

**BROWN COUNTY
ORDINANCE NO.
2015-01**

**AN 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.**

The County Board of Commissioners of Brown County ordains:

SECTION 100. PURPOSE. Because Brown County 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 the sale, 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 smoking 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 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 Minnesota Statute § 144.391, as it may be amended from time to time.

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, 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, or 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 related to tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.

Subd. 2, Electronic Delivery Devices. "Electronic Delivery Device" 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 device shall include any component part of such a product whether sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

Subd. 3, Individually Packaged. "Individually Packaged" shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, 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 packaged.

Subd. 4, Loosies. "Loosies" shall mean the common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually.

Subd. 5, Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 6, Moveable Place of Business. "Movable Place of Business" shall refer to any form of business operated out of a truck, van, 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. 7, 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 tobacco 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.

Subd. 8, 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, and restaurants.

Subd. 9, Sale. "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 10, Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco-related devices, electronic delivery devices, or 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 or other personnel 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 tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

Subd. 11, Smoking. "Smoking" shall mean inhaling or exhaling smoke from any lighted or heated cigarette, cigar, pipe, or any other lighted or heated tobacco or plant product, or inhaling or exhaling vapor from an electronic delivery device or any nicotine or lobelia delivery product. Smoking shall include carrying a lighted or heated cigarette, cigar, or pipe or any other lighted or heated tobacco or plant product intended for inhalation or carrying an electronic delivery device or nicotine or lobelia delivery product that is turned on or otherwise activated.

Subd. 12, Tobacco. "Tobacco" includes cigarettes and any product containing, made or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component part, or accessory of a tobacco product; 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 tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Subd. 13, Tobacco-Related Device. "Tobacco-related device" shall mean any tobacco product as well as pipes, rolling papers, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products or the inhalation of vapor from an electronic delivery device. Tobacco-related devices shall include accessories or components of tobacco-related devices which may be marketed or sold separately.

Subd. 14, Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

SECTION 400. LICENSE. No person shall sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product without first having obtained a license to do so from the county.

Subd. 1, Application. An application for a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products shall be made on a form provided by the county. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the county deems necessary. 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 tobacco, tobacco-related products, electronic delivery devices, or nicotine or lobelia delivery 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 pursuant to Brown County Ordinance No. 1998-01 shall be valid until June 30, 2016. All licenses issued hereunder 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, Smoking Prohibited in Tobacco Product Shop. Smoking shall not be permitted and no person shall smoke indoors at any location with a tobacco retailer license. Smoking for the purpose of sampling tobacco, tobacco-related devices, electronic delivery devices, nicotine or lobelia delivery products or any other plant products shall be prohibited.

Subd. 10, 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.

SECTION 500. FEES. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be \$200.00. The licensing fee will be determined by the Brown County Board of Commissioners each year. 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 the age of eighteen (18) years.
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 tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.
3. The applicant has had a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products revoked within the preceding twelve (12) months of the date of application.
4. The applicant fails to provide any information required on the 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 SALES. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product:

1. To any person under the age of eighteen (18) years.
2. By means of any type of vending machine, except as may otherwise be provided in this ordinance.
3. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product 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 the licensee's employee and the customer.
4. By means of loosies as defined in Section 200 of this ordinance.
5. 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.
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 regulations.

SECTION 800. VENDING MACHINES. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

SECTION 900. 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 employ 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 clerk and the customer. All tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products shall either be stored behind the counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at the time this ordinance is adopted shall comply with this section within ninety (90) days following the effective date of this ordinance.

SECTION 1000. 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 any such items 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 laws or regulations.

SECTION 1100. COMPLIANCE CHECKS AND INSPECTIONS. All licensed premises shall be open to inspection by the County Sheriff, or other official during regular business hours. From time to time, but at least once per year, the County Sheriff shall conduct compliance checks by engaging, with 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 or attempted to be obtained as 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 minor's lawfully engaged in a compliance check shall answer all questions about the minor's age when they are 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, educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

SECTION 1200. OTHER ILLEGAL ACTS. Unless otherwise provided, the following acts shall be a violation of this ordinance.

Subd. 1, Illegal Sales. It shall be a violation of this ordinance for any person to sell or otherwise provide and tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product to any minor.

Subd. 2, 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 product. This subdivision shall not apply to minor lawfully involved in a compliance check.

Subd. 3, 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.

Subd. 4, 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 subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 5, 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 minor has been modified or tampered with, to represent an age older than the actual age of the minor.

SECTION 1300. 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 1300 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.

Subd. 6, Misdemeanor Prosecution. Nothing in this section shall prohibit the county from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If the county elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Subd. 7, Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

SECTION 1400. 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 penalty of seventy-five dollars (\$75.00) for a first violation of this ordinance; two hundred dollars (\$200.00) for a second offense at the same licensed premises within a twenty-four (24) month period; and two hundred fifty dollars (\$250.00) 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 seven (7) days. 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 penalties for violations must be paid within ten (10) working days after the signed date on the certified mail receipt. If the penalty is not received at the Brown County Auditor/Treasurer office within this ten (10) day period, the vendor will be subject to an additional penalty 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 penalty charged.

Subd. 2, Other Individuals. Other individuals, other than minors regulated by Subdivision 3 of this Section, found to be in violation of this ordinance shall be charged an administrative penalty 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 penalties for violations must be paid within ten (10) working days after the signed date on the certified mail receipt. If the penalty is not received at the Brown County Auditor/Treasurer office within this ten (10) day period, the individual will be subject to an additional penalty 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 penalty charged. If not paid within ten (10) days, the matter may be turned over for criminal prosecution.

Subd. 3, Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, shall be subject to prosecution under Minnesota Statute 609.685.

Subd. 4, Misdemeanor. Nothing in this Section shall prohibit the county from seeking prosecution as a misdemeanor for any violation of this ordinance.

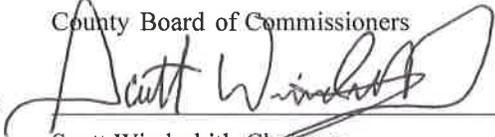
Subd. 5, Failure to Pay Fine. Failure to pay a fine as levied pursuant to this ordinance shall be grounds for termination or suspension of the vendor's license to sell tobacco.

SECTION 1500. EXCEPTIONS AND DEFENSES. Nothing in this ordinance shall prevent the providing of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. 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 1600. 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 1700. EFFECTIVE DATE. This ordinance shall take effect on the 18th day of August, 2015, and hereby repeals and replaces in its entirety Brown County Ordinance No. 1998-01, the Brown County Ordinance Relating to the Sale, Possession, and Use of Tobacco Products, and Tobacco Related Devices in Brown County and to Reduce the Illegal Sale, Possession, and Use of Such Items to any Minors, enacted on March 17, 1998.

Duly passed and adopted this 18th day of August, 2015

County Board of Commissioners
By: 
Scott Windschitl, Chairman

ATTEST:


Charles Enter, County Administrator