

## Renville County Tobacco Licensing Ordinance

Summary: This ordinance relates to the sale of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products, herein described as “licensed products,” in Renville County and to reducing the illegal sale of such items to underage persons.

Renville County Board Ordains:

**Section 100. Findings of Fact and Purpose.** Because Renville 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 200. Definitions and Interpretations.** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. 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** 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** shall mean any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minnesota Statutes, Section 297F.01, Subd. 3, as amended from time to time. These are at times referred to as cigarillos.

**Subd. 3 Compliance Checks** shall mean the system Renville 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 as authorized by this ordinance. 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.

**Subd. 4. Delivery Sale** shall mean 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.

**Subd. 5. Electronic Delivery Device** shall mean 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.

**Subd 6. 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 (50%) 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 0.011 gauge window screen with an 18 by 16 mesh count is not a wall.

**Subd. 7. Licensed Products** shall mean tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products.

**Subd. 8. Loosies** shall mean 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.

**Subd. 9. Moveable Place of Business** shall mean any retail establishment whose physical location is not permanent, including, but not limited to, any form of business operated from a kiosk, other transportable structure, or a motorized or nonmotorized vehicle.

**Subd. 10. Nicotine or Lobelia Delivery Products** shall mean any product containing or delivering nicotine or lobelia, whether natural or synthetic, 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 do 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.

**Subd. 11. Pharmacy** shall mean a registered pharmacy as defined in Minn. Stat. § 151.01, Subd. 2, as amended from time to time.

**Subd. 12. Political Subdivisions** shall mean a body politic commonly defined as a township or city within the territorial jurisdiction of Renville County.

**Subd. 13. Retail Establishment** shall mean any place of business where licensed products are available for sale to the general public. The phrase shall include, but not be limited to, grocery stores, convenience stores, restaurants, and bars.

**Subd. 14. Sale** shall mean any transfer of goods for money, trade, barter, or other consideration.

**Subd. 15. Self-Service Display** shall mean displays of licensed products in any manner where any person shall have access to the licensed 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 licensed products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

**Subd. 16. Smoking** shall mean 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.

**Subd. 17. Tobacco** 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; pipe tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff; snuff flowers; cavendish; plug and twist tobaccos; fine cut and other chewing tobaccos; 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.

**Subd. 18. Tobacco-Related Devices** shall mean any pipe, wraps, 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 shall include accessories or components of tobacco-related devices which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco.

**Subd. 19. Vending Machine** shall mean 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 a licensed product.

**Subd. 20. Youth-Oriented Facility.** Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. Youth-oriented facility includes, but is not limited to, schools, playgrounds, recreation centers, and parks.

**Section 300 License.** No person shall sell or offer to sell licensed products without first having obtained a license to do so from Renville County or the appropriate Political Subdivision of Renville County, if such entity elects to self-regulate as provided in Minn. Stat. § 461.12.

**Subd. 1. Application.** An application for a license 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, telephone numbers, the name of the business for which the license is sought, and any additional information the county deems necessary. Upon receipt of an application, Renville County Public Health Services shall review the application. If an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.

**Subd. 2. Action.** The Renville County Board of Commissioners gives authority to Renville County Public Health Services to either approve or deny the license, or 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 application is denied, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the County's decision.

**Subd. 3. Term.** All licenses issued under this ordinance shall be valid for one calendar year from January 1 to December 31 of each year. Licenses applied for mid-year will be charged the full-fee. There shall be no refunds for portions of unused tobacco licenses.

**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 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.

**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 licensed premise.

**Subd. 8. Renewals.** 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.

**Subd. 9. Election to Self-Regulate** A Political Subdivision of Renville County may elect to self-regulate by enacting a tobacco licensing ordinance that complies with Minnesota laws, including without limitation the requirements of Minn.Stat. §461.12-21. Retail establishments that obtain a license from a Political Subdivision of Renville County shall not be required to obtain an additional license from the County, unless the Political Subdivision fails to enforce its ordinance in conformity with Minnesota laws, in which case the County may require an additional license under this ordinance.

**Subd 10. Issuance as privilege and not a right.** The issuance of a license issued under this section 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 11. Minimum Age.** To sell licensed products, individuals employed by a person licensed under this ordinance must be at least sixteen (16) years of age or in compliance with any amendments of Minn.Stat. §461.12-2.

**Subd 12. Education Requirements.** No person shall be issued a license or renewal license to sell licensed products unless an applicant or license holder has an approved program for instructing all employees, including new employees, regarding the legal requirements pertaining to the sale of licensed products at the business premises for which the license was issued.

The instructional program shall include, but is not limited to,

- reviewing the federal law on the sale of tobacco-related products which requires employees to request identification from every customer who appears under 30 years of age,
- reviewing Minnesota and Renville County regulations,
- information that the sale of licensed products to persons under age 21

is prohibited,

- explanation of what proof of age is legally acceptable, and
- information that a sale to a person under age 21 can subject the applicant or license holder and their employees to criminal and/or civil liability.

No license shall be issued unless the applicant or license holder signs a county form attesting that each employee of the applicant or license holder has received annual training and instruction on the sale of licensed products and the date such training occurred. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the county at the time of renewal, or whenever requested to do so during the license term.

**Subd. 13. Smoking in Retail Establishments.** Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking restriction includes, but is not limited to, sampling licensed products is prohibited.

