

Mille Lacs County Code of Ordinances
Chapter 2 – Public Safety
Article 6 - Tobacco

Sec. 3-600 Purpose

The County recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of both State and Federal laws. Studies, which are hereby accepted and adopted, 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 smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this Article is intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related devices for the purpose of enforcing and further existing laws to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco related device, and to further the official public policy of the State of Minnesota in regards to preventing young people from starting to smoke as stated in Minnesota Statute.

limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall be considered individually packaged.

(2) Compliance Checks - means the system the County uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco related devices 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 products, or tobacco related devices 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 products, and tobacco related devices.

Sec. 3-601 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:

(1) Individually Packaged - means the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be

(3) Loosies – means the common term used to refer to a single or individually packaged cigarette.

(4) Minor - means any natural person who has not yet reached the age of eighteen (18) years.

(5) Moveable Place of Business - refers to any form of business operated out of a 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.

- (6) Sale - means any transfer of goods for money, trade, barter, or other consideration.
- (7) Self-Service Merchandising - means open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco related devices, without the intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.
- (8) Retail Establishment - means any place of business where tobacco, tobacco products, or tobacco related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.
- (9) Tobacco or Tobacco Products - means cigarettes and 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; 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. (Minn. Stat. 609.685 (a))

- (10) Tobacco Related Devices - means cigarette papers or pipes for smoking. (Minn. Stat. 609.685 (b))

- (11) Vending Machine - means any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco products, or tobacco related device.

Sec. 3-602 License

No person shall sell or offer to sell any tobacco, tobacco products, or tobacco related device without first having obtained a license to do so from the County.

The issuance of a license under this ordinance shall be considered a privilege and not absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

(1) Application

- a. An application for a license to sell tobacco, tobacco products, or tobacco related devices 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 Auditor/Treasurer shall forward the application to the County Board for action at its next regularly scheduled board meeting. If the Auditor/Treasurer determines that an application is incomplete, they shall return the application to the applicant

- with notice of the information necessary to make the application complete.
- b. The application shall be accompanied by the appropriate fee as established by ordinance by the County Board.
 - c. The applicant shall be in compliance with all local, State and Federal requirements, including payment of taxes.

(2) Decision

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.

a. Approval of License

If the County Board approves the license, the Auditor/Treasurer shall provide written notice of the approval to the applicant and issue the license to the applicant. The following shall be conditions of approval:

- i. All licenses issued under this article shall be valid for one calendar year from the date of issue.
- ii. 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 without the prior approval of the County Board.
- iii. No license shall be issued to a moveable place of business. Only fixed location businesses

shall be eligible to be licensed under this article.

- iv. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- v. All licensees under this article shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices 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 employee to whatever penalties are appropriate under this Article, State or Federal law, or other applicable law or regulation.

b. Denial of License

If the County Board denies the license, written notice of the denial shall be mailed by certified mail to the applicant along with notice of the applicant's right to appeal the decision.

The following shall be grounds for denying the issuance or renewal of a license under this ordinance; 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 a person, it shall be revoked upon the discovery that the person was ineligible for the license and under this Section.

- i. The applicant is under the age of 18 years.

- ii. 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 or tobacco products, or tobacco related devices.
- iii. 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.
- iv. The applicant fails to provide any information required on the application, or provides false or misleading information.
- v. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

(3) Renewal of License

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.

(4) Revocation of License

Any license issued under this article may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

Sec. 3-603 Prohibited Sales

It shall be a violation of this article for any person to sell or offer to sell any tobacco, tobacco product, or tobacco related device:

- (1) To any person under the age of eighteen (18) years.

- (2) By means of any type of vending machine, except as may otherwise be provided in this ordinance.
- (3) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the license premise in order to receive the tobacco, tobacco product, or tobacco related device and whereby there is not a physical exchange of the tobacco, tobacco product, or tobacco related device between the licensee or the licensee's employee, and the customer.
- (4) By means of loosies as defined in Sec. 3-601 of this article.
- (5) Containing opium, morphine, jimson weed, bella donna, stychnos, 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.
- (6) 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 regulations.

Sec. 3-605 Compliance Checks and Inspections

All licensed premises shall be open to inspection by the local law enforcement or other authorized County official during regular business hours. From time to time, 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 products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated county personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or

attempted purchase, nor the unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained or attempted to be 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 produce 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 educational, research, or training purposes or those required for the enforcement of a particular State or Federal law.

Sec. 3-606 Other Illegal Acts

Unless otherwise provided, the following acts shall be a violation of this ordinance.

- (1) For any minor to have in his or her possession any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.
- (2) For any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device.
- (3) For any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, 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 product, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Sec. 3-607 Violations

- (1) Notice.

Upon a violation of this ordinance, the violator shall be personally served with an

Administrative Penalty Order (APO) that sets for the violation and which informs the alleged violator of his right to appeal the order at a hearing before the County Board.

- (2) Hearings.

An individual who appeals an APO issued pursuant to this ordinance must request in writing within ten (10) days of receipt of the APO that the matter be heard before the County Board. The time and place of the hearing shall be published at least ten (10) days before the scheduled date and provided to the recipient of the APO. The hearing shall occur no more than thirty (30) days from receipt of the request for a hearing.

- (3) Hearing Officer.

The Mille Lacs County Board of Commissioners or its designee shall serve as the hearing officer.

- (4) Decision.

The Hearing Officer's determination, along with the findings supporting the determination as well as the penalty to be imposed under Sec. 3-608 of this ordinance, if any, shall be recorded in writing, a copy of which shall be provided to the recipient of the APO within thirty (30) days from the date of the hearing.

- (5) Appeals.

Appeals of any determination made by the Hearing Officer shall be filed in the Mille Lacs County District Court.

- (6) Continued Violation.

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

Sec. 3-608 Penalties

(1) Licensees.

Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative penalty as set by the County Board for the first violation of this ordinance; an administrative penalty as set by the County Board plus a fourteen (14) day suspension of the license for a second offense at the same licensed premises within a twelve (12) month period; and an administrative penalty as set by the County Board plus revocation of the license for a twelve (12) month period for a third offense at the same licensed premises within a twelve (12) month period.

Unless appealed, any order and penalty becomes permanent and effective administratively eleven (11) days after receipt of the APO.

(2) Other Individuals.

Other individuals, other than minors regulated by (3) of this Section, found to be in violation of this ordinance shall be charged an administrative fee as established by the County Board.

(3) Minors.

Minors found in unlawful possession of, or who unlawfully purchase or attempt to

purchase tobacco, tobacco products, or tobacco related products shall be subject to the notification of their parents and shall be required to attend and complete a tobacco free education program approved by their local school district or participate and successfully complete an appropriate diversion program.

(4) Misdemeanor.

Nothing in this Section shall prohibit the County from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

Sec. 3-609 Exceptions and Defenses.

Nothing in this Article shall prevent the providing of tobacco, tobacco products, 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 Article for a person to have reasonably relied on proof of age as described by State law.

Sec. 3-610 Severability and Savings Clause.

If any section or portion of this Article 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 and provision of this Article.