

Ordinance No. 186596

WHEREAS, Douglas County expressly finds and declares that:

- 1. Tobacco use is dangerous to human health;**
- 2. There exists substantial scientific evidence that the use of tobacco products causes cancer, heart disease and various other medical disorders;**
- 3. The Surgeon General of the United States has declared that nicotine addiction from tobacco is similar to addiction to cocaine, and is the most widespread example of drug dependence in this country;**
- 4. The National Institute on Drug Abuse found that cigarette smoking precedes and may be predictive of adolescent illicit drug use; and**
- 5. The enactment of this ordinance directly pertains to and is in furtherance of the health, welfare and safety of the residents of Douglas County, particularly those residents under eighteen (18) years of age.**

NOW THEREFORE, THE COUNTY BOARD OF THE COUNTY OF DOUGLAS, MINNESOTA, HEREBY ORDAINS:

1. Definitions

- A. "Tobacco products" 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, prepared in such a manner as to be suitable for chewing or smoking in a pipe or other tobacco-related devices.
- B. "Tobacco-related devices" includes, but is not limited to, cigarette papers or pipes for smoking tobacco.
- C. "Vending machine" means any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.

2. License:

- A. No person shall keep for retail sale, sell at retail or otherwise dispose of any tobacco product at any place in Douglas County without first obtaining a license from the County.
- B. The annual license fee for a retail tobacco license shall be established by the Douglas County Board in its fee schedule, and may be amended. All retail tobacco licenses shall be valid until June 30 after date of issue and renewable on July 1 of each year.
- C. Every license shall be conspicuously posted at the place for which the license is issued and shall be exhibited to any person upon request.

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

1. 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 tobacco, tobacco products, or tobacco-related devices.
2. The applicant has had a license to sell tobacco, tobacco products, or tobacco-related devices revoked within the preceding twelve months of the date of application.

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

3. **Sales Prohibited to Minors.** It shall be in violation of this ordinance for any person to sell, offer to sell or give away any tobacco, tobacco products or tobacco-related devices to any person under eighteen (18) years of age, and shall be assessed an administrative penalty pursuant in 9B of this ordinance.
4. **Parental Responsibility.** It shall be in violation of this ordinance for any parent or legal guardian of a minor to knowingly permit a minor to violate this ordinance, and shall be assessed an administrative penalty pursuant in 9B of this ordinance.
5. **Possession Prohibited by Minors.** It shall be in violation of this ordinance for any person under the age of eighteen (18) years of age to possess any tobacco, tobacco products or tobacco-related devices, and shall be assessed an administrative penalty pursuant in 9C of this ordinance.
6. **Self-Service Sales.**
 - A. No licensee shall offer for sale single packages, cartons, or other multipack units of any tobacco, tobacco products or tobacco-related devices in open displays which are accessible to the public without the intervention of a store employee. All tobacco, tobacco products and tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or storage unit not left open and accessible to the general public.
 - B. The self-service restrictions described in this Section 6A shall not apply to retail stores which derive at least 90% of their revenue from tobacco and tobacco-related products and which cannot be entered at any time by persons younger than eighteen (18) years of age.
7. **Vending Machine Sales.** No person shall sell tobacco, tobacco products or tobacco-related devices from vending machines. This section does not apply to vending machines in facilities that cannot be entered at any time by persons younger than eighteen (18) years of age.
8. **Compliance Checks.** The County shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco is sold to test compliance with Minnesota Statutes Section 609.685. Compliance checks shall utilize minors over the age of 15, but under the age of 18, who, with the prior written consent of a parent or guardian, attempt to purchase tobacco under the direct supervision of a law enforcement officer or an employee of the licensing authority.

