

ORDINANCE NO. 2016-05-24-01

**LICENSING AND SALE
OF TOBACCO AND RELATED PRODUCTS AND DEVICES**

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

The County of Murray does ordain:

Section 1. Purpose. Because the County of Murray recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products, and such sales, possession, and use are violations of both state and federal laws; and because studies, which the County hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Stat. § 144.391.

Section 2. Definitions and Interpretations. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

Applicant. “Applicant” shall mean a person as defined in this section who seeks to hold a new or renewed license to sell or to offer to sell any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product.

Application. “Application” shall mean a document which an applicant shall complete and submit to the Murray County Auditor/Treasurer in seeking to hold a new or renewed license.

Blunt Wrap. “Blunt wraps” shall mean rolling papers or similar tobacco-related devices that are manufactured or packaged for use as wraps or hollow tubes that are designed or intended to be filled with loose tobacco, plant products, or other fillers to create custom cigars or cigar-like products.

Child-Resistant Packaging. “Child-Resistant Packaging” shall mean any packaging that meets the definition as set forth in Code of Federal Regulations, title 16, section 1500.15(b) as in effect on January 1, 2015, when 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. "Compliance Checks" shall mean the system the County uses to investigate and ensure that those authorized to sell tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products for educational, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products.

Electronic Delivery Devices. “Electronic Delivery Devices” shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery devices includes any component part of a product, whether or not marketed or sold separately. Electronic delivery devices 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.

Imitation Tobacco Product. “Imitation Tobacco Product” shall mean either any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product, that is designed to be used by children as toy. Examples of imitation tobacco products include but are not limited to candy or chocolate cigarettes or cigars, bubble gum cigars, shredded bubble gum resembling chew tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. An electronic delivery device or a nicotine or lobelia delivery product is not an imitation tobacco product.

Individually Packaged. “Individually Packaged” shall mean the practice of selling any product wrapped individually for sale. Individually wrapped products shall include, but not be limited to, single cigarette packs, single cigars, 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 not be considered individually packages.

License. “License” shall mean a document evidencing a grant of permission by the County of Murray to an application lawfully to sell or to offer to sell any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product.

Licensee. “Licensee” shall mean a person as defined in this section who holds or held a license to sell or to offer to sell any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product.

Loosies. “Loosies” shall mean the common term used to refer to a single or individually packaged cigarette or cigar, or any other tobacco product that has been removed from its packaging and sold individually. The term “loosies” does not include individual cigars with a retail price before any sales tax of more than \$2.60 per cigar.

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

Moveable Place of Business. "Moveable Place of Business" shall mean any form of business operated out of a truck, van, automobile, kiosk, 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 Products. “Nicotine or Lobelia Delivery Products” 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, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Offense. “Offense” shall mean the commission or an act, or the omission of a required act, in contravention of a provision of this Ordinance.

Permission. “Permission” shall mean a privilege which the County of Murray may grant, deny, suspend, or revoke pursuant to this Ordinance.

Person. “Person” shall mean a natural person, city, township, firm, corporation, unincorporated association, partnership, proprietorship, or other entity.

Possession. “Possession” shall mean the care, custody, dominion and control over any tobacco, tobacco related device, or nicotine or lobelia delivery product. Possession shall not mean the intermediate and temporary exchange of any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product by a licensee’s employee to a customer during the course of a sale at a licensed retail establishment.

Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, liquor stores, gas stations, golf courses, bowling alleys, taverns, and restaurants.

Sale. "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products in any manner where any person shall have access to the tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Smoking. "Smoking" means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product, or inhaling or exhaling aerosol or vapor from any electronic delivery device. Smoking also includes being in possession of a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

Tobacco or Tobacco Products. "Tobacco" or "Tobacco Products" shall mean any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigarettes; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco 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.

Tobacco Related Devices. "Tobacco Related Devices" shall mean any pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco related devices include components of tobacco related devices which may be marketed or sold separately.

Vending Machines. "Vending Machine" shall mean any mechanical, electrical, 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.

Violation. "Violation" shall mean the commission of an act, or the omission of a required act, in contravention of a provision of this Ordinance.

Section 3. License. No person shall sell or offer to sell any tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products without first having obtained a license to do so from the County.

- A. Application.** An application for a license shall be made on a form provided by the County of Murray. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is bought, and any additional information the County deems necessary. Upon receipt of a completed application, the Murray County Auditor shall forward the application to the board for action at its next regularly scheduled board meeting. Any incomplete application will be returned to the applicant with notice of the information necessary to make the application complete.
- B. Action.** The board may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the board approves the license, the Murray County Auditor shall issue the license to the applicant. If the board denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the board's decision.
- C. Term.** All licenses issued under this ordinance shall be valid for the calendar year during which they are issued. There shall be no proration of any application fees under this ordinance.
- D. Revocation or Suspension.** Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties sections of this ordinance.
- E. Transfers.** All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid.

