15-01

BIG STONE COUNTY TOBACCO ORDINANCE

Adopted 3-15-2022
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BIG STONE COUNTY TOBACCO ORDINANCE

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BIG STONE COUNTY TOBACCO ORDINANCE

SECTION 1. PURPOSE

Because the County recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates both state and federal law; and because studies, which are hereby accepted and adopted (i.e. CDC, Minnesota Department of Public Health/ASSIST) have shown high school use of any commercial tobacco product has increased to 27.6% in Minnesota; and because nearly 90% of people who smoke begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used 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 several serious health problems which subsequently place a financial burden on all levels of government; this Ordinance shall be intended to regulate the sale 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 youth and young adults against the serious effects associated with the use and initiation 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. APPLICABILITY AND JURISDICTION

This ordinance governs the licensing and regulation of the sale of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products in the unorganized territory of Big Stone County and in any city or town located in Big Stone County that does not license and regulate retail sales of tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products in conformance with the minimum requirements of Minn. Stat. § 461. Retail establishments licensed by a city or town are not required to obtain a second license for the same location under this ordinance.

SECTION 3. 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. Cigar. 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, as it 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 sell licensed products are following and complying with the requirements of this ordinance. Compliance Checks involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. Compliance Checks may also be conducted by the county or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

Subd. 4. 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 nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act.

Subd. 5. Flavored Electronic Delivery Device. "Flavored electronic delivery device" shall mean any electronic delivery device 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 mint, menthol, chocolate, cocoa, 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 an electronic delivery device, 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 electronic delivery device.

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. A standard (0.011) gauge window screen is not considered a wall.

Subd. 7. Licensed Products. "Licensed Products" shall mean any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product, as they are defined by this section.

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

Subd. 9. Moveable Place of Business. "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. 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. 12. Sale. A "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 13. 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 14. Schools. "Schools" shall mean any public or private educational institutions with the purpose of providing academic classroom instruction, trade, craft, computer or other technical training.

Subd. 15. Smoke or Smoking. "Smoke" or "Smoking" shall mean inhaling, exhaling, burning, or carrying any 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 shall include carrying or using an activated electronic delivery device.

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 4. COUNTY TOBACCO RETAILER LICENSE

No person shall sell or offer to sell any licensed product, 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 as set by the Big Stone 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 January 1. Each license issued shall expire on December 31 of the calendar year, unless sooner if 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.

Subd 11. Instructional Program. Licensees must complete and 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.

Subd 12. Proximity to schools. No license will be granted to any person for a retail establishment location that is within 1,000 feet of a school, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a school. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in that same location for at least one year before the date this section was enacted into law.

SECTION 5. 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 21 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 6. 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 7. MANDATORY COMPLIANCE CHECKS

All licensed premises shall be open to inspection by the Big Stone 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. In accordance with state law, the county will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

SECTION 8. 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. By means of any type of vending machine.

B. By means of loosies as defined in Section 3, Subd. 7 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 means of self-service display. All licensed products must 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 must comply with this section within 90 days of the effective date of this ordinance.

E. 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. Legal Age. No person shall sell any licensed product to any person under the age of 21.

A. **Age verification**. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection

B. **Signage.** Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the county, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

Subd. 3. Flavored Products. No person shall sell or offer for sale any flavored electronic delivery device.

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 9. PROHIBITED ACTS

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

Subd. 1. Illegal Procurement. It shall be a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product.

Subd. 2. Use of False Identification. It shall be a violation of this Ordinance for any person to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the

age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Subd. 3. 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 licensed products is prohibited.

SECTION 10. EXCEPTIONS AND DEFENSES

Subd. 1. Religious, Spiritual, or Cultural Ceremonies or Practices. Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

Subd. 2. Reasonable Reliance. It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

SECTION 11. 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. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt.

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 Big Stone 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. Nothing in this section shall prohibit the county from seeking prosecution as a misdemeanor for any alleged violation of this Ordinance for persons aged 21 and older. 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 12. 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:	$ 300.00
Second Offense/at same licensed premise within 24 months:	$600.00
Third and Subsequent Offense/at same licensed premise within 36 months and the license shall be suspended for not less than thirty (30) days.	$1000.00

Upon a fourth violation within a 36-month period, the license will be revoked.

Subd. 2. Persons under the age of 21. Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to noncriminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the county determines to be appropriate. The County Board will consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel, and other interested parties to determine an appropriate remedy for persons under the age of 21 in the county in the best interest of the underage person. The remedies for persons under 21 who use a false identification to purchase or attempt to purchase licensed products may be established by ordinance and amended from time to time.

Subd. 3. Employees of Licensees and Other Individuals. Employees and licensees and other individuals, other than persons under the age of 21, 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 13. 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 14. REPEAL OF PRIOR ORDINANCES

This Ordinance, upon its adoption, shall repeal the Big Stone County Tobacco Ordinance dated.

SECTION 15. EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication.

ADOPTION OF ORDINANCE

Passed and approved by the Board of County Commissioners, Big Stone County, Minnesota, this.

Jeff Klages, Chairman

Attest: Pam Rud
Pam Rud, Coordinator

APPROVED AS TO FORM AND EXECUTION:

Matt Franzese, County Attorney

I, Pam Rud, do hereby certify that this is a true and correct copy of the "BIG STONE COUNTY TOBACCO ORDINANCE" as passed by the Big Stone County Board of Commissioners on.

I further certify that on, the County Commissioners duly approved a Summary of the foregoing Ordinance to be published, pursuant to M.S. 375.51, Subd. 3.

Pam Rud

Pam Rud, Coordinator

Date of Publication of Ordinance Summary: 3-21-22