

TOBACCO ORDINANCE NO. 27**Amended May 10, 2016****THE COUNTY BOARD OF THE COUNTY OF ROSEAU, MINNESOTA, HEREBY ORDAINS:**

Section 1. Authority. The Roseau County Board shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in the unorganized territory of the County and in any city or town that does not license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in conformance with the requirements of Minn. Stat. ch. 461. Retail establishments licensed by a city or town are not required to obtain a second license for the same location under this Ordinance. This Ordinance is adopted under the authority and pursuant to the mandate of Minn. Stat. § 461.12.

Section 2. Purpose and Intent. Because the County recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products and such sales, possession and use are violations of both state and federal laws; because studies, which are hereby accepted and adopted, 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 tobacco use has been shown to be the cause of several serious health problems which subsequently place 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 illegal use 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.

Section 3. 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 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.

Subd. 1. Child-Resistant Packaging. “Child-Resistant Packaging” shall mean 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.

Subd. 2. Compliance Checks. “Compliance Checks” shall mean the system the County uses to investigate and ensure that those authorized to sell tobacco, tobacco-related devices, electronic delivery devices, or 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, or 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, and local laws and regulations relating to tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products.

Subd. 3. Electronic Delivery Device. “Electronic Delivery Device” 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 aerosol or vapor from the product. Electronic delivery device includes any component part of such a product whether or not sold separately. Electronic delivery device does not include any product that has been approved or otherwise 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.

Subd. 4. Loosies. “Loosies” shall mean the common term used to refer to a single or individually packaged cigarette.

Subd. 5. Minor. “Minor” shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 6. Moveable Place of Business. “Moveable Place of Business” shall refer to any form of business operated out of a kiosk, truck, van, automobile, 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.

Subd. 7. Nicotine or Lobelia Delivery Product. “Nicotine or Lobelia Delivery Product” 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 or for other medical purposes, and is being marketed and sold solely for such approved purpose.

Subd. 8. Retail Establishment. “Retail Establishment” shall mean any place of business where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are available for sale to the general public. Retail establishments shall include, but not limited to, grocery stores, convenience stores, restaurants, and drug stores.

Subd. 9. Sale. A “Sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 10. Self-Service Merchandising. “Self-Service Merchandising” shall mean open displays of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in any manner where any person can have access to the tobacco, tobacco-related devices, electronic delivery devices, or 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 product between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 11. Tobacco or Tobacco Product. "Tobacco" or "Tobacco Product" shall mean 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 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. 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.

Subd. 12. Tobacco-Related Device. "Tobacco-Related Device" shall mean 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.

Subd. 13. Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other device which dispenses tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products upon the insertion of money, token or other form of payment directly in the machine by the person seeking to purchase the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

Section 4. License. No person shall sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product without first having obtained a license to do so from the County.

Subd. 1. Application. Any application for a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery 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 Roseau County Auditor shall forward the application to the County Board for action at its next regularly scheduled board meeting. If the Roseau County Auditor determines that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 2. 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 County Board approves the license, the Roseau County Auditor shall issue the license to the applicant. If the County Board 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.

Subd. 3. Term. All licenses issued under this Ordinance shall be valid for one calendar year from the date of issue.

Subd. 4. Fee. No license shall be issued under this Ordinance until the appropriate license fee is paid in full. The fee shall be established by ordinance and may be amended from time to time.

Subd. 5. Revocation or Suspension. Any license issued under this Ordinance may be revoked or suspended following the procedures provided in the Violations and Administrative Penalties section of this Ordinance.

Subd. 6. 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. No transfer of any license to another person or for another location shall be valid.

Subd. 7. Moveable Place of Business. No license shall be issued to a moveable place of business. Only a fixed location business shall be eligible to be licensed under this Ordinance.

Subd. 8. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 9. Renewals. The renewal of a license under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license.

Subd. 10. Issuance as Privilege and Not a Right. 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.

Section 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 years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to 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 delivery devices, or nicotine or lobelia delivery products suspended or revoked with the preceding twelve months of the date of application.(d). The applicant is prohibited by federal, state, or other local law, or other regulation, from holding such a license. (e). The applicant fails to provide any information required on the application or provides false or misleading information.

