

ORDINANCE NO. ____

LICENSING AND REGULATING THE SALE OF
TOBACCO AND RELATED DEVICES AND PRODUCTS

An ordinance relating to the sale, possession, and use of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in Lyon County, and to reduce the illegal sale, possession, and use of such items to and by minors.

The County of Lyon does ordain:

SECTION 1

Subd. 1. Purpose. 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; and because studies, which the County hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 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 a 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, or nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products, 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.

Subd. 2. 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:

- A. Blunt Wraps.** "Blunt Wraps" shall mean wraps, hollow tubes, or similar tobacco-related devices that are designed, manufactured, and packaged with the intent to be filled with loose tobacco, plant products, or other fillers to create custom cigars or cigar-like products.
- B. 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.

- C. **Cigar.** “Cigar” shall mean 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.

- D. **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, and 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 or local laws and regulations relating to tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.

- E. **Electronic Delivery Devices.** 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 such devices, whether they are manufactured, distributed, marketed or sold as e-cigarettes, e-cigars, e-pipes, or under any product name or descriptor.

- F. **Imitation Tobacco Products.** “Imitation Tobacco Products” shall mean any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used as a toy. Imitation tobacco products includes, but is not limited to, candy or chocolate cigarettes or cigars, bubble gum cigars, shredded bubble gum resembling chew tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. Imitation tobacco products does not include electronic delivery devices or a nicotine or lobelia delivery products.

- G. **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 (0.011 gauge with an 18 by 16 mesh count) window screen is not considered a wall.

- H. **Loosies.** “Loosies” shall mean a single or individually packaged cigar or cigarette, or any other licensed product that has been removed from its intended retail packaging and

offered for sale. Loosies does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least \$2.60 per cigar.

- I. **Minor.** "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.
- J. **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.
- K. **Nicotine or Lobelia Delivery Products.** "Nicotine or Lobelia Delivery Products" 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 subdivision. Nicotine or lobelia delivery products does not include 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 that approved purpose.
- L. **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 be limited to, grocery stores, convenience stores, gasoline service stations, bars and restaurants.
- M. **Sale.** A "Sale" shall mean any transfer of goods for money, trade, barter or other consideration.
- N. **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 shall 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 product 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 between the clerk and the customer.
- O. **Smoking.** "Smoking" shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product, or inhaling or exhaling aerosol or vapor from an electronic delivery device. Smoking includes being in possession of a lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product intended for inhalation, or an electronic delivery device that is turned on or otherwise activated.

- P. Tobacco or Tobacco Products.** “Tobacco” or “Tobacco Products” 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 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.
- Q. Tobacco-Related Devices.** “Tobacco-Related Devices” shall mean any pipe, rolling papers, or other device 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 includes components of tobacco-related devices which may be marketed or sold separately.
- R. Vending Machine.** “Vending Machine” shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the product

Subd. 3. 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.

- A. Applications.** An application for a license to sell 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 bought, and any additional information the County deems necessary. Upon receipt of a completed application, the County Auditor shall forward the application to the board for action at its next regularly scheduled board meeting. Any incomplete application will be returned to the applicant with notice of the information necessary to make the application complete.
- B. Action.** The 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 board approves the license, the County Auditor shall issue the license to the applicant. If the 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 board's decision.

- C. **Term.** All licenses issued under this ordinance shall be valid for the calendar year during which they are issued. There shall be no proration of any application fees under this ordinance.
- D. **Revocation or Suspension.** Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties sections of this ordinance.
- E. **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 location or person shall be valid.
- F. **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.
- G. **Display.** All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- H. **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.
- I. **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.
- J. **Smoking Prohibited.** Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment licensed under this ordinance. Smoking for the purposes of sampling tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products is prohibited.
- K. **Distribution of Samples Prohibited.** No person shall distribute samples of any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product free of charge or at nominal cost.
- L. **Proximity to youth-oriented facilities.** No license shall be granted to any person for any location that is within five hundred (500) feet of a school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been licensed to sell such licensed products in that location for at least one year before the date this section was enacted into law. For the purpose of this section, a youth-oriented facility is defined to include any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21

or which primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21.

Subd. 4. Fees. No license shall be issued under this ordinance until the license fee of \$100.00 is paid in full.

