

Kandiyohi County Tobacco Licensing Ordinance

Ordinance No. 28

THE BOARD OF COMMISSIONERS OF KANDIYOHI COUNTY DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. FINDINGS OF FACT AND 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 both state and federal law; and because studies, which the county accepts and adopts, have shown that high school use of any commercial tobacco product has increased to 27.6% in Minnesota; and because nearly 90% of people who smoke begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, 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.

In making these findings, the County Board accepts the conclusions and recommendations of: the U.S. Surgeon General reports, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking — 50 Years of Progress* (2014) and *Preventing Tobacco Use Among Youth and Young Adults* (2012); the Centers for Disease Control and Prevention in their studies, *Tobacco Use Among Middle and High School Students — United States, 2011– 2015*(2016), and *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997(1998)*; and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. *Health Reports*, 9(4), 39-46; D'Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at starting smoking and number of cigarettes smoked. *Annals of Epidemiology*, 4(6), 455-459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. (1999). Initiation of cigarette smoking and subsequent smoking behavior among U.S. high school students. *Preventive Medicine*, 29(5), 327-333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. *Oncogene*, 21(48), 7326-7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673-677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740-746; Minnesota Department of Health. (2020). *Data Highlights from the 2019 Minnesota Youth Tobacco Survey*. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). *The Verdict Is In: Findings from United States v. Philip Morris, The Hazards of Smoking*. University of California San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco>; Xu, X.,

Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. *American Journal of Preventive Medicine*, 48(3), 326–333, copies of which are adopted by reference.

Section 2. **AUTHORITY.** This ordinance is adopted under the authority and pursuant to the mandate of Minnesota Statute § 461.12, pertaining to municipal tobacco licenses.

Section 3. **DEFINITIONS.** Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this ordinance, the following definitions apply unless the context clearly indicates or requires a different meaning:

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.

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 involve the use of persons under the age of 21 who purchase or attempt to purchase licensed 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 licensed products.

DELIVERY SALE. The sale of any licensed product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. DELIVERY SALE includes but is not limited to the sale of any licensed product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. DELIVERY SALE includes delivery by licensees or third parties by any means, including curbside pick-up.

ELECTRONIC DELIVERY DEVICE. 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 nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

LICENSED PRODUCTS. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

LOOSIES. The common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. LOOSIES does not include premium cigars that are hand-constructed, have a

wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

NICOTINE OR LOBELIA DELIVERY PRODUCT. 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 nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. RETAIL ESTABLISHMENT includes but is not limited to grocery stores, tobacco products shops, convenience stores, liquor stores, gasoline service stations, bars, and restaurants.

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

SELF-SERVICE DISPLAY. The open display of licensed products in a retail establishment in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee’s employee and where a physical exchange of the licensed product from the licensee or the licensee’s employee to the customer is not required in order to access the licensed products.

TOBACCO. 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 nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

TOBACCO-RELATED DEVICE. Any 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 DEVICES may or may not contain tobacco.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment into or onto the device by the person seeking to purchase the licensed product.

Section 4. **LICENSE.** Kandiyohi County Health and Human Services (KCHHS) is designated as the licensing authority pursuant to this ordinance, and shall act on behalf of the Kandiyohi County Board of Commissioners in the enforcement thereof.

- A. **License required.** No person, corporation, partnership, or any other organization or retail establishment may engage in the retail sale of licensed products unless a license therefore has been issued by KCHHS. A retail license shall be required for each retail establishment at which licensed products are sold at retail.
- B. **Application.** An application for a license to sell licensed products shall be submitted to the Environmental Health Specialist, as designated representative of KCHHS. An application for a license to sell licensed products must be made on a form provided by the county. The application shall be submitted on forms provided by KCHHS and shall contain, at a minimum: the full legal name of the applicant, the applicant's residential address, the business address of the retail establishment for which application is made, the telephone number at the location for which application is made, the name of the business for which the license is sought, a diagram of all areas within said location to be used for display and sale of licensed products, and any additional information KCHHS deems necessary. If the KCHHS determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.
- C. **Action.** Upon receipt of the completed application, and the fee required, KCHHS shall act upon the application within 30 days thereof, and either notify the applicants of the issuance of the license, or the basis for denial. If a license is denied pursuant to this ordinance, any party aggrieved by the denial may request a hearing as provided by Minn. Stat. § 461.12, subd. 2, within 30 days of the Notice of Denial. If the Environmental Health Specialist notes that an application is incomplete, he or she shall return the application to the applicant with notice that the information must be provided within ten days. Failure to provide the requested information will result in denial of the application.
- D. **Term and renewals.** Each license shall expire on December 31 each year. Thereafter all licenses shall be renewed on or before December 31 of each year. The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days, but no more than 60 days, before the expiration of the current license.
- E. **Transfers.** All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- F. **Display.** The license required herein shall be prominently displayed to the public at the location to which the license applies.
- G. **Issuance as privilege and not a right.** The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.
- H. **Movable place of business.** No license shall be issued to a movable place of business. A movable place of business shall refer to any form of business operated

out of a kiosk, truck, van, automobile, or any type of motorized or nonmotorized vehicle or transportable shelter which is not a fixed or other permanent type of location or structure authorized for sales, and identified as a separate parcel for purposes of real estate taxes.

Section 5. LICENSE FEE. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a tobacco license shall be in a sum set by action of the County Board and may be amended from time to time.

Section 6. BASIS FOR DENIAL OF LICENSE. The following shall be grounds for denial of the issuance or renewal of a license under this ordinance. The following grounds are not an exclusive list. In the event a license is mistakenly issued or renewed to a person who should have otherwise been denied a license upon these grounds, the license shall be revoked immediately upon determination that the person was ineligible for licensing.

