

**GOODHUE COUNTY**  
**TOBACCO LICENSING ORDINANCE**  
**Ordinance #1014.14**

The County Board of Goodhue County ordains and establishes an ordinance relating to the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery devices in the County.

**Section 100. Purpose**

Because the County recognizes that many retailers sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery devices to persons under the age of 21; and because sales to persons under the age of 21 are a violation of Federal and state law; and because studies have shown that most people who use commercial tobacco products begin before they have reached the age of 21 years and that those persons who reach the age of 21 years without having started using commercial tobacco products are significantly less likely to ever begin; and because the use of commercial tobacco products has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery devices for the purpose of enforcing and furthering existing laws and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to use commercial tobacco products as stated in Minn. Stat. § 144.391.

**Section 200. Applicability and Jurisdiction**

This ordinance governs the licensing and regulation of the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in the unorganized territory of Goodhue County and in any city or town located in Goodhue County that does not license and regulate retail sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in conformance with the minimum requirements of Minn. Stat. § 461. Retail establishments licensed by a city or town are not required to obtain a second license for the same location under this ordinance.

**Section 300. 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 the 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, as in effect on January 1, 2015.

Subd. 2 Compliance Checks. "Compliance Checks" shall mean the system the County uses to investigate and ensure that those authorized to sell licensed products are following and complying the requirements of this ordinance. Compliance checks involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. Compliance checks may be conducted by the county or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

Subd. 3 Electronic Delivery Device. "Electronic delivery device" shall mean any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption though inhalation of aerosol or vapor from the product. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

Subd. 4 Indoor Area. "Indoor area" shall mean 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. A standard window screen (0.011 gauge with an eighteen (18) by sixteen

(16) mesh count) is not considered a wall.

Subd. 5 Licensed Products. "Licensed Products" shall mean any tobacco or tobacco product, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product.

Subd. 6 Loosies. "Loosies" shall mean the common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. LOOSIES does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

Subd. 8 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. 9 Nicotine or Lobelia Delivery Device. "Nicotine or lobelia delivery device" 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 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.

Subd. 10 Retail Establishment. "Retail Establishment" shall mean any place of business where licensed product area available for sale to the general public. Retail establishments shall include, but not be limited to grocery, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants.

Subd. 11 Sale. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 12 Self-Service Merchandising. "Self-Service Merchandising" shall mean the open display of licensed products in a retail establishment in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee and where a physical exchange of the licensed product from the licensee or the licensee's employee to the customer is not required in order to access the licensed products.

Subd. 13 Smoking. "Smoking" shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, 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 shall also mean carrying or using an activated electronic delivery device.

Subd. 14 Tobacco. "Tobacco" 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 does not include any product that has been approved by the U.S. 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. 15 Tobacco Related Devices. "Tobacco related devices" shall mean any rolling papers, wraps, pipes, ashtrays, or other device intentionally designed or intended to be used with tobacco products. Tobacco related devices shall include components of tobacco related devices or tobacco products, which may be marketed or sold separately. Tobacco related devices may or may not contain tobacco.

Subd. 16 Vending Machine. "Vending Machine" shall mean 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 licensed products.

#### **Section 400. License.**

No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the County. Persons or retail establishments validly licensed by a town or city to sell licensed products in compliance with Minn. Stat. § 461, are not required to obtain a second license for the same location under this ordinance.

Subd. 1 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. A completed application shall be filed with the County Administrator for action at the next regularly scheduled County Board meeting. If the County Administrator shall determine 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 shall approve the license, the County Administrator 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 Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

Subd. 5 License Not Transferable. 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 location or person shall be allowed.

Subd. 6 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 ordinance.

Subd. 7 Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 8 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 thirty days but no more than sixty days before the expiration of the current license. 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.

Subd. 9 Smoking. Smoking is not be permitted and no person

shall smoke within the indoor area of any establishment with a retail tobacco license.

Subd. 10 Sampling. No person shall distribute samples of any licensed product free of charge or at nominal cost. The distribution of licensed products as a free donation is prohibited.

#### **Section 500. Fees.**

No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be set in accordance with a fee schedule adopted by the County Board. Said fee schedule may be amended from time to time by action of the County Board.

#### **Section 600. Basis for Denial of License.**

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

Subd. 1. The applicant or proposed licensee is under the age of 21 years.

Subd. 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.

Subd. 3. The applicant has had a license to sell licensed products suspended or revoked within the preceding twelve months of the date of application.

