of 21 as part of a lawfully recognized religious, spiritual or cultural ceremony.

(B) It shall also be an affirmative defense to the violation of this Chapter for a person to have reasonably and in good faith relied on proof of age as described by state law in Minn. Stat. 340A.503, subd. 6.

§ 112.51 PENALTY.

(A) Any licensee found to have violated this Chapter or whose employee has violated this Chapter, shall be charged:

1. An administrative fine of \$300 for a first violation of this Chapter;
2. An administrative fine of \$600 and a one-day suspension of the license for a second violation at the same licensed premises within a five-year period of the first violation;
3. An administrative fine of \$1,000 and a seven (7) day suspension for a third

violation at the same licensed premises within a five-year period of the first violation and may be revoked; or

4. Revocation of the license for a fourth violation at the same licensed premises within a five-year period of the first violation.

(B) 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, the higher administrative penalty will prevail.

(C) If a license is mistakenly issued or renewed to an applicant, the license will be administratively revoked upon the discovery that the applicant or licensee was ineligible for a license under Section 112.31.

(D) Other individuals age 21 and older found to be in violation of this Chapter may be charged an administrative fine of \$50.

(E) (1) The administrative penalties set forth in this Section shall be paid within 30 days of:

- a) The receipt of a citation for a violation of this Chapter;
- b) The final decision under section 112.48; or
- c) The exhaustion of appellate review under section 112.49, whichever occurs last in time.

(2) Non-payment of any administrative penalty assessed within the specified 30 days shall result in a suspension of the retail tobacco license for the licensed premises at which the violation occurred. A new license shall not be issued until a renewal application is made and the license fee is paid. Payment of all administrative penalties shall be made to the County Auditor-Treasurer by either cash, check or money order. If payment is made by check or money order, the check or money order shall be made payable to "Redwood County Auditor-Treasurer".

§ 112.52 PROSECUTION.

Nothing in this Chapter shall prohibit the state from seeking prosecution as a misdemeanor or gross misdemeanor for any alleged violation of state statutes in addition to or instead of any administrative penalty under this Chapter.

§ 112.53 CONTINUED VIOLATIONS.

Each violation shall constitute a separate

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

§ 112.54 SEVERABILITY.

If any section or provision of this chapter is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

This Ordinance shall be in full force and effect immediately from and after its passage and publication as required by law.

ADOPTED by the Redwood County Board of Commissioners this 5th day of March, 2024.



James Salfer, Redwood County Board Chair

Attest: 