

CHAPTER 3. REDUCING YOUTH ACCESS TO TOBACCO

SECTION 1. PURPOSE

Because the County recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices, and the sales, possession and use are violations of both State and Federal laws; and because studies, which are hereby accepted and adopted (i.e. CDC, Minnesota Department of Public Health/ASSIST) have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who have 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 products, tobacco-related devices, and nicotine or lobelia delivery devices, for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with illegal use of tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minnesota State Statute 144.391, as it may be amended from time to time.

SECTION 2. DEFINITIONS & INTERPERTATIONS

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. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- A. **Compliance Checks:** shall mean the system the county uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices 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 products, tobacco-related devices, or nicotine or lobelia delivery devices 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 products, tobacco-related devices, and nicotine or lobelia delivery devices.
- B. **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 definition shall not be considered individually packaged.
- C. **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.
- D. **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. The term “loosies” does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.
- E. **Minor:** shall mean any natural person who has not yet reached the age of eighteen (18) years.
- F. **Moveable 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 authorized for sales transactions.
- G. **Nicotine or Lobelia Delivery Devices:** 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.
- H. **Retail Establishment:** shall mean any place of business where tobacco, tobacco products, or tobacco-related devices, or nicotine or lobelia delivery devices are available for sale to the general public. The phrase shall include but not be limited to, grocery stores, convenience stores, restaurants, and drug stores.
- I. **Sale:** shall mean any transfer of goods for money, trade, barter, or other consideration.
- J. **Self-Service Merchandising:** shall mean open displays of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices 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 product, tobacco-related device, or nicotine or lobelia delivery device 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. Self-services merchandising shall not include vending machines.
- K. **Smoking:** shall mean inhaling or exhaling from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.
- L. **Tobacco or Tobacco Products:** shall include 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 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.

- M. **Tobacco-Related Devices:** shall include any tobacco product as well as a pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.
- N. **Vending Machine:** shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco-related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device.

SECTION 3. COUNTY TOBACCO RETAILER LICENSE

No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices without first having obtained a tobacco license from the County.

Subsection 3.1: License Application

An application for a license to sell tobacco, tobacco products, or tobacco-related devices, or nicotine or lobelia delivery devices 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. Upon receipt of a completed application, the County Auditor shall forward the application to the County Board of Commissioners, or its designee for action at its next regularly scheduled meeting. If the County Auditor, or designee shall determine 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.

Subsection 3.2: Action on License

The County Board or its designee 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 it deems necessary. If the County Board shall approve the license, the County Auditor or designee shall issue the license to the applicant. If the license is denied, notice of the denial shall be given to the applicant along with the notice of the applicant's right to appeal the decision.

Subsection 3.3: License Fees

Each application for a tobacco retailer's license shall be accompanied by a fee as set by the Swift County Board of Commissioners. Application for licenses issued after June 30 of a calendar year shall be accompanied by a prorated fee. No license shall be issued under this

Ordinance until the appropriate license fee is paid in full.

Subsection 3.4: License Term

The licensing period begins on June 30 of a calendar year and ends June 30 of the following calendar year. Each license issued shall expire on June 30 of the calendar year unless sooner revoked by the County or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the County Auditor or designee.

Subsection 3.5: Renewals

The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license.

Subsection 3.6: 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.

Subsection 3.7: Display

All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subsection 3.8: 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 or designee.

Subsection 3.9: Revocation or Suspension

Any license issued under this ordinance may be revoked or suspended as provided in Section 11 of the Ordinance.

Subsection 3.10: 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.

Subsection 3.11: Proximity to Youth-Oriented Facilities

No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices within 1,000 feet of any school, playground, house of worship, or 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 school, playground, house of worship, or youth-oriented facility, unless that person has been in the business of selling such products in that location before the date this section was enacted into law for at least one year. For the purpose of this section, a youth-oriented facility is defined to include any facility with residents, customers, visitors, or inhabitant of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products that are

consumed or used primarily by persons under the age of 21.

Subsection 3.12: Proximity to Other Tobacco Retailers

No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices within two thousand feet of any other establishment holding such a license, 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 that person has been in the business of selling such products in that location before the date this section was enacted into law for at least one year.

Subsection 3.13: Smoking

Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco-related products is prohibited.

SECTION 4. BASIS FOR DENIAL OF TOBACCO RETAILER’S 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 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. The grounds for denying the issuance or renewal 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 years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco or tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices.
- C. The applicant has had a license to sell tobacco, tobacco products, tobacco-related devices or nicotine or lobelia delivery devices revoked within the preceding twelve 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.

SECTION 5. LICENSES RESPONSIBLE FOR ACTION OF EMPLOYEES

All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices or nicotine or lobelia delivery devices on the licensed premises, and the sale of 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 6. MANDATORY COMPLIANCE CHECKS

All licensed premises shall be open to inspection by the Swift County Sheriff Department or its designee, Countryside Public Health, or other authorized County official during regular business hours. From time to time, but at least once a 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 products, tobacco related devices or nicotine or lobelia delivery devices. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated county personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase, or attempted purchase, nor the unlawful possession of tobacco, tobacco products, tobacco-related devices or nicotine or lobelia delivery devices 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 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. Compliance checks for the purpose of this ordinance will not be performed in townships or municipalities where a similar ordinance meeting the minimum requirements of this statute exists.

SECTION 7. PROHIBITED SALES

Subdivision 7.1: General

It shall be a violation of this Ordinance for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery 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 self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer.
- D. By means of loosies as defined Section 2 of this Ordinance.
- E. 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 tobacco products.

- F. By any other means, to any other person, in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

Subdivision 7.2: Vending Machines

It shall be unlawful for any person licensed under this Ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

Subdivision 7.3: Self-Service Sales

It shall be unlawful for a licensee under this Ordinance to allow the sale of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices by any means where by 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 product, tobacco-related devices, and nicotine or lobelia delivery devices between the licensee or his or her clerk and the customer unless minors are at all times prohibited from entering the licensed establishment and unless ninety (90) percent or more of the licensed establishment are generated by the sale of tobacco and tobacco related products. All tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices 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. Any retailer selling tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices at the time this Ordinance is adopted shall comply with this section within ninety (90) days following the effective date of this Ordinance.

SECTION 8. OTHER PROHIBITED SALES

Unless otherwise provided, the following acts shall be a violation of this Ordinance:

Subsection 8.1: Illegal Sales

It shall be a violation of this Ordinance for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device to any minor.

Subsection 8.2: Illegal Possession

It shall be a violation of this Ordinance for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This subsection shall not apply to minors lawfully involved in a compliance check.

Subsection 8.3: Illegal Use

It shall be a violation of this Ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device.

Subsection 8.4: Illegal Procurement by a Minor

It shall be a violation of this Ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This subsection shall not apply to minors lawfully involved in a compliance check.

Subsection 8.5: Illegal Procurement

It shall be a violation of this Ordinance for any person to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device 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 product, tobacco-related device, or nicotine or lobelia delivery device. This subsection shall not apply to minors lawfully involved in a compliance check.

Subsection 8.6: 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.

SECTION 9. EXCEPTIONS & DEFENSES

Nothing in this Ordinance shall prevent the providing of tobacco, tobacco products, tobacco-related devices or nicotine or lobelia delivery devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to an alleged violation of this Ordinance for a person to have reasonably relied on proof of age as described by State Law.

SECTION 10. ADMINISTRATIVE REVIEW

Subsection 10.1: 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 for a hearing on the accusation. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

Subsection 10.2: Hearings

Upon issuance of a citation, a person accused of violating this chapter may request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the citation and delivered to the County Auditor or designee. Failure to request a hearing within ten (10) business days of the issuance of the citation will terminate the person's right to a hearing. The County Auditor or designee shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

Subsection 10.3: Hearing Officer

Swift County Board or its designee shall serve as the hearing officer.

Subsection 10.4: Decision

A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this Ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Subsection

11.2 of this Ordinance, shall be recorded in writing, a copy of which shall be provided to the County and the accused violator as soon as practical. 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 County and the acquitted accused violator as soon as practical. If the citation is upheld by the hearing officer, the County's actual expenses in holding the hearing up to \$1,000.00 shall be paid by the person requesting the hearing. The decision of the hearing officer is final.

Subsection 10.5: Appeals

Appeals of any decision made by the hearing officer shall be filed in the district court for the jurisdiction of the county in which the alleged violation occurred within ten (10) business days.

Subsection 10.6: 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.

Subsection 10.7: Continued Violation

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

SECTION 11. ADMINISTRATIVE PENALTIES

Subsection 11.1: Licenses

Any licensee found to have violated this Ordinance, or whose employee shall have violated this Ordinance, shall be charged an administrative fee as follows:

- A. First Offense: \$75.00
- B. Second Offense: At same licensed premise within 24 months: \$200.00
- C. Third and Subsequent Offense: At same licensed premise within 24 months: \$250.00 and the license shall be suspended for not less than seven (7) days.
- D. Second and subsequent offenses occurring on the same licensed premise within 25 months or more of a previous violation shall be treated as if it were a first offense.

Subsection 11.2: Minors

Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices, shall be charged an administrative penalty of \$25 and shall participate in an appropriate tobacco-related education classes, diversion programs, community services, or another penalty that the County believes will be appropriate and effective. In second and subsequent offenses, minors shall be charged an administrative fee of \$25.

Subsection 11.3: Other Individuals

Other individuals, other than minors regulated by Subdivision 11.2, found to be in violation of this Ordinance shall be charged an administrative fee of \$50.

Subsection 11.4: Statutory Penalties

If the administrative penalties authorized to be impose by Minnesota State Statute 461.12, as it may be amended from time to time, differ from those established in this Ordinance, then statutory penalties shall prevail.

SECTION 12. SEVERABILITY

If any section or portion of this Ordinance is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

SECTION 13. REPEAL & EFFECTIVE DATE

This Ordinance repeals and replaces in its entirety the Reducing Youth Access to Tobacco Ordinance passed on November 13, 1998. This Ordinance becomes effective on the date of its public hearing, or upon the publication of a summary of the Ordinance as provided by Minnesota State Statute 412.191, subdivision 4, as it may be amended from time to time, which meets the requirements of Minnesota State Statute 331A.01, subdivision 10, as it may be amended from time to time.

Passed by the Swift County Board of Commissioners on February 15, 2011.

(Seal)

Chairperson

Attest:

County Auditor

Approved as to form and execution:

County Attorney