Subd. 4. The applicant fails to provide any information

required on the application, or provides false or misleading information.

Subd. 5. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

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 shall be revoked upon the discovery that the person was ineligible for the license under this Section.

### **Section 700. Prohibited Sales.**

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

Subd. 1. By means of loosies as defined in section 300.

Subd. 2. 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.

Subd. 3. 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.

### **Section 800. Legal Age.**

No person shall sell any licensed product to any person under the age of 21.

Subd. 1. Age Verification. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth 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 does not constitute a defense to a violation of this subsection.

Subd. 2. Signage. Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the county, must be posted in a manner that is

clearly visible to anyone who is or is considering making a purchase.

**Section 900. Vending Machines.**

It shall be unlawful for any person licensed under this ordinance to allow the sale of licensed products by the means of a vending machine unless persons under the age of 21 are at all times prohibited from entering the licensed establishment.

**Section 1000. 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 displays. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.

**Section 1100. Liquid Packaging.**

No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the county, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

**Section 1200. 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 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 1300. Compliance Checks and Inspections.**

All licensed premises shall be open to inspection by the local law enforcement, Goodhue County Sheriff's Department, the county or its designee during regular business hours. From time to time, but at least twice per year, the county shall conduct a compliance checks. In accordance with state law, the county will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under



the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

#### **Section 1400. Violations.**

Subd. 1 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, the penalty to be imposed, and which shall inform the alleged violator of his or her right to be heard on the accusation.

Subd. 2 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. A hearing must be requested within thirty (30) days of the issuance of a citation or it shall be deemed waived. The County Administrator or other designated County officer 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 10 business days prior to the hearing.

Subd. 3 Hearing Officer. The County Board or other person(s) designated by the County Board shall serve as the hearing officer.

Subd. 4 Decision. A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officers reasons for finding a violation and the penalty to be imposed under Section 1400 of this ordinance, shall be recorded in writing, a copy of which shall be provided to 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, such findings shall be recorded and a copy provided to the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in Subd. 5 of this section.

Subd. 5 Appeals. Appeals of any decision made by the hearing officer shall be filed, within thirty (30) days of the decision of the hearing officer, in the district court for the jurisdiction of the county in which the alleged violation occurred.

Subd. 6 Misdemeanor. Any person over the age of 21 years or retailer who violates any of the provisions of this ordinance may be subject to a misdemeanor.

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

### **Section 1500. Other Prohibited Acts.**

Unless otherwise provided, the following acts shall be violations of this chapter:

Subd. 1 Use of false identification. It shall be a violation of this chapter for any person under the age of 21 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 1600. Administrative Penalties.**

Subd. 1 Licensees. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$300 for a first violation of this ordinance; \$600 for a second offense at the same licensed premises within a thirty-six month period; and \$1000 for a third or subsequent offense at the same location within a thirty-six month period. In addition, after the third offense, the license shall be suspended for not less than seven days and may be revoked.

Subd. 2 Employees and Other Individuals. Individuals 21 years of age and older found to be in violation of this ordinance shall be charged an administrative fee of \$50.

Subd. 3 Suspension or Revocation. Any violation of this ordinance may be grounds for suspension or revocation of a license. The County Board may attach reasonable conditions to the reinstatement of a suspended or revoked license. There shall be no license fee refund upon suspension or revocation of a license.

Subd. 4 Person under the Age of 21. Persons under the age of 21 who use false identification to purchase or attempt to purchase licensed products shall only be subject non-criminal, non-monetary civil penalties, including tobacco-related education classes, diversion programs, community services, or another penalty that the county believes will be appropriate and effective. The County Board shall consult with interested parties of the courts, educators, parents, guardians, and the violating person under the age of 21 to determine an appropriate penalty under this section. The penalty may be established by ordinance and amended from time

to time.

Subd. 5 Statutory Penalties. 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, then the statutory penalties shall prevail.

**Section 1700. Exceptions and Defenses.**

Subd. 1 Religious, Spiritual, or Cultural Ceremonies or Practices. Nothing in this ordinance prevents the providing of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

Subd. 2. Reasonable Reliance. It is 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 1800. 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.

**Section 1900. Effective Date.** This ordinance shall take effect November 3, 2020.

Passed by a majority vote of all members of the Goodhue County Board of Commissioners this 3<sup>rd</sup> day of November, 2020.

 , Chair  
Goodhue County Board of Commissioners