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. If a license is mistakenly issued or renewed to any person based on false or misleading information or other grounds for denial, the license shall be revoked up discovery.

Section 6. Prohibited Sales. It shall be a violation of this Ordinance for any person to sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product: **(a).** To any person under the age of eighteen (18) years. **(b).** By means of loosies as defined in Section 3 of this Ordinance. **(c).** 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. **(d).** By any other means, to any other person, or in any other manner or form prohibited by federal, state, or local law, ordinance provisions, or other regulation.

Section 7. Vending Machines. It shall be unlawful for any person licensed under this Ordinance to allow the sale of tobacco, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery products by means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

Section 8. Liquid Packaging. It shall be unlawful for any person licensed under this Ordinance to allow 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. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Section 9. 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 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 device, electronic delivery device, or nicotine or lobelia delivery product 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 the counter or other area not freely accessible to customers, or in case or other storage unit not left open and accessible to the general public.

Section 10. 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, or 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 the County from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, state or federal law, or other applicable law or regulation.

Section 11. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the Roseau County Sheriff's Office or other designated personnel during regular business hours. From time to time, but at least once per year, the County or their designee 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 premise to attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products. Minors used for the purpose of compliance checks shall be

supervised by designated law enforcement officers or other county personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase, attempted purchase or possession of tobacco, tobacco-related devices, electronic delivery devices, or lobelia delivery products when such items are obtained as 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 provide any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for education, research, or training purposes, or required for the enforcement of a particular state or federal law.

Section 12. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this Ordinance:

Subd. 1. Illegal Sales. It shall be a violation of this Ordinance for any person to sell or otherwise provide any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product to a minor.

Subd. 2. 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 delivery product.

Subd. 3. 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 delivery product.

Subd. 4. Illegal Procurement. It shall be a violation of this Ordinance for any minor to purchase, 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 device, electronic delivery device, or nicotine or lobelia delivery product.

Subd. 5. 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 13. Violations.

Subd. 1. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued a citation from the issuing authority, either personally or by certified mail, that set forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

Subd. 2. Hearings. Upon issuance of a citation, a person accused of violating this Ordinance 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 County Auditor or other designated County officer. 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. 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.

Subd. 3. Hearing Officer. The County official designated by the County Board shall serve as the hearing officer. The hearing officer must be an impartial employee of the County or an impartial person retained by the County to conduct the hearing.

Subd. 4. 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 shall be recorded in writing and 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.

Subd. 5. Appeals. Appeals of any decision made by the hearing officer shall be filed in Roseau County District Court.

Subd. 6. 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 misdemeanor prosecution, no administrative penalty shall be imposed.

Subd. 7. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Subd. 8. Payment of Fines. All fines shall be paid within thirty (30) days of the receipt of the citation, decision of the hearing officer, or decision of the Roseau County District Court. Failure to pay the fine in a timely fashion shall result in the suspension of the license until the fine is paid in full.

Section 14. Administrative Penalties.

Subd. 1. Licensees. If a licensee or employee of a licensee violates any provision of this Ordinance, the licensee shall be charged an administrative penalty of \$75.00 for the first violation. An administrative penalty of \$200.00 must be imposed for a second violation at the same location within twenty-four (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, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products at that location must be suspended for not less than seven days.

Subd. 2. Other Individuals. An individual who sells tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 18 years shall be charged an administrative penalty of \$50.00.

Subd. 3. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempts to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products may be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the County believes will be appropriate and effective. The administrative fine or other penalty may be established by ordinance upon the County Board’s consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the County.

Subd. 4. Misdemeanor. Nothing in this section shall prohibit the County from seeking prosecution as a misdemeanor for any violation of this Ordinance.

Section 15. Exception 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 religion, 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.

Section 16. Severability and Savings Clause. If any section or portion of this Ordinance shall be found to be unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or affect the validity and enforceability of any other section or provision of this Ordinance.

This ordinance shall become effective following publication according to law.


Passed by the Roseau County Board of Commissioners, this 10th day of May, 2016.



Chair, Roseau County Board of Commissioners

Attest:


Jeff Pelowski, Coordinator/Environmental Officer

Approved as for form and execution:


Karen M. Foss, Roseau County Attorney