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BENTON COUNTY MINNESOTA
CHERYL L. KANTOR
COUNTY RECORDER

BENTON COUNTY ORDINANCE NO. 475
Retail Licensing

By: KB
G - V - I

An ordinance relating to the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in the county and to reduce the illegal sale of such items to and by minors and persons under the age of 21.

The County Board of Benton County Ordains:

Section 100. Purpose. This ordinance shall be intended to regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing existing laws, to protect minors and persons under the age of 21 against the serious effects associated with the 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 with regard to preventing young people from starting to smoke 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 Benton County and in any city or town located in Benton 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. Ch. 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. 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.

Subd. 3. Cigarette. Shall mean any roll for smoking made wholly or in part of tobacco that weighs 4.5 pounds or less per thousand:

Nicole Ruhoff
Benton Co. Public Health
no fee

- (1) the wrapper or cover of which is made of paper or another substance or material except tobacco; or
- (2) wrapped in any substance containing tobacco, however labeled or named, which, because of its appearance, size, the type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to or purchased by consumers as a cigarette, as defined in clause (1), unless it is wrapped in whole tobacco leaf and does not have a cellulose acetate or other cigarette-like filter.

Subd. 4. 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 involve the use of minors and persons under the age of 21 who purchase or attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products. Compliance checks may also 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 tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.

Subd. 5. Consumer. "Consumer" shall mean an individual who has or could gain title to or possession of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products for personal consumption.

Subd. 6. Electronic Delivery Devices. "Electronic Delivery Devices" shall mean 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 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.

Subd. 7. 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 18 by 16 mesh count) is not considered a wall.

Subd. 8. Loosies. "Loosies" shall mean single or individually packaged cigars or cigarettes, 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.

Subd. 9. Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 10. 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. 11. 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 section. 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.

Subd. 12. 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 potential consumers. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, restaurants, taverns, tobacco shops and service stations.

Subd. 13. Sale. "Sale" shall mean a transfer, exchange, or barter, in any manner or by any means, for consideration, and includes all sales made by any person. It also includes gifts or samples provided for advertising or promotional purposes, made by a person engaged in the selling of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.

Subd. 14. Self-Service Display. "Self-Service Display" shall mean the open display of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in any manner where any person has 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.

Subd. 15. Smoking. "Smoking" shall mean inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product, whether natural or synthetic, containing, made, or derived from nicotine, tobacco, marijuana, or other plant, that is intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device.

Subd. 16. Tobacco or Tobacco Products. "Tobacco" or "Tobacco Products" shall mean 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,

including, but not limited to, cigarettes, cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; 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 products 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.

Subd. 17. Tobacco-Related Devices. "Tobacco-Related Devices" shall mean any rolling papers, wraps, pipes or other devices 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 include components of tobacco-related devices which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco.

Subd. 18. 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 forms of payment directly into the machine by the person seeking to purchase the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

Section 400. 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 from the proper licensing authority.

Subd. 1. Application. An application for a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery 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 County Auditor/Treasurer shall forward the application to the County board for action at its next regularly scheduled board meeting. If the County Auditor/Treasurer determines that an application is incomplete, he or she shall return the application with notice of the information necessary to make the application complete. An application shall not be forwarded to the County Board until it is 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 is necessary to complete any investigation of the application or applicant it deems necessary. If the County Board approves the license, the Auditor/Treasurer will then issue the license to the applicant. If the County Board denies the license, notice of the denial shall be given to the applicant and notice of the applicant's right to appeal the decision. If the denial is the result of information gathered by the sheriff's department or the county attorney, that department shall issue a statement of what was found and if/how it could be corrected in order to apply for a license again at a later date. The statement shall be sent to the applicant, along with the notice of denial.

Subd. 3. Term. Licenses issued under this ordinance shall be valid for one calendar year from the date of issue beginning January 1st. Licenses may be issued and granted under this ordinance for a fractional year thereof. All licenses issued expire on December 31st.