1. The applicant is under the age of 21 years.
2. The applicant has been convicted of a violation of a federal, state, or local law or ordinance pertaining to the sale of licensed products within the past three years.
3. The applicant has had a license to sell licensed products within the 12 months preceding the date of application.
4. The applicant fails to provide all information required on the prescribed application form, or provides false or misleading information thereon.
5. The applicant is prohibited by federal, state, or other law or ordinance from holding such a license.

Section 7. PROHIBITED SALES.

A. **In General.** It shall be a violation of this ordinance for any person to sell or offer to sell any licensed product:

1. By means of loosies.
2. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other products subject to this ordinance.
3. By means of self-service display. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.
4. By means of any type of vending machine.
5. By means of delivery sales. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.

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 regulation.
- B. **Legal age.** No person shall sell any licensed product to any person under the age of 21.
1. **Age verification.** Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 2. **Signage.** Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the county, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- C. **Liquid Packaging.** The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device, must be sold in child-resistant packaging. Child-resistant packaging is defined in Code of Federal Regulations, title 16, section 1700.15(b)(1). Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Section 8. VIOLETIONS AND ADMINISTRATIVE PENALTIES.

A. **Violations.**

1. **Notice.** A person violating this ordinance may be issued, either personally or by mail, a citation from the county that sets forth the alleged violation and that informs the alleged violator of their right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.
2. **Hearing.** A due process hearing requested pursuant to Minn. Stat. § 461.12, subd. 2 shall be heard before the Kandiyohi County Board of Commissioners within 30 days of the request for hearing by the licensee or employee of a licensee. A licensee whose administrative penalty or license suspension is upheld at a hearing must pay the administrative penalty within seven (7) days. License suspension shall begin on the 7th day following the hearing. In the event of nonpayment of any administrative penalty within 7 days as required, the retail license for the retail establishment at which the violation occurred shall be void. Thereafter, no license will be issued for that location until a renewed application is made and the license fee paid, together with a sum equal to three (3) times the administrative penalty imposed.
3. **Costs.** If the citation is upheld by the hearing officer, the county's actual expenses in holding the hearing up to a maximum of [\$1,000] must be paid by the person requesting the hearing.

4. **Appeals.** Appeals of any decision made by the Kandiyohi County Board of Commissioners must be filed in Kandiyohi County district court within 10 business days of the date of the decision.
5. **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

B. Administrative penalties.

1. **Licensee.** If a licensee or an employee of a licensee sells licensed products to a person under the age of 21 years, or violates any other provision of this ordinance, the licensee may be charged an administrative penalty of \$300.00 as provided in Minn. Stat. § 461.12, subd. 2. The administrative penalty for a second violation at the same location within 36 months shall be \$600.00. Upon a third violation at the same location within 48 months after an initial violation, the licensee's authority to sell licensed products at that retail establishment shall be suspended for not less than 30 days and a penalty of \$1000.00 assessed.
2. **Employees of licensees and other individuals.** Individuals, other than persons under the age of 21, who sell licensed products to a person under the age of 21 years may be charged with an administrative penalty of \$50.00.
3. Administrative penalties may be modified from time to time by Kandiyohi County Board of Commissioners by simple resolution.

Section 9. COMPLIANCE MONITORING. Unannounced compliance checks of each licensee shall be made a minimum of once each calendar year at each location where licensed products are sold. In accordance with state law, the county will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel. Compliance monitoring shall be conducted by the Environmental Health Specialist with such assistance of the Kandiyohi County Sheriffs Office as he or she deems necessary.

Section 10. SEVERABILITY. If any section or portion of this ordinance is found to be unconstitutional or otherwise invalid or unenforceable by any court of competent jurisdiction, such findings shall not serve as an invalidation of nor effect validity and enforceability of any other section or provision of this ordinance.

Section 11. APPLICABILITY. Pursuant to the mandate of the State statute, this ordinance applies to all locations within Kandiyohi County where licensed products are sold. It is further provided, however, that upon the adoption of a tobacco retail licensing ordinance pursuant to Minn. Stat. § 461.12 by any city or township of Kandiyohi County, such ordinance shall apply to the sale of licensed products within such city or township, and locations within such city or township shall be exempt from the coverage of the Kandiyohi County Tobacco Licensing Ordinance.

Section 12. EXCEPTIONS AND DEFENSES.

- A. **Religious, Spiritual, or Cultural Ceremonies or Practices.** Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- B. **Reasonable Reliance.** It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

Section 13. PENALTIES. The administrative penalties provided herein are not exclusive. Nothing in this section prohibits the county from seeking prosecution as a misdemeanor for an alleged second violation of this ordinance by a person 21 years of age or older within five years of a previous violation under the ordinance.

Section 14. EFFECTIVE DATE. This amendment shall be effective on and after March 1, 2021.

Dated at Willmar, Minnesota, the 18th day of November, 1997

Harland Madsen

Harland Madsen, Chairman, Kandiyohi County Board of Commissioners

Sam Modderman

Sam Modderman, Auditor, Kandiyohi County Auditor/Treasurer

AMENDED

Dated at Willmar, Minnesota, the 2nd day of December, 2008

Richard Larson

Richard Larson, Chairman Kandiyohi County Board of Commissioners

Sam Modderman

Sam Modderman, Auditor, Kandiyohi County Auditor/Treasurer

AMENDED

Dated at Willmar, Minnesota, the 2nd day of February, 2021.

George Berg

George Berg, Chairman
Kandiyohi County Board of Commissioners

Mark Thompson

Mark Thompson, Auditor
Kandiyohi County Auditor/Treasurer