- F. **Movable Place of Business.** No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.
- G. **Display.** All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- H. **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.
- I. **Issuance as Privilege and Not a Right.** The issuance of a license under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.
- J. **Smoking Prohibited in Tobacco Retail Establishments.** Smoking shall not be permitted and no person shall smoke indoors at any location with a tobacco retailer license. Smoking for the purposes of sampling tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products shall be prohibited.
- K. **Proximity to Schools, Playgrounds, Public Parks or Houses of Worship.** No tobacco retailer license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products within one thousand (1,000) feet of any school, playground, public park, or house of worship, occupied space of the school, playground, public park, or house of worship unless a licensed tobacco retailer has been in the business of selling such products in that location for at least one (1) year before the date this section was enacted into law.
- L. **Proximity to Other Tobacco Retail Establishments.** No tobacco retailer license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery products within two thousand (2,000) feet of any other licensed retail establishment, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the nearest existing licensee, unless a licensed tobacco retailer has been in the business of selling such products in that location for at least one (1) year before the date this section was enacted into law.
- M. **Retail Roll-Your-Own Machines prohibited in Tobacco Retail Establishments.** The placement, operation, or use of a retail roll-your-own machine by any person shall be prohibited at any retail establishment, and no person shall place, operate, or use a retail roll-your-own machine to make cigarettes or any other rolled tobacco or plant product at any licensed premises.

This prohibition shall apply to any new application for a tobacco retailer license and to any application for renewal.

Section 4. Fees. No license shall be issued under this ordinance until the license fee of \$125 .00 is paid in full.

Section 5. Basis for Denial of License. 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 of Murray 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. Grounds for denial of a license include, but are not limited to the following:

- A. The applicant is under the age of eighteen (18) years.
- B. The applicant has been convicted within the past five (5) 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 suspended or 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. The applicant fails to pay the appropriate license fee.

Section 6. Prohibited Sales. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product or tobacco related device:

- A. To any person under the age of eighteen (18) years.
- B. By means of any type of vending machine.
- C. By means of loosies as defined in this ordinance.
- D. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of any otherwise lawful manufacturing process.
- E. By any other means, to any other person, on in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

Section 7. Blunt wraps. It shall be unlawful for any person license under this ordinance to sell or offer to sell blunt wraps.

Section 8. Imitation Tobacco Products. It shall be unlawful for any person licensed under this ordinance to sell or offer for sale any imitation tobacco product. No licensed retail establishments shall give away, sell, or offer for sale any imitation tobacco product.

Section 9. Self-Service Sales. It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product between the licensee or his or her employee and the customer. All tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products shall either be stored behind a 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.

Section 10. Cigars. No person shall sell, offer for sale, or otherwise distribute cigars in original packages containing three (3) or fewer cigars for a sale price, after any coupons, multipack or buy-one-get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, or less than two dollars and sixty cents (\$2.60) per cigar contained within. In addition, no person shall sell, offer for sale, or otherwise distribute cigars in original packages of four (4) or more cigars for a sale price, after any coupons, multipack or buy-one-get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, or less than ten dollars and forty cents (\$10.40) per package.

Section 11. 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 clerk to whatever penalties are appropriate under this ordinance, state or federal law, or other applicable law or regulation.

Section 12. Minimum Age to Sell. Individuals employed by a person licensed under this ordinance must be at least eighteen (18) years of age to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.

Section 13. Compliance Checks and Inspections. All licensed premises shall be open to inspection by local law enforcement or other authorized county official during regular business hours. From time to time, but at least once per year, the county shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter the licensed premise to attempt to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products. Minors used for the purpose of compliance checks shall be

supervised by county designated law enforcement officers or other designated county personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

Section 14. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance:

- A. Illegal Sales.** It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product to any minor.
- B. Illegal Possession.** It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery device. This division shall not apply to minors lawfully involved in a compliance check.
- C. Illegal Use.** It shall be a violation of this ordinance for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product.
- D. Illegal Procurement.** It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product.. This division shall not apply to minors lawfully involved in a compliance check.
- E. Use of False Identification.** It shall be a violation of this ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.
- F. Liquid Packaging.** It shall be a violation of this Ordinance unlawful for a licensee to allow the sale of any liquid, whether or not such liquid contains nicotine, intended for human consumption and use in an electronic delivery

device, in packaging that is not child-resistant. Upon request, a licensee shall provide a copy of the certificate for compliance or full laboratory testing report for the packaging used.

Section 15. Violations.

- A. **Notice.** Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.
- B. **Hearings.** If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.
- C. **Hearing Officer.** The Hearing Officer for any violations of this ordinance shall be the Murray County Administrator or a person(s) duly designated by the Administrator.
- D. **Decision.** If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officers reasons for finding a violation and the penalty to be imposed for a violation of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.
- E. **Appeals.** Appeals of any decision made by the hearing officer shall be filed in the district court for the County of Murray, State of Minnesota.
- F. **Misdemeanor Prosecution.** Nothing in this Section shall prohibit the County from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.
- G. **Continued Violation.** Each violation and every day in which a violation occurs or continues, shall constitute a separate offense.

Section 16. Penalties.

- A. **Licensees and Employees.** Any licensee, and any employee of a licensee, found to have violated this ordinance shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense at the same license premises within a twenty-four month period; and \$ 250 for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the violator's license shall be suspended for a period of ninety days.

- B. **Other Individuals.** Individuals, other than minors regulated by this ordinance, found to be in violation of this ordinance by providing or selling to minors shall be charged an administrative fee of \$75.
- C. **Minors.** Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the county believes will be appropriate and effective. The administrative fine or other penalty shall be established by the County Board ordinance upon the County Board's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the county. This administrative fine or other penalty may also be established from time to time by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.
- D. **Misdemeanor.** Nothing in this section shall prohibit the County from seeking prosecution as a misdemeanor for any violation of this ordinance.

Section 17. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

Section 18. Severability and Savings Clause. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability or any other section or provision of this ordinance.

Section 19. Effective Date. This ordinance shall take effect 90 days after its adoption and publication.

Passed and adopted by the Murray County Board on the 24th day of May, 2016.