Subd. 4. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in this ordinance.

Subd. 5. Transfers. All licenses 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.

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 licensee's premises.

Subd. 8. Renewals. The renewal of a license issued under this section shall be processed in the same manner as the original application. The request for a renewal shall be made at least thirty (30) days, but no more than sixty (60) days before the expiration of the current license.

Subd. 9. 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.

Subd. 10. Proximity to Schools. No license will be issued to any person for a retail establishment location that is within 500 feet of a school, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee and the nearest property line of the school. This restriction does not apply to an applicant who has been licensed to sell such products in that location for at least one year before the date this section was enacted into law.

Subd. 11. Smoking Prohibited. Smoking is prohibited within the indoor area of any retail establishment licensed under this ordinance. Smoking for the purpose of sampling tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products is prohibited.

Subd. 12. Sampling Prohibited. No person shall distribute samples of any tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products free of charge or at nominal cost.

Subd. 13. Instructional Program. All licensees must ensure that all employees go through a training program on the legal requirements relating to the sale of tobacco, tobacco-related

devices, electronic delivery devices, or nicotine or lobelia delivery products and the possible consequences for violations. A training portal will be available on the Benton County Public Health web page that will contain the required training program. Licensees must maintain and provide to the county documentation demonstrating compliance at the time of renewal, or whenever requested during the license term. Records will be randomly audited by Benton County Public Health Staff. If after inspection, it is found that employees have not completed the required training, the licensee will be required to come into compliance within a time frame specified by Benton County Public Health. Failure to come into compliance may result in a fine, suspension or revocation pursuant to Section 1200 of this ordinance.

Section 500. Fees. No license shall be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the county's fee schedule and may be amended from time to time.

Section 600. Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license under this ordinance:

- A. The applicant is under the age of twenty-one (21) years.
- B. 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.
- C. The applicant has had a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products revoked within the preceding twelve (12) months of the date of application.
- D. The applicant fails to provide any information required on the application, or provides false or misleading information.
- E. The applicant is prohibited by federal, state or other local law, ordinance or other regulation from holding such a license.
- F. Delinquent property tax remains unpaid on the place of business.

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 under this Section.

Section 700. Prohibited Sale.

Subd. 1. In General. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product:

- A. To any minor or person under the age of twenty-one (21) years.
- A. By means of any type of vending machine.
- B. By means of loosies as defined in Section 300 of this ordinance.
- C. 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.
- D. 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.

Subd. 2. Legal age. No person shall sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to any person under the age of 21.

- 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.

Subd. 3. Self-Service Sales. No licensee shall offer for sale any tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in self-service displays, including but not limited to vending machines, self-service displays and kiosks which are accessible to the public without the intervention of a store 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 licensee's employee and the customer. All tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery products must 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. Any retailer must comply with this section within 90 days of the effective date of this ordinance. The self-service restrictions described in this section shall not apply to retail establishments which derive at least 90% of their revenue from tobacco, tobacco-related device, electronic

delivery device, or nicotine or lobelia delivery products and where the retailer ensures that no person younger than 21 years of age is present, or permitted to enter, at any time.

Subd. 4. Cigars. The sale of cigars in packages of less than seven are prohibited unless the price for each cigar, after any discounts or price promotions and before sales taxes are imposed, is at least \$2.60 per cigar. This price may be adjusted periodically for inflation by the Benton County Commission by simple resolution.

Subd. 5. Liquid Packaging. No person shall sell or offer for sale 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 must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Subd. 6. Price promotion and coupon redemption. No person shall accept or redeem any coupon or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising or display at the location where the item is sold or offered for sale, including all applicable taxes.

Section 800. 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 section shall be construed as prohibiting the county from also subjecting the employee of a licensee to whatever penalties are appropriate under this ordinance, state or federal law, or other applicable law or regulations.