Subd. 5. Basis for Denial of License.

- A. Grounds for denying the issuance or renewal of a license include but are not limited to the following:
- (1) The applicant is under the age of eighteen (18) 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 tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.
 - (3) The applicant has had a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products suspended or revoked within the preceding twelve 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 such 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.

Subd. 6. Prohibited Sales.

- A. **In General.** It shall be a violation of this ordinance for any person to sell, offer to sell, or otherwise distribute any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product:
- (1) To any person under the age of eighteen (18) years.
 - (2) By means of any type of vending machine.
 - (3) By means of loosies as defined in this ordinance.

- (4) 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 any otherwise lawful manufacturing process.
- (5) 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.

B. Self-Service Sales. 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 any means where by the customer may have access to those 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, and nicotine or lobelia delivery products shall either be stored behind the sales 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.

C. Cigars. No person shall sell, offer for sale, or otherwise distribute a package containing three or fewer cigars for a sales price, after any discounts are applied and 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 four (4) or more cigars for a sale price, after any discounts are applied and before sales taxes are imposed, of less than ten dollars and forty cents (\$10.40) per package.

D. Liquid Packaging. It shall be a violation of this ordinance for any person to 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, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

E. Imitation Tobacco Products. It shall be unlawful for any person to sell, offer for sale, or otherwise distribute any imitation tobacco products within the County.

F. Blunt Wraps. The sale of blunt wraps is prohibited.

G. Retail Roll-Your-Own Machines. The placement, operation, or use of a retail roll-your-own machine at any retail establishment is prohibited. No person shall place, operate, or use a retail roll-your-own machine to make cigarettes or any other rolled tobacco or plant product at any licensed premises.

Subd. 7. 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 subdivision 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.

Subd. 8. Compliance Checks and Inspections. All licensed premises shall be open to inspection by local law enforcement or other authorized County official during regular business hours. From time to time, but at least once per year, the County 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, and nicotine or lobelia delivery products. Minors used for the purpose of compliance checks shall be supervised by County designated law enforcement officers or other designated County personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products when such items are obtained as a 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 produce any identification, if any exists, for which he or she is asked. Nothing in this subdivision 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.

Subd. 9. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance:

- A. **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 any minor.
- B. **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. This shall not apply to minors lawfully involved in a compliance check.
- C. **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. .
- D. **Illegal Procurement.** It shall be a violation of this ordinance for any minor to purchase or 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. This shall not apply to minors lawfully involved in a compliance check.

- E. **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.

Subd. 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. **Hearing Officer.** The County Board shall designate a 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.
- D. **Decision.** 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 for a violation of this ordinance, shall be recorded in writing, 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.
- E. **Appeals.** Appeals of any decision made by the hearing officer shall be filed in the district court for the County of Lyon, State of Minnesota.
- F. **Misdemeanor Prosecution.** Nothing in this subdivision shall prohibit the County from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.
- G. **Continued Violation.** Each violation and every day in which a violation occurs or continues, shall constitute a separate offense.

Subd. 11. Penalties.

- A. Licensees and Employees.** Any licensee found to have violated this ordinance, or whose employee has violated this ordinance, shall be charged an administrative fine of \$250 for a first violation of this ordinance; \$500 for a second offense at the same license premises within a twenty- four month period; and \$600 and a minimum forty-five (45) day license suspension for a third offense at the same location within a twenty-four month period. Upon the fourth offense within a twenty-four month period, the violator's license shall be revoked.
- B. Other Individuals.** Individuals, other than minors regulated by Subd. 11(c), found to be in violation of this ordinance by providing or selling to minors shall be charged an administrative fee of \$75.
- C. Minors.** Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products or tobacco related devices, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or other penalty that the County believes will be appropriate and effective. The administrative fine or other penalty shall be established by the County Board upon consultation with the courts, educators, parents, children, and other interested parties. This administrative fine or other penalty may be established by ordinance and amended from time to time.
- D. Misdemeanor Prosecution.** Nothing in this subdivision shall prohibit the County from seeking prosecution as a misdemeanor for any violation of this ordinance.

Subd. 12. Exceptions 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 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.

Subd. 13. 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 or any other section or provision of this ordinance.

Section 2. This ordinance will take effect 90 days after its adoption and publication.