**Subd. 14. Samples Prohibited.** No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited.

**Subd. 15. Proximity to Youth-Oriented Facilities.** No license shall be granted to any person for any retail sales of licensed products within five hundred (500) feet of any youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the youth-oriented facility, unless that person has been in the business of selling such products in that location for at least one year before the date this section was enacted into law.

**Subd. 16. Sales Prohibited by Pharmacies.** The sale of licensed products shall be prohibited in any pharmacy and in any retail establishment that operates or contains an on-site pharmacy.

**Section 400. Fees.** No license shall be issued under this ordinance until the appropriate license fee is paid in full. The fee for a license under this ordinance will be set annually by the Renville County Board of Commissioners. Renville County Public Health Services shall be authorized to accept payment of this license fee.

**Section 500. Basis for Denial of License.** The following shall be grounds for denying the issuance or renewal of a license under this ordinance. If a license is issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section:

**Subd. 1. Age of Applicant.** The applicant is under the age of 21 years.

**Subd. 2. Prior Conviction of Applicant.** 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.

**Subd. 3. Prior Revocation or Suspension.** The applicant has had a license to sell licensed products suspended or revoked within the preceding twelve months of the date of application.

**Subd. 4. Incomplete of Misleading Information.** The applicant fails to provide any information required on the application, or provides false or misleading information.

**Subd. 5. Prohibition.** The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

**Subd. 6. Mistakenly Issued or Renewed License.** If a license is mistakenly issued or renewed to a person, the county will revoke the license upon the discovery that the person was ineligible for the license under this ordinance. The county will provide the license holder with notice of the revocation, along with information on the right to appeal.

**Section 600. Prohibited Sales.** The following sales of licensed products shall be a violation of this ordinance:

**Subd. 1. Legal age.** No person shall sell any licensed product to any person under the age of 21.

**1.1 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.

**1.2 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.

**Subd. 2. Minimum Price per Cigar.** 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 \$2.10 per cigar. This price may be adjusted periodically for inflation by the Renville County Commissioners by simple resolution.

**Subd. 3. Loosies.** By means of Loosies as defined in Section 200.

**Subd. 4. Self Service Display.** By means of self-service display as defined in Section 200.

**Subd. 5. Spiking.** 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.

**Subd. 6. Vending Machines.** By means of any type of vending machine as defined in Section 200.

**Subd. 7. Delivery Sales.** All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.

**Subd. 8. 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.

**Subd. 9. Other.** 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.

**Section 700. Responsibility.** All licensees under this ordinance 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 Renville 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 800. Compliance Checks and Inspections.** All licensed premises shall be open to inspection by Renville County Public Health Services or other authorized county officials during regular business hours.

**Subd. 1. Procedure.** From time to time, but at least once per year, Renville County will conduct compliance checks. In accordance with state law, the city 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.

**Subd. 2. Non-Exclusion.** Nothing in this Section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or as required for the enforcement of a particular State or Federal law.

**Section 900. Other Prohibited Acts.** Unless otherwise provided, the following acts shall be an administrative violation of this ordinance.

**Subd. 1. Prohibited furnishing or procurement.** It is a violation of this ordinance 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. It is also a violation 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.

**Subd. 2. Use of False Identification.** It shall be a violation of this ordinance for any person 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.

**Section 1000. Violations and Administrative Process.**



**Subd. 1. 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.

**Subd. 2. 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.

**Subd. 3. Hearing Panel.** The Renville County Board of Commissioners shall serve as the hearing panel.

**Subd. 4. Decision.** If the hearing panel determines that a violation of this ordinance did occur, that decision, along with the hearing panel's reasons for finding a violation and the penalty to be imposed under Section 1100 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing panel 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.

**Subd. 5. Appeals.** Appeals of any decision made by the hearing panel shall be filed in the district court for the jurisdiction in which the alleged violation occurred.

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

## **Section 1100 Administrative Penalties.**

**Subd. 1. Licensees.** Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine. These may be modified from time to time by the Renville County Commissioners by simple resolution. All such fees imposed will be payable to Renville County.

**1.1.** For the first violation, the licensee shall pay an administrative penalty of three hundred dollars (\$300.00) plus mandatory training regarding the sale of licensed products.

**1.2.** For the second violation within a thirty-six (36) month period, the licensee shall pay an administrative penalty of six hundred dollars (\$600.00).

**1.3.** For the third violation within a forty-eight (48) month period, the licensee shall pay an administrative penalty of one thousand dollars (\$1,000.00) and the licensee's license shall be suspended for thirty (30) days.

**1.4.** For the fourth violation within a sixty (60) month period, the licensee shall pay an administrative penalty of one thousand dollars (\$1,000.00) and the licensee's license shall be revoked.

**1.5.** If there is a change of ownership where at least fifty percent (50%) of the ownership is transferred to an unrelated party, previous violations will not apply. For purposes of this section, violations occurring prior to the effective date of this ordinance will not be considered.

**Subd. 2. Employee.** The employee found to have violated this ordinance will be personally liable to pay an administrative fine of \$50 in addition to any fines imposed upon the licensee.

**Subd. 3. Persons Under the Age of 21.** Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to noncriminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the county determines to be appropriate.

**Subd. 4. Misdemeanor.** Nothing in this section prohibits the city 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 conviction under the ordinance.

#### **Section 1200 Exceptions and Defenses.**

**Subd. 1. 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.

**Subd. 2. 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 1300 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 1400 Effective Date.** This ordinance shall take effect June 22, 2021.