Section 900. Compliance Checks and Inspections. All licensed premises must be open to inspection by law enforcement or other authorized county officials during regular business hours. From time to time, but at least once per year, the county will conduct compliance checks. In accordance with state law, the county will conduct at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between the ages of 18 and 20 to enter licensed premises to attempt to purchase licensed products. Prior written consent of 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 1000. Other Prohibited Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance.

Subd. 1. Sales to Underage Person. 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 device to any minor or person under the age of 21.

Subd. 2. Prohibited Furnishing or Procurement. It shall be a violation of this ordinance for any person aged 21 or older to purchase or otherwise obtain tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices on behalf of a minor or person under the age of 21. It shall further be a violation for any person aged 21 or older to coerce or attempt to coerce a minor or person under the age of 21 to illegally purchase or otherwise obtain for use any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

Section 1100. Appeals for License Denials and Violations.

Subd. 1. Notice. Upon denial of a license application, the applicant shall be sent a notice of denial and informed of the applicant's right to appeal. 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.

Subd. 2. Hearings. If an applicant is denied a license or a person or licensee 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. The accused person or licensee must pay the administrative penalty, or request a hearing, in writing, within 30 days of the date the citation was issued. A written request for a hearing shall be made to the Benton County Administrator.

Subd. 3. Hearing Committee. The County Board shall appoint a hearing committee or hearing officer, who shall have the authority to review all facts relevant to the license denial or alleged violation and the penalty imposed, and sustain or reverse the decision of the County Board or other county official regarding the guilt of the accused, and/or sustain, reverse or modify the penalty imposed by the County Board or county official.

Subd. 4. Decision. The hearing committee or hearing officer's decision, along with the officer's or committee's reasons for supporting the denial of a license or a finding a violation and the penalty to be imposed under Section 1200 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, such findings shall be recorded and a copy provided to the accused violator.

Subd. 5. Appeals. Appeals of any violation and penalty decision made by the hearing committee shall be filed in the Seventh Judicial District Court for Benton County. (This subdivision does not apply to license denials.)

Subd. 6. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Section 1200. Penalties.

Subd. 1. Licensees. If a licensee sells tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of 21 years, or violates any other provision of this chapter, the licensee shall be charged an administrative penalty of \$250. An administrative penalty of \$500 must be imposed for a second violation at the same location within 24 months after the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty of \$1000 must be imposed, and the licensee's authority to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at that location must be suspended for not less than twenty-one days. Upon a fourth violation, the license will be revoked. No revocation, suspension or penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

Subd. 2. Other Individuals. An individual aged 21 years or older who is found to be in violation of Section 1000(1) or (2) of this ordinance may be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before a person authorized by the licensing authority to conduct the hearing. A decision that a violation has occurred must be in writing.

Subd. 3. Prosecution. Nothing in this section shall prohibit criminal prosecution as a misdemeanor for any alleged violation of this ordinance by persons age 21 years of age and older. Criminal prosecution shall not preclude an administrative penalty also being imposed.

Subd. . Failure to Pay Fine. Failure to pay a fine within the time ordered shall be grounds for termination or suspension of a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.

Section 1300. License Suspension and Revocation. Any license issued pursuant to this ordinance may also be suspended or revoked for cause including, but not limited to, the following reasons:

- A. The licensee knowingly allowed or permitted illegal acts unrelated to the sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products on the licensed premises, including violations of any local ordinance or state or federal law.
- B. The licensee, or persons under his direction or control, violated the terms of this ordinance.

- C. The licensee had knowledge of illegal acts taking place on the licenses premises, but failed to cooperate or refused to cooperate fully with investigating law enforcement authorities.
- D. The licensee meets one or more of the criteria for license denial listed in Section 600.

Section 1400. 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 1500. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco or tobacco-related devices to a minor or person under the age of 21 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.

Section 1600. Effective Date. This ordinance shall take effect on January 1, 2020.

Approved and adopted this 16th day of July, 2019.



 A. Jake Bauerly, Chair
 Benton County Board of Commissioners

ATTEST:



 Montgomery Headley
 Benton County Administrator