

OTTER TAIL COUNTY

PUBLIC HEALTH REGULATION ON THE DISTRIBUTION AND PROVISION OF COMMERCIAL TOBACCO PRODUCTS TO PERSONS UNDER 21

An Ordinance relating to distribution and provision of commercial tobacco and tobacco-related products and devices to youth and young adults in the County of Otter Tail.

The County Board of Otter Tail County ordains:

Section I. General Provisions.

A. Title. The title of this Ordinance shall be the Otter Tail County Public Health Regulation on the Distribution and Provision of Commercial Tobacco Products to Person Under 21.

B. Findings of Fact and Purpose.

Whereas, Otter Tail County recognizes that the use of commercial tobacco products has devastating health and economic consequences. Commercial tobacco use is the foremost preventable cause of premature death in America. Otter Tail County further recognizes that young people are particularly susceptible to the addictive properties of these tobacco products and are particularly likely to become lifelong users. The County Board of Commissioners accepts the conclusions and recommendations of the Centers for Disease Control & Prevention; U.S. Department of Health & Human Services, Substance Abuse & Mental Health Services Administration, Center for Behavioral Health Statistics, and Quality; Minnesota Department of Health; and the Institute of Medicine.

Accordingly, Otter Tail County adopts the following Public Health Regulation on the Distribution and Provision of Commercial Tobacco Products to Person Under 21 to reduce tobacco use by keeping commercial tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery devices out of the hands of young people.

C. Authority. This Ordinance is enacted pursuant to Minnesota Statutes Chapters 145A and 461 and allowing for local ordinances for counties to regulate actual and potential threats to the public health and to set more restrictive regulation on the distribution and provision of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery devices.

D. Severability and Savings Clause. If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provision of this Ordinance that can be given effect without the invalid provision or application. Each invalid provision or application of this Ordinance is severable.

E. Jurisdiction. Pursuant to Minn. Stat. § 145A.05, Subd. 1, this Ordinance shall apply throughout all of Otter Tail County including all municipalities and unincorporated areas therein. Nothing in this Ordinance shall prevent other local levels of government within Otter Tail County from adopting more stringent measures.

Section II. Definitions.

For the purposes of this Ordinance, certain terms and words are herein defined as follows:

- A.** "Distribute" or "Provision" means to sell, barter, furnish, provide or give away tobacco, tobacco-related ~~devices products~~, electronic delivery devices, or nicotine or lobelia delivery devices to another person.
- B.** "Distributor" means a person who distributes a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device to another person.
- C.** "Electronic Delivery Device" ~~"Electronic delivery devices"~~ means 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.
- B.D.** "Nicotine or Lobelia Delivery Device" means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a 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 solely for that approved purpose.
- C.E.** "Person" means any natural person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation, or any officer, agent, employee, factor, or any other personal representative thereof, in any capacity.
- D.F.** "Recipient" means any person who obtains or attempts to obtain tobacco, a tobacco product, electronic delivery device, or nicotine or lobelia delivery device.
- E.G.** "Tobacco" and "Tobacco Products" means 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 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 flower; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; 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 product" does not include non-commercially-produced tobacco provided by a Native American as part of a traditional Native American

spiritual or cultural ceremony. For purposes of this section, a Native American is a person who is a member of an Indian tribe as defined in Minn. Stat. § 260.755, subd. 12.

F.H. Tobacco-Related Devices. "Tobacco-related devices" means any pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking or the inhalation of vapors of tobacco or tobacco products and may be marketed or sold separately.

Section III. Minimum Legal Distribution and Provision Age.

A. Minimum legal distribution and provision age for tobacco products. The ~~provision and distribution~~ of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery devices to a person under the age of 21 is prohibited. ~~This subsection shall not apply to provisions to any person who is born on or before December 31, 2000. The provision or distribution of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery devices to a person under the age of 21 by an employee of a licensee who has obtained a license under the Otter Tail County Tobacco Ordinance or any other municipal licensing authority within the county shall be considered as an action of the licensee.~~

B. Age verification. Before distributing or providing any tobacco product, ~~tobacco-related device, electronic delivery device, and nicotine or lobelia delivery device~~ the distributor shall verify that the recipient is at least 21 years of age. Each distributor shall examine the recipient's government issued photographic identification. No such verification is required for a person over the age of 30. That a recipient appeared to be 30 years of age or older shall not constitute a defense to a violation of this section.

