

**BROWN COUNTY
ORDINANCE NO.
2020-01**

AN ORDINANCE RELATING TO THE SALE OF TOBACCO, TOBACCO-RELATED DEVICES, ELECTRONIC DELIVERY DEVICES, AND NICOTINE OR LOBELIA DELIVERY PRODUCTS IN BROWN COUNTY.

The County Board of Commissioners of Brown County ordains:

SECTION 100. PURPOSE. Because Brown County recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates federal law; that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 18 violates state law; and because studies, which the County accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% 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 accepts the conclusions and recommendations from the U.S. Surgeon General, the Centers for Disease Control and Prevention, and of scholars in scientific journals.

SECTION 200. APPLICABILITY AND JURISDICTION. Pursuant to Minnesota Statute § 461.12, this Ordinance shall govern the licensing and regulation of the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products in the unorganized territory of Brown County and in any town or home rule charter or statutory city located in Brown County if the town or city does not license and regulate retail sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products. Retail establishments licensed by a town or city, located in Brown County, to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products 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 as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

Subd. 3, Compliance Checks. “Compliance Checks” shall mean the system the county uses to investigate and ensure that those authorized to licensed products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of persons under the age of 21 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 related to licensed products.

Subd. 4, Electronic Delivery Devices. “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 shall include, 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 such a product, whether or not marketed or sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Subd. 5, Flavored Product. “Flavored Product” shall mean any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

Subd. 6, 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.

Subd. 7, Licensed Products. “Licensed Products” shall mean the term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

Subd. 8, Loosies. “Loosies” shall mean the common term used to refer to single cigarettes, cigars, and any other licensed product that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

Subd. 9, Moveable Place of Business. "Movable Place of Business" shall refer to any form of business operated out of a truck, van, kiosk, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorize for sales transactions.

Subd. 10, Nicotine or Lobelia Delivery Product. "Nicotine or Lobelia Delivery Product" shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco or an electronic delivery device as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco use cessation product, a tobacco-dependence product, or for harm reduction, or other medical purposes, and is being marketed and sold solely for that approved purpose.

Subd. 11, Retail Establishment. "Retail Establishment" shall mean any place of business where licensed products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, tobacco product shops, convenience stores, gasoline service stations, bars, and restaurants.

Subd. 12, Sale. "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 13, Self-Service Display. "Self-Service Display" shall mean open 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 or other personnel. Self-service display also means ~~or~~ any placement of a retail roll-your-own machine in an open area of a retail establishment where any person shall have access to the machine without the assistance or intervention of the licensee or the licensee's employee or other personnel. The assistance or intervention shall entail the actual physical exchange of the licensed products between the customer and the licensee or employee.

Subd. 14, Smoking. "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. 15, Tobacco. "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; cheroots, stogies; perique; granulated, plug-cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobaccos; 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 product that has been approved by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Subd. 16, Tobacco-Related Device. "Tobacco-related device" shall mean any tobacco product as well as pipes, rolling papers, wraps, or other devices 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.

Subd. 17, Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed product.

SECTION 400. LICENSE. No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the county.

Subd. 1, Application. An application for a license to sell licensed products shall be made on a form provided by the county. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the county deems necessary. All applicants shall have the completed application and fee returned to the Brown County Auditor/Treasurer prior to the beginning of the year in which the license sought will be valid. Delay in submission may result in a period of time in which the applicant may not sell any licensed products. Upon receipt of a completed application, the Brown County Auditor/Treasurer shall forward the application to the Brown County Board of Commissioners for action at its next regularly scheduled Board meeting. If the Auditor/Treasurer determines that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 2, Action. The County Board of Commissioners may either approve or deny the license, or it may delay action for such reasonable period of time necessary to complete an investigation of the application or the applicant it deems necessary. If the County Board shall approve the license, the County Board shall issue the license to the applicant. If the County 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 decision.

Subd. 3, Term. All licenses issued shall be valid for one calendar year, commencing on July 1st and ending on June 30th. License fees for licenses issued after July 1st shall be prorated for the year issued.

Subd. 4, Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of 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 without the prior approval of the County Board of Commissioners.

Subd. 6, Movable Place of Business. No license shall be issued to a movable 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 (30) days but no more than sixty (60) days before the expiration of the current license.

Subd. 9, Minimum Clerk Age. Individuals employed by a licensed retail establishment under this ordinance must be at least 18 years of age to sell licensed products.

Subd. 10, Smoking Prohibited. Smoking shall not be permitted and no person shall smoke in any indoor areas of any licensed retail establishment. Smoking for the purpose of sampling licensed products or any other plant products shall be prohibited.

Subd. 11, 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. 12, Instructional Program. Licensees must ensure that all employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the county. 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.

SECTION 500. FEES. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The licensing fee will be determined by the Brown County Board of Commissioners each year and posted on the Brown County website. Any new business that submits a late application will be charged a prorated fee based upon the remaining months of the current year.

SECTION 600. 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 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:

1. The applicant is under twenty-one (21) years of age.
2. 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 licensed products.
3. The applicant has had a license to sell licensed products suspended or revoked within the preceding twelve (12) months of the date of application.
4. The applicant fails to provide any information required on the licensing application, or provides false or misleading information.
5. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

SECTION 700. PROHIBITED ACTS.

Subd. 1, 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 any type of vending machine.
2. By means of loosies as defined in Section 300 of this ordinance.
3. 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.
4. By any other means, to any other person, or in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulations.

Subd. 2, Legal Age. It shall be a violation of this ordinance for any person to 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 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 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. It shall be unlawful for a licensee under this ordinance to allow the sale of licensed products by means of self-service display. All licensed products shall 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 shall comply with this section within ninety (90) days following the effective date of this ordinance.

