

## MILLE LACS COUNTY CODE OF ORDINANCES

### CHAPTER 2 - PUBLIC SAFETY, ARTICLE 6 - TOBACCO

Sec. 3-600 **PURPOSE.** Because the county recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates federal law; and that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates state law; this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

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:

**CHILD-RESISTANT PACKAGING:** 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.

**CIGAR:** 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 it may be amended from time to time.

**COMPLIANCE CHECKS:** The system the County uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of persons under the age of 21 as authorized by this ordinance. Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase licensed 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 licensed products.

**ELECTRONIC DELIVERY DEVICES:** Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, 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 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 marketed and sold for such an approved purpose.

**INDOOR AREA:** 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.

**LICENSED PRODUCT:** Any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product

**LOOSIES** Single cigarettes, cigars, and any other licensed product 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.

**MOVEABLE PLACE OF BUSINESS:** 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.

**NICOTINE OR LOBELIA DELIVERY:** Means 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. Nicotine or Lobelia Delivery Product does not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

**RETAIL ESTABLISHMENT:** Any place of business where licensed products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, gas stations, bars, convenience stores, and restaurants.

**SALE:** Any transfer of goods for money, trade, barter, or other consideration.

**SELF-SERVICE MERCHANDISING:** Open displays of licensed products in any manner where any person shall have access to the licensed products without the 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 needed in order to access the licensed products.

**SMOKING:** Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or 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 also includes carrying or using an activated electronic delivery device.

**TOBACCO OR TOBACCO PRODUCTS:** 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 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)).

**TOBACCO RELATED DEVICES:** Rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. Tobacco Related Device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco Related Device may or may not contain tobacco.

**VENDING MACHINES:** 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 the licensed product.

Sec. 3-602 LICENSE. No person shall sell or offer to sell any licensed product 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 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. 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.
  - iii. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

- iv. All licensees under this article 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 employee to any civil penalties appropriate under this Article, State or Federal law, or other applicable law or regulation.
  - b. Licenses Issued or Renewed by Mistake. 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.
  - c. 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.
    - i. The applicant is under the age of 21 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 licensed products.
    - iii. The applicant has had a license to sell licensed products 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 retail establishment for which the license is requested is a moveable place of business. Only fixed-location businesses are eligible to be licensed.
    - vi. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.
- (3) Renewal. 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. 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 licensed product:

- (1) To any person under the age of twenty-one (21) years.
  - a. Age Verification. Licensees must verify by means of government-issued photographic identification 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.
  - b. Signage. Notice of the legal sales age and age verification requirement 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.
- (2) By means of any type of vending machine.
- (3) By means of self-service merchandising. 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.
- (4) By means of loosies as defined in Section 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) That is 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.
- (7) 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. 3-604 SMOKING PROHIBITED.**

- (1) Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance.
- (2) No person shall distribute samples of any licensed product free of charge or at a nominal cost.

**Sec. 3-605 COMPLIANCE CHECKS AND INSPECTIONS.** All licensed premises shall be open to inspection by the local law enforcement or other authorized County officials during regular business hours. The county will conduct at least one unannounced compliance check at licensed premises each calendar year 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 years to participate in a compliance check. Persons used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated county personnel.

No person used in compliance checks shall attempt to use a false identification misrepresenting their age, and all persons 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 person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21.
- (2) For any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product.

**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 forth the violation and 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 of \$300.00 for a first violation; \$600.00 for a second offense at the same licensed premises within a 36-month period after the initial violation; and \$1,000.00 for a third or subsequent offense at the same location within a 36-month period after the initial violation. In addition, the licensee shall face a seven (7) consecutive-day suspension for a third or subsequent offense at the same location within a 36-month period after the initial violation.  
  
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 of \$50.00.
- (3) Persons Under the Age of 21. Persons under the age of 21 found in unlawful possession of, or who unlawfully purchase or attempt to purchase licensed products shall be required to attend and complete a commercial tobacco-free education program approved by their



local school district or participate and successfully complete an appropriate diversion program to learn about the harms, difficulty, and resources to help support recovery of nicotine addiction approved by the county and, for persons under the age of 18, additionally subject to the notification of the parents or guardians.

- (4) Misdemeanor. Nothing in this Section shall prohibit the County from seeking prosecution as a misdemeanor for any alleged violation of this ordinance by a person 21 years of age or older.

**Sec. 3-609 EXCEPTIONS AND DEFENSES.**

- (1) Nothing in this Article shall prevent the providing of tobacco or tobacco related devices to any person as part of a lawfully recognized religious, spiritual, or cultural ceremony.
- (2) 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.

**Sec 3-611 JURISDICTION.** Whereas Minn. Stat. § 451.12 permits the County Board to license and regulate retail tobacco in the unincorporated area of the County and in those towns or cities that do not license and regulate retail tobacco sales, this Ordinance shall apply.

**Sec 3-612 EFFECTIVE DATE.** This Ordinance shall take effect and be enforced upon passage and publication.

Passed and approved this 5<sup>th</sup> day of October, 2021 by the Mille Lacs County Board of Commissioners.