

WILKIN COUNTY ORDINANCE NO 2019-02

AN ORDINANCE REGULATING THE USE OF COMMERCIAL TOBACCO WITHIN WILKIN COUNTY, MINNESOTA

THE BOARD OF COMMISSIONERS OF THE COUNTY OF WILKIN, STATE OF MINNESOTA HEREBY ORDAINS AS FOLLOWS:

TITLE: This Section shall be known as the Wilkin County Tobacco Ordinance

REPEALER: Wilkin County Ordinance 28-98 of the Wilkin County Code is hereby repealed in its entirety. The following shall be adopted in its place.

PURPOSE

Because Wilkin 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 18 violates both state and federal laws; and because studies, which the county accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of people who smoke begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

Wilkin County desires to prevent young people from gaining access to and starting to use commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products, to encourage and assist those who use tobacco to quit.

SCOPE

This ordinance will cover all unincorporated areas of Wilkin County and all incorporated areas that do not license and regulate the retail sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products.

DEFINITIONS.

Except as may otherwise be 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.

CHILD-RESISTANT PACKAGING. Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20.

CIGAR. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

COMPLIANCE CHECKS. The system the county uses to investigate and ensure that those authorized to sell licensed products, and nicotine or lobelia delivery devices are following and complying with the requirements of this ordinance. ***COMPLIANCE CHECKS*** shall involve the use of persons under the age of 21 as authorized by this ordinance. ***COMPLIANCE CHECKS*** shall also mean the use of persons under the age of 21 who attempt to purchase 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.

ELECTRONIC DELIVERY DEVICES. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the 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.

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

LICENSED PRODUCTS. Any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

LISTED PRICE. The minimum cigarette sales price provided by Minn. Stat. §§ 325D.30-.42, the minimum cigar sales price provided by this Ordinance, or the price listed for any other cigarette and non-cigar product on its package or any related shelving, posting, advertising or display at the location where such products are sold or offered for sale, including all applicable taxes.

LOOSIES. 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 \$2.60 per cigar.

MOVEABLE PLACE OF BUSINESS. Any form of business operated out of a truck, van, automobile, trailer, kiosk or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

NICOTINE OR LOBELIA DELIVERY DEVICES. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or 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.

PERSON. Any natural person, partnership, firm, joint stock company, corporation, or other legal entity, including an employee of a legal entity.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants, and drug stores.

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

SELF-SERVICE MERCHANDISING. Open displays of licensed products in any manner where any person shall have access to 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 sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

SMOKING. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device.

TOBACCO or TOBACCO PRODUCTS. Tobacco and tobacco products includes 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; 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.

TOBACCO-RELATED DEVICES. Tobacco-related devices includes any tobacco product as well as a pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking or inhalation of vapors of tobacco or tobacco products and may be marketed or sold separately.

VENDING MACHINE. 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.

YOUTH-ORIENTED FACILITY. Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. This definition includes but is not limited to schools, playgrounds, and houses of worship.

LICENSE

(A) *License required.* No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the County.

(B) *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 Clerk shall forward the application to the County Board for action at its next regularly scheduled County Board meeting. If the County Clerk shall determine that an application is incomplete, they shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.* The County Board may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the County Board approve the license, the County Clerk shall issue the license to the applicant. If the County Board deny the license, notice of

the denial shall be given to the applicant along with notice of the applicant's right to appeal the County Board's decision to District Court.

(D) *Term.* All licenses issued under this section shall be valid for one calendar year from the date of issue.

(E) *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in this Ordinance.

(F) *Transfers.* All licenses issued under this section 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 Commissioners.

(G) *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 section.

(H) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

(I) *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 30 days but no more than 60 days before the expiration of the current license.

(J) *Issuance as privilege and not a right.* The issuance of a license issued under this section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

(K) *Proximity to youth-oriented facilities.* It shall be unlawful for any person to sell, offer for sale, giveaway or deliver any licensed product within one thousand feet (1000') of any school building, child care facility or other building used for education or recreational purposes by persons under the age of eighteen (18) years.

(L) *Smoking prohibited.* Smoking shall not be permitted and no person shall smoke within the indoor area or within 25 feet from any external door, wall, or window of any establishment with a retail tobacco license. Smoking for the purpose of sampling licensed products is prohibited in these areas.

(M) *Distribution of Samples Prohibited.* No person shall distribute samples of any licensed product free of charge or at nominal cost.

FEES.

No license shall be issued under this Section until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be established in the county's Ordinance Establishing Fees and Charges, as it may be amended from time to time.

BASIS FOR DENIAL OF LICENSE.

(A) Grounds for denying the issuance or renewal of a license under this chapter include but are not limited to the following:

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

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

(3) The applicant has had a license to sell licensed products revoked within the preceding 12 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 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. Notice of the revocation will be given to the entity along with necessary information on the right to appeal.