C. Signage. No person shall distribute or permit the provision of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices in Otter Tail County unless a clearly visible notice of the county minimum legal sales age is posted at the location where these products are available for purchase.

~~C.~~

Section IV. Violations.

A. Enforcement. The Otter Tail County Public Health Department, or its authorized designee may conduct random, unannounced inspections at locations where tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery devices are available for purchase to test and ensure compliance with this Ordinance. The county enforcement authority of this Ordinance shall provide notice of any compliance check failure to the municipal tobacco retailer licensing authority of the jurisdiction where a failed compliance check occurs.

B. Citation. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation from Otter Tail County Public Health that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation. The person may either admit to the violation by paying the administrative fee or may request a hearing within 10 business days of receipt of the

citation.

C. Hearing Procedure. If a person accused of violating this Ordinance requests a hearing to the County Auditor, a hearing shall be scheduled before the Otter Tail County Board of Commissioners, and shall be open to the public.

1. Notice. A person accused of violating the Ordinance shall be given notice of the hearing. The notice shall include a statement of the time, place and nature of the hearing, and a reference to the section of the Ordinance involved.

2. Conduct of the hearing. The accused may be represented by counsel. The County shall present evidence. All testimony shall be sworn under oath. All parties shall have full opportunity to respond to and present evidence, cross-examine witnesses and present argument.

3. Burden of Proof. The County shall have the burden of proving a violation of the Ordinance by a preponderance of the evidence, and all findings of fact, conclusions and decision by the County Board shall be based on evidence presented and matters officially noticed.

4. Evidence. All evidence which possesses probative value, including hearsay, may be admitted if it is the type of evidence on which prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence that is incompetent, irrelevant, immaterial or unduly repetitious may be excluded. The hearing shall be confined to matters raised in the written notice of hearing.

D. Decision. Following the hearing, the County Board shall make written findings, and if a violation is found to have occurred, shall impose the administrative penalties outlined in this Ordinance. A copy of the Findings and Order shall be provided to the person accused.

E. Appeals. Appeals of any decision made by the County Board shall be filed in the District Court.

~~A.~~

B. Penalties.

~~C.F. - In General.~~ Any person 21 years of age or older found to have violated this Ordinance shall be subject to a fine of no less than \$100-300 for the first offense, no less than \$200-600 for the second offense within a 36 month period from the first violation, and no less than \$400-1,000 for the third offense within the a 36 month period of the second violation, and \$750-1,000 each offense thereafter. Each violation, and every day in which a violation occurs, shall constitute a separate violation over a 24 month period of time.

~~2. Persons under the Age of 21.~~ Persons under the age of 21 acting within their capacity as an employee of a distributor who violate this Ordinance may only be subject to noncriminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the County determines to be appropriate. The County Board will consult with court personnel, educators, parents, children, and other interested parties to determine an appropriate consequence for persons under the age of 21 in the county. The penalty may be established by ordinance and amended from time to time.

L. Licensees. A licensee who has obtained a license under the Otter Tail County Tobacco Ordinance or any other municipal licensing authority within the county who violates any provision of this Ordinance may still be subject to fines, license suspension, revocation, and/or non-renewal, consistent with their municipal licensing authority regulations.

M. Exceptions and defenses.

1. The penalties in this Ordinance do not apply to a person under the age of 21, ~~unless that person violates this Ordinance while acting within their capacity as an employee of a distributor.~~

1.2. ~~The penalties in this Ordinance do not apply to a person acting within their capacity as an employee of a distributor.~~

2.3. Nothing in this Ordinance prohibits an underage person from handling tobacco products, ~~tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery devices~~ in the course of lawful employment.

3.4. Nothing in this ordinance prevents the provision of traditional, non-commercial tobacco or tobacco products or tobacco-related devices to any person as part of a lawfully recognized religious, spiritual, or cultural ceremony.

4.5. It shall be an affirmative defense to a violation of this Ordinance for a person to have reasonably relied on proof of age as described by state law.

Section V. Effective date.

This Ordinance shall take effect on

Adopted by the Otter Tail County Board of Commissioners on

Attested: