



**ORDINANCE AMENDMENT #19-5
BOARD OF WRIGHT COUNTY
COMMISSIONERS**

Christine Husom District 1
Derek Vetsch District 2
Mark Daleiden District 3
Michael Potter District 4
Charles Borrell District 5

**DATE ADOPTED:
September 24, 2019**

ORDINANCE AMENDMENT #19-5

**Article 1 - Amendment to Chapter 110 Tobacco Regulations
(see attached)**

**Motion by
Commissioner**

Husom _____

**Seconded by
Commissioner**

Potter _____

Vote:

	YES	
HUSOM	X	_____
VETSCH	X	_____
DALEIDEN		_____
POTTER	X	_____
BORRELL		_____

	NO	
HUSOM		_____
VETSCH		_____
DALEIDEN	X	_____
POTTER		_____
BORRELL	X	_____

STATE OF MINNESOTA)

ss.

County of Wright)

I, Susan Vergin, duly appointed and qualified Assistant County Administrator of the County of Wright, State of Minnesota, do hereby certify that I have compared the foregoing copy of this ordinance amendment with the original minutes of the proceedings of the Board of County Commissioners, Wright County, Minnesota, at their session held on the 24th day of September, 2019, now on file in my office, and have found the same to be a true and correct copy thereof.

Witness my hand and official seal at Buffalo, Minnesota, this 24th day of September, 2019.

Susan Vergin, Assistant County Administrator

ORDINANCE AMENDMENT NUMBER 19-5

THE COUNTY BOARD OF WRIGHT COUNTY HEREBY ORDAINS:

Article I – Amendment to Chapter 110 Tobacco Regulations

Sec. 1.

§ 110.003 DEFINITIONS AND INTERPRETATIONS:

Amend § 110.003:

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.** The system the county uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices and electronic delivery devices are following and complying with the requirements of state law through this chapter. **COMPLIANCE CHECKS** shall involve the use of minors or persons under the age of 21 as by authorized state law through this chapter. **COMPLIANCE CHECKS** shall also mean the use of minors or persons under the age of 21 who attempt to purchase tobacco, tobacco products, tobacco-related devices and electronic 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 electronic delivery devices.

(B) **ELECTRONIC DELIVERY DEVICE.** 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 for legal sale by the United States Food and Drug Administration for use in tobacco cessation treatment, or other medical purposes, and is being marketed and sold solely for that approved purpose.

(C) **INDIVIDUALLY PACKAGED.**

(1) 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 or snuff or chewing tobacco.

(2) Cartons or other packaging containing more than a single pack or other container as described herein shall not be considered **INDIVIDUALLY PACKAGED**.

(D) LICENSED PRODUCTS. The term that collectively refers to any Tobacco, Tobacco-Related Device, Electronic Delivery Device, or Nicotine or Lobelia Delivery Product.

~~(D)~~ **LOCATION.** The building, room, rooms or other compact space or area where tobacco is sold at retail, as specified in the tobacco license application.

(F) LOOSIES. The common term used to refer to single or individually packaged cigars or cigarettes, or any other licensed product that has been removed from its intended retail packaging and offered for sale. **LOOSIES** does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least \$2.50 per cigar.

~~(E)~~ **MINOR.** Any natural person who has not yet reached the age of 18 years.

~~(F)~~ **MOVEABLE PLACE OF BUSINESS.** 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)~~ **RETAIL ESTABLISHMENT.** Any place of business where tobacco, tobacco products, tobacco-related devices and electronic delivery devices are available for sale to the general public. **RETAIL ESTABLISHMENTS** shall include, but not be limited to, grocery stores, convenience stores and restaurants.

~~(H)~~ **SALE.** Any transfer of goods for money, trade, barter or other consideration.

~~(I)~~ **SELF-SERVICE.** Open displays of tobacco, tobacco products, tobacco-related devices and electronic delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices and electronic 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 products, tobacco-related devices and electronic delivery devices between the customer and the licensee or employee. **SELF-SERVICE MERCHANDISING** shall not include vending machines.

~~(J)~~ **TOBACCO** or **TOBACCO PRODUCTS.** Any substance or item containing tobacco leaf, including, but not limited to: cigarettes; cigars; pipe tobacco, snuff; fine cut or other chewing tobacco; any other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking. **TOBACCO PRODUCTS** 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.

(~~K~~M) **TOBACCO-RELATED DEVICES.** Any tobacco product as well as pipe, rolling papers or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco product.

(~~L~~N) **VENDING MACHINE.** Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, tobacco-related devices and electronic delivery 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 products, tobacco-related devices and electronic delivery devices.

(O) **YOUTH-ORIENTED FACILITY.** Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. Youth-oriented facility includes, but is not limited to, schools, playgrounds, recreation centers, and parks.

Sec. 2

§ 110.004 PROHIBITED SALES.

Amend § 110.004:

It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco products, tobacco-related devices and electronic delivery devices:

- (A) To any person under the age of ~~18~~ 21 years;
- (B) By means of any type of vending machine, except as may otherwise be provided in this chapter;
- (C) By means of self-service methods unless allowed under § 110.006(B) of this chapter; ~~and~~
- (D) 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 regulation; ~~;~~ or
- (E) By means of Loosies as defined.

Sec. 3

§ 110.005 VENDING MACHINES.

Amend § 110.005:

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products or tobacco-related devices by the means of a vending machine unless ~~minors~~ persons under the age of 21 are at all times prohibited from entering the licensed establishment.