PROHIBITED SALES

It shall be a violation of this ordinance for any person to sell or offer to sell any licensed product:

(A) To any person under the age of 21 years.

- a. Licensees shall 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 shall not constitute a defense to a violation of this subsection.
- b. Notice of the legal sales age and the age verification requirement shall 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, shall be posted in a manner so that it is clearly visible to anyone who is considering or making a purchase.

(B) By means of any type of vending machine.

(C) By means of loosies.

(D) 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. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.

(E) By any other means, to any other person, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

(F) By means of any liquid or other product intended for use in electronic delivery devices, regardless of whether such liquid contains nicotine, that is not in child resistant packaging.

CIGARS.

It shall be a violation of this Ordinance to sell or offer for sale a package containing four (4) or fewer cigars for a sales price, before sales taxes are imposed, of less than two dollars and sixty cents (\$2.60) per cigar contained within. In addition, no person shall sell, offer for sale, or otherwise distribute cigars in a package containing five (5) or more cigars for a sale price, before sales taxes are imposed, of less than thirteen dollars (\$13.00) per

package. The Wilkin County Board of Commissioners will annually consider suggestions from the Community Health Board, if any, to change the minimum pack and price amounts to adjust for inflation and in response to any public health concerns.

SELF-SERVICE SALES.

It shall be unlawful for a licensee under this ordinance to allow the sale of licensed products by means of self-service merchandising. Licensed products shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public.

RESPONSIBILITY

All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed premises, and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the County from also subjecting the clerk to whatever penalties are appropriate under this Section, state or federal law, or other applicable law or regulation.

COMPLIANCE CHECKS AND INSPECTIONS

All licensed premises shall be open to inspection by the County during regular business hours. From time to time, but at least one per year, the county will conduct compliance checks. In accordance with state law, the county will conduct [at least one compliance check that involves the participation of two persons: one person between the ages of 15 and 17 and one person between the ages of 18 and 20] [at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between the ages of 18 and 20] to enter licensed premises to attempt to purchase licensed products. Prior written consent is required for any person under the age of 18 to participate in a compliance check. No person under the age of 21 used in compliance checks shall attempt to use a false identification misrepresenting their age, and all persons under the age of 21 lawfully engaged in a compliance check shall answer all questions about their age asked by the licensee or their employee and shall produce any identification, if any exists, for which they are asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

OTHER ILLEGAL ACTS

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

(A) *Illegal procurement.* It shall be a violation of this ordinance for any person over the age of 21 to purchase or otherwise obtain those items on behalf of a person under the age of 21. It shall further be a violation for any person over the age of 21 to coerce or attempt to coerce a person under the age of 21 to purchase or otherwise obtain or use any licensed product.

(B) *Use of false identification.* It shall be a violation of this ordinance for any person

under the age of 21 to attempt to disguise their 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.

EXCEPTIONS AND DEFENSES

Nothing in this ordinance shall prevent the providing of 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 relied on proof of age as described by state law.

SEVERABILITY

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

VIOLATIONS AND PENALTY

(A) *Misdemeanor prosecution.* Nothing in this section shall prohibit the County from seeking prosecution as a misdemeanor for any alleged violation of this ordinance by a person 21 years of age or older.

(B) *Violations.*

(1) *Notice.* A person violating this ordinance may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) *Hearings.*

(a) Upon issuance of a citation, a person accused of violating this chapter may request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the citation and delivered to the Public Health Department. Failure to request a hearing within ten (10) business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The Director of Public Health shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

(3) *Hearing Officer.* The Director of Public Health shall serve as the hearing officer.

(4) *Decision.*

(a) A decision shall be issued by the hearing officer within ten (10) business days after the hearing. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division (8) of this ordinance, shall be recorded in writing, a copy of which shall be provided to the County and the accused violator by in person delivery or mail as soon as practicable Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the County and the acquitted accused violator by in person delivery or mail as soon as practicable.

(b) Costs. If the citation is upheld by the hearing officer, the County's actual expenses in holding the hearing up to a maximum of \$200.00 shall be paid by the person requesting the hearing.

(c) The decision of the hearing officer is final.

(5) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the County in which the alleged violation occurred within ten (10) business days.

(6) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.


(C) *Administrative penalties.*

A Tobacco Fee Schedule for Administrative Penalties will be adopted by the Wilkin County Board of Commissioners simultaneously with this Ordinance, which may be amended from time to time by the resolution of the Board.

EFFECTIVE DATE.

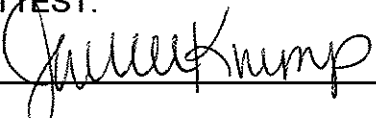
This Ordinance shall be effective upon publication.

Adopted by the Wilkin County Board of Commissioners 6-10-19



Chairman, **Wilkin** County Board of Commissioners

ATTEST:



Wilkin County Auditor-Treasurer