Subd. 4, Flavored Products. It shall be unlawful for any person to sell or offer for sale any flavored products.

Subd. 5, Liquid Packaging. It shall be unlawful for any person to sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the county, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

SECTION 8 00. RESPONSIBILITY. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the license holder. Nothing in this section shall be construed as prohibiting the county from also subjecting the employee or clerk to any civil penalties that the county deems appropriate under this ordinance, State or Federal law, or other applicable laws or regulations.

SECTION 9 00. COMPLIANCE CHECKS AND INSPECTIONS. All licensed premises shall be open to inspection by the County Sheriff, or other official during regular business hours. In accordance with state law, the county will conduct compliance checks. Prior written consent is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks shall be supervised by county designated law enforcement officers or other designated county personnel. No person used in compliance checks shall attempt to use a false identification misrepresenting their age, and all persons lawfully engaged in a compliance check shall answer all questions about their age when they are asked by the licensee or their employee and shall produce any identification, if any exists, for which they are asked. Nothing in this section shall prohibit compliance checks authorized by State or Federal laws, educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

SECTION 1000. OTHER PROHIBITED ACTS. Unless otherwise provided, the following acts shall be an administrative violation of this ordinance.

Subd. 1, Prohibited Furnishing or Procurement. It shall be a violation of this ordinance for any person 21 years of age or older to purchase, attempt to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It shall further be 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 illegally 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 use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.

SECTION 1100. VIOLATIONS.

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 requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Subd. 3, Hearing Officer. The County Board of Commissioners shall serve as the hearing officers.

Subd. 4, Decision. If the hearing officers determine 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 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 officers find that no violation occurred or find 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 officers shall be filed in the district court for the jurisdiction of the county in which the alleged violation occurred within 10 business days of the date of the decision.

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 and Employees. Any licensee, and any employee of a licensee, found to have violated this ordinance shall be charged an administrative fine of two hundred dollars (\$200.00) for a first violation of this ordinance; five hundred dollars (\$500.00) for a second offense at the same licensed premises within a twenty-four (24) month period; and seven hundred fifty dollars (\$750.00) for a third or subsequent offense at the same location within a twenty-four (24) month period. In addition, after the third offense, the license shall be suspended for not less than thirty (30) days. Upon a fourth violation, the license will be revoked. The Brown County Auditor/Treasurer will notify the vendor via certified mail with dates of suspension unless a request for hearing is made by the vendor. All fines for violations must be paid within ten (10) working days after the signed date on the certified mail receipt. If the fine is not received at the Brown County Auditor/Treasurer office within this ten (10) day period, the vendor will be subject to an additional fine on a per-day-basis at a rate of an additional five dollars (\$5.00) per day, not to exceed the amount of the initial fine charged.

Subd. 2, Other Individuals. Individuals, other than persons under the age of 21 regulated by Subdivision 3 of this Section, found to be in violation of this ordinance shall be charged an administrative fine of seventy-five dollars (\$75.00) for a first violation of this ordinance; two hundred dollars (\$200.00) for a second offense within a twenty-four (24) month period; and two hundred fifty dollars (\$250.00) for a third or subsequent offense within a twenty-four (24) month period. All fines for violations must be paid within thirty (30) working days after the signed date on the certified mail receipt. If the fine is not received at the Brown County Auditor/Treasurer office within this thirty (30) day period, the individual will be subject to an additional fine on a per-day-basis at a rate of an additional five dollars (\$5.00) per day, not to exceed the amount of the initial fine charged.

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 be subject to criminal penalties under state statute in addition to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the county determines to be appropriate. The County Board of Commissioners will consult with court personnel, educators, parents, children and other interested parties to determine an appropriate penalty for persons under the age of 21 in the county. The penalty may be established by ordinance and amended from time to time.

Subd. 4, Misdemeanor. Nothing in this Section shall prohibit the county from seeking prosecution as a misdemeanor for any violation of this ordinance by a person 21 years of age or older.

Subd. 5, Failure to Pay Fine. Failure to pay a fine as levied pursuant to this ordinance shall be grounds for termination or suspension of the vendor's license to sell licensed products.

SECTION 1300. EXCEPTIONS AND DEFENSES. Nothing in this ordinance shall prevent 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. It shall be 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.

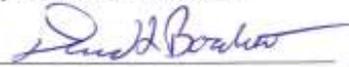
SECTION 1400. SEVERABILITY AND SAVINGS CLAUSE. If any section or portion of this ordinance shall be found invalid, such invalidity shall not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

SECTION 1500. EFFECTIVE DATE. This ordinance shall take effect on the 1st day of December, 2020, and hereby repeals and replaces in its entirety Brown County Ordinance No. 2015-01, the Brown County Ordinance Relating to the Sale, Possession, and Use of Tobacco, Tobacco-Related Devices, Electronic Delivery Devices, and Nicotine or Lobelia Delivery Products in Brown County and to Reduce the Illegal Sale, Possession, and Use of Such Items to and by Minors, enacted on August 18, 2015.

Duly passed and adopted this 1st day of December, 2020

County Board of Commissioners

By:



David Borchert, Chairman

ATTEST:


Sam Hansen, County Administrator

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BROWN COUNTY

OFFICE OF THE RECORDER
BROWN CO, MINNESOTA

COUNTY OF BROWN
BROWN COUNTY COURTHOUSE
NEW ULM, MN 56073

Recorded on:

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December 03, 2020 3:45 PM

BETTI KAMOLZ, RECORDER