9. Administrative Penalties.

- A. Licensees If a licensee or employee of a licensee sells tobacco, tobacco products or tobacco-related devices to a person under the age of 18 years, or violates any other provision of this ordinance, the licensee shall be charged an administrative penalty of \$75. An administrative penalty of \$200 must be imposed for a second violation at the same location within 24 months after the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty of \$250 must be imposed, and the licensee's authority to sell tobacco at that location must be suspended for not less than seven (7) days. No suspension or penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a Hearing Board, said board to be composed of two County Commissioners appointed at the discretion of the Chairman of the Board.
- B. Other Individuals An individual who sells or distributes tobacco products or tobacco-related devices to a person under the age of 18 years must be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a Hearing Board, said board to be composed of 2 County Commissioners appointed at the discretion of the Chairman of the Board.
- C. Minors Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products, or tobacco-related devices, may be required to attend and complete tobacco education classes and may be required to submit to other chemical evaluations, perform community service, or pay an administrative penalty in an amount not to exceed \$200.
- D. It is an affirmative defense to the charge of selling tobacco to a person under the age of 18 years in violation of this ordinance that the licensee or individual making the sale relied in good faith upon proof of age as follows:
 - 1. A valid driver's license or identification card issued by the State of Minnesota, another state, or a province of Canada, and including the photograph and date of birth of the licensed person; or
 - 2. A valid military identification card issued by the United States Department of Defense; or
 - 3. In the case of a foreign nation, from a nation other than Canada, by a valid passport.

10. Violations

- A. 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.
- B. 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.

- C. Decision If the Hearing Board determines that a violation of this ordinance did occur, that decision, along with the Hearing Board's reasons for finding a violation and the penalty to be imposed under Section 9 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the Hearing Board 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.

- D. Appeals Appeals of any decision made by the Hearing Board may be filed with the Douglas County District Court administrator within thirty days after the decision has been made.

- E. Misdemeanor Prosecution Nothing in this section shall prohibit the county from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If the county elects to seek gross misdemeanor, misdemeanor, or petty misdemeanor prosecution, an administrative penalty can also be imposed.

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

- 11. **Conformity with Other Laws.** The remedies listed in this Ordinance are in addition to any other remedies provided by law, and do not supersede any other statutory or common law action, nor preclude any other remedy available to Douglas County by other ordinance or law. This Ordinance specifically does not preclude prosecution under the laws of Minnesota relating to the use, possession or sale of tobacco.

- 12. **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 section or provision of this ordinance.

This ordinance shall become effective after its passage and publication.

Dated: 3-10-99

DOUGLAS COUNTY BOARD OF COMMISSIONERS

By Harold M. Jensen
Chairperson

OFFICE OF COUNTY RECORDER } SS
County of Douglas, Minn.

I hereby certify that the within instrument was filed in this office for record on the 6th day of Apr A.D. 1999 at 10:00 o'clock A. M. and was duly recorded as Doc. No. 186596

Darlene Chernick
County Recorder

Published in the Echo-Press on March 19, 1999

Tobacco Ordinance

Publish March 19, 1999

ADOPTION OF THE DOUGLAS COUNTY TOBACCO ORDINANCE

Notice is hereby given that on March 9, 1999, the Douglas County Board of Commissioners, adopted the following amendments to the Douglas County Tobacco Ordinance.

Section 2 License

B. The annual license fee for a retail tobacco license shall be established by the Douglas County Board in its fee schedule, and may be amended. All retail tobacco licenses shall be valid until June 30 after date of issue and renewable on July 1 of each year. (The fee has been set at \$100, and licensing will be handled by Douglas County Public Health)

D. Provisions added that describe reasons for denial or renewal of license application.

6. Self-Service Sales

A. No licensee shall offer for sale single packages, cartons, or other multipack units of any tobacco, tobacco products, or tobacco-related devices in open displays which are accessible to the public without the intervention of a store employee. All tobacco, tobacco products, and tobacco-related devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or storage unit not left open and accessible to the general public.

9. Administrative Penalties

C. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products, or tobacco-related devices, may be required to attend and complete tobacco education classes and may be required to submit to other chemical evaluations, perform community service, or pay an administrative penalty in an amount not to exceed \$200.

Approved and adopted by the County Board on the 9th day of March, 1999 by the following vote:

YES: Heidt, Tomford, Jennissen, Kakač, Lorsung

NO: none

Harold Jennissen
Board of County Commissioners
Douglas County, Minnesota

Attest:
Colleen Schultz