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Property & Public Services

Property Records Division

Yellow Medicine County, Minnesota

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Janel Timm, Yellow Medicine County Recorder

By Debra Blood Deputy

YELLOW MEDICINE COUNTY TOBACCO ORDINANCE

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Table of Contents

Section 1	Purpose.....	1
Section 2	Definitions and Interpretations.....	1
Section 3	County Tobacco Retailer License	4
Section 4	Basis for Denial of Tobacco Retailer's License	5
Section 5	Licensees Responsible for Actions of Employees.....	6
Section 6	Mandatory Compliance Checks	6
Section 7	Prohibited Sales.....	6
Section 8	Prohibited Acts.....	7
Section 9	Exceptions and Defenses	8
Section 10	Administrative Review.....	8
Section 11	Administrative Penalties.....	9
Section 12	Severability and savings Clause	10
Section 13	Repeal of Prior Ordinances.....	10
Section 14	Effective Date.....	10

YELLOW MEDICINE COUNTY TOBACCO ORDINANCE

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 related devices, electronic delivery devices, or nicotine or lobelia delivery products, and such 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 reached the age of 18 years without having started smoking are significantly less likely to begin smoking; and because tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this Ordinance shall be intended to regulate the sale, possession, and use tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products, for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco and related licensed 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.

SECTION 2. DEFINITIONS AND INTERPRETATIONS

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

Subd. 1. Child-resistant packaging. "Child-resistant packaging" shall mean packaging that meets the definition as set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, when tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

Subd. 2. Compliance Checks. "Compliance Checks" shall mean the system the 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 may involve the use of minors as authorized by this Ordinance. Compliance checks may also mean the use of minors who attempt to purchase licensed products for educational, research and training purposes as authorized by state and federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations relating to licensed products.

Subd. 3. Electronic Delivery Device. "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 or not 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. 4. 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. A standard (0.011) gauge window screen is not considered a wall.

Subd. 5. 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.

Subd. 6. Licensed Products. "Licensed Products" shall mean any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery device, as they are defined by this section.

Subd. 7. 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. 8. Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 9. Moveable Place of Business. "Moveable Place of Business" shall refer to any form of business whose physical location is not permanent, including, but not limited to, any business operated out of a motorized vehicle, mobile sales kiosk, trailer, or other structure or equipment not permanently attached to the ground.

Subd. 10. Nicotine or Lobelia Delivery Products. "Nicotine or Lobelia Delivery Products" 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 or an electronic delivery device as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and

Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Subd. 11 Nominal Cost. "Nominal Cost" shall mean the cost of any item that is transferred from one person to another for less than the total of: (1) twenty-five percent (25%) of the full retail value of the item exclusive of taxes and fees; plus (2) all taxes and fees previously paid and all taxes and fees still due on the item at the time of transfer.

Subd. 12. 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. 13. Sale. A "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 14. Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of licensed products in any manner where any person shall have access to 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. 15. Smoke or Smoking. "Smoke" or "Smoking" shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product. Smoking shall include being in possession of a lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product.

Subd. 16. Tobacco or Tobacco Products. "Tobacco" or "Tobacco Products" shall mean any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product including but not limited to cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Subd. 17. Tobacco Related Devices. "Tobacco Related Devices" shall mean any pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of

tobacco or tobacco products. Tobacco related devices shall include accessories or components of tobacco related devices which may be marked or sold separately.

Subd. 18. Vending Machine. "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 the licensed product.

SECTION 3. COUNTY TOBACCO RETAILER LICENSE

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

Subd. 1. License Application. An application for a license to sell a licensed product 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 deemed 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.

Subd. 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.

Subd. 3. License Fees. Each application for a tobacco retailer's license shall be accompanied by a fee of \$110 as set by the Yellow Medicine County Board of Commissioners. Application for licenses issued after June 30 of a calendar year shall be accompanied by a prorated fee.

Subd. 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.

Subd. 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 days, but no more than sixty days before the expiration of the current license.

Subd. 6. Issuance as a 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. 7. 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. 8. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

Subd. 9. 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.

Subd. 10. Revocation or Suspension. Any license issued under this Ordinance may be revoked or suspended as provided in Section 11 of the Ordinance.

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.

- A. The applicant is under the age of 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 licensed products.
- C. The applicant has had a license to sell tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products, suspended or revoked within the preceding twelve 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. LICENSEES 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 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 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 Yellow Medicine County Sheriff's 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 licensed products. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers, Countryside Public Health personnel, or other authorized County personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase, or attempted purchase, nor the unlawful possession of licensed 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 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 feral laws for education 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

Subd. 1. General. It shall be a violation of this Ordinance for any person to sell or offer to sell any licensed products:

- A. To any person under the age of eighteen (18) years.

- B. By means of loosies as defined in Section 2, Subd. 6 of this Ordinance.
- C. 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 intent of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.
- D. 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.

Subd. 2. Vending Machines. It shall be unlawful for any person licensed under this Ordinance to allow the sale of licensed products by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

Subd. 3. Self-Service Sales. It shall be unlawful for a licensee under this Ordinance to allow the sale licensed products by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the licensed products 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.

Subd. 4. Liquid Packaging. The sale of any liquid, whether or not such liquid contains nicotine, intended for human consumption and use in an electronic delivery device, that is not contained in child-resistant packaging is prohibited. All licensees under this chapter must ensure that any liquid intended for use in an electronic delivery device is sold in child-resistant packaging. Upon request, a licensee shall provide a copy of the certificate of compliance or the full protocol laboratory testing report for the packaging used.

SECTION 8. PROHIBITED 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 any licensed products 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 licensed products. This subdivision shall not apply to minors 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 licensed products.

Subd. 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 licensed products. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 5. Illegal Procurement. 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 licensed products. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 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.

Subd. 7. Smoking. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license.

Subd. 8. Sampling. No person shall distribute samples of any licensed product free of charge or at nominal cost.

SECTION 9. EXCEPTIONS AND DEFENSES

Nothing in this Ordinance shall prevent the providing of tobacco or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to 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

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 Officer. The Yellow Medicine County Board or its designee shall serve as the hearing officer.

Subd. 4. Decision. 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 Section 11 of this Ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred, or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Subd. 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.

Subd. 6. Misdemeanor Prosecution. Any violation of this Ordinance is a misdemeanor. 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 11. 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 fee as follows:

First Offense:	\$ 75.00
Second Offense/at same licensed premise within 24 months:	\$200.00
Third and Subsequent Offense/at same licensed premise within 24 months and the license shall be suspended for not less than seven (7) days	\$250.00

Second and subsequent offenses occurring on the same licensed premises after 24 months or more of a previous violation shall be treated as if it were a first offense.

Subd. 2. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products, shall be charged an administrative penalty of \$25.00 and shall participate in an appropriate educational/diversion program. In second and subsequent offenses, minors shall be charged an administrative fee of \$50.00.

Subd. 3. Other Individuals. Other individuals, other than minors, regulated by subdivision 2 of this subsection, found to be in violation of this Ordinance shall be charged an administrative fee of \$50.00.

SECTION 12. 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 invalidate the effectiveness of any other section or provision of this Ordinance.

SECTION 13. REPEAL OF PRIOR ORDINANCES

This Ordinance, upon its adoption, shall repeal the Yellow Medicine County Tobacco Ordinance dated September 1, 1998.

SECTION 14. EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication.

ADOPTION OF ORDINANCE

Dated: February 9, 2016

Yellow Medicine County Board of Commissioners

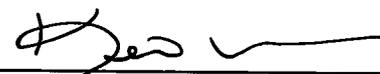


Chairperson
John Berends

Attest: 

County Administrator
Peggy Heglund

APPROVED AS TO FORM AND EXECUTION:



County Attorney
Keith Helgeson