Sec. 4

§ 110.006 SELF-SERVICE SALES.

Amend § 110.006 (D):

(D) The self-service restrictions described in this section shall not apply to retail establishments which derive at least 90% of their revenue from tobacco and tobacco-related products and which cannot be entered at any time by persons younger than ~~18~~ 21 years of age.

Sec. 5

§ 110.008 COMPLIANCE CHECKS AND INSPECTIONS.

Amend § 110.008(A):

(A) All licensed premises shall be open to inspection by an authorized county official during regular business hours. From time to time, but at least once per year, the county shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minor over the age of 15 years, but less than 18 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices and electronic delivery devices. Minors used for the purpose of compliance checks shall be trained and supervised by 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 and electronic 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 a 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~~ their employee and shall produce any identification, if any exists, for which he or she is asked. The County may also conduct additional compliance checks that involve the participation of a persons between the ages of 18 to 20 years.

Sec. 6

§ 110.026 APPLICATION.

Amend § 110.026 (A)(1):

(A) (1) An application for a license to sell tobacco, tobacco products, tobacco-related devices and electronic 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, the location for which the license is sought and any additional information the county deems necessary. Any retail establishment that is located within 1,000 feet of a youth-oriented facility must provide financial records documenting its annual sales, upon request by the county.

Sec. 7.

§ 110.035 BASIS FOR DENIAL OF LICENSE.

Amend § 110.035 (B):

(B) Grounds for denial are:

(1) The applicant is under the age of ~~18~~ 21 years;

(2) 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, tobacco products, tobacco-related devices and electronic delivery devices;

(3) The applicant has had a license to sell tobacco, tobacco products, tobacco-related devices and electronic delivery devices revoked within the preceding 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; ~~and/or~~

(6) The applicant has failed to pay on a timely basis any administrative fine levied by the county under § 110.999 of this chapter; or

(7) Proximity to youth-oriented facilities. No license will be granted to any person for a retail establishment that derives more than 25% of its gross revenue from the sales of licensed products that is located within 1,000 feet of a youth-oriented facility, as measured by the shortest line from the property lot line of the space to be occupied by the proposed licensee to the nearest property lot line of a youth-oriented facility. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in the same location for at least one year before the date this section was enacted into law.

Sec. 8

§ 110.051 ILLEGAL SALES.

Amend § 110.051:

It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco products, tobacco-related device and electronic delivery device to any ~~minor~~ person under the age of 21.

Sec. 9

§ 110.054 ILLEGAL PROCUREMENT.

Amend § 110.054:

It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco products, tobacco-related device and electronic delivery device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain such items on behalf of a ~~minor~~ person under the age of 21. It shall further be a violation for any person to coerce or attempt to coerce a ~~minor~~ person under the age of 21 to illegally purchase or otherwise obtain for use any tobacco, tobacco products, tobacco-related device and electronic delivery device. This section shall not apply to ~~minor~~ person under the age of 21 lawfully involved in a compliance check.

Sec. 10

§ 110.055 FALSE IDENTIFICATION.

Amend § 110.055:

It shall be a violation of this chapter for any ~~minor~~ person under the age of 21 to attempt to disguise ~~his or her~~ their 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.

Sec. 11

§ 110.999 PENALTY.

Amend § 110.999:

(A) *Licensees.* Any licensee found to have violated this chapter, or whose employees shall have violated this chapter, shall be charged an administrative fine of not less than ~~\$75~~ \$200 for a

first violation of this chapter; not less than \$200 ~~\$500~~ for a second offense at the same licensed premises within a 24-month period; and not less than ~~\$250~~ \$1,000 for a third or subsequent offense at the same location within a 24-month period. In addition, with a ~~third~~ fourth or subsequent offense, the license shall be suspended for not less than ~~seven~~ thirty days. Any violation of federal, state or local tobacco control laws or regulations may also subject the licensee to suspension or revocation of their tobacco license.

(B) *Other individuals.* Other individuals, other than minors regulated by division (C) below, found to be in violation of this chapter shall be charged an administrative fee of not less than \$75 for a first violation of this chapter and not less than \$200 for a second offense within a 24-month period.

(C) *Minors.* Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products, tobacco-related devices or electronic delivery devices ~~shall~~ may be charged an administrative fine of at least ~~\$65~~ \$75 ~~and~~ or shall be required to attend a tobacco-related education class, diversion program, community service, or another penalty that the county determines to be appropriate. ~~an appropriate tobacco education or tobacco cessation program from an approved source.~~ The cost of such program shall be the responsibility of the minor attending the program.

(D) *Payment of fines.* Any administrative fines levied by the county pursuant to this section shall be paid within 30 days of the date of mailing for the citation or the hearing findings issued under §§ 110.070 through 110.074 of this chapter.

(E) *Persons under the age of 21.* Persons under the age of 21 who use false identification to purchase or attempt to purchase Licensed Products may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the county determines to be appropriate.

(F) *Continuing violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(G) *Statutory penalties.* If the administrative penalty authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.

~~(E-H)~~ *Misdemeanor.* Nothing in this section, ~~except for subparts (C) and (E),~~ shall prohibit the county from seeking prosecution as a misdemeanor for any violation of this chapter.

Sec. 12.

Effective Date:

These ordinance amendments shall be effective on January 1, 2020.



Darek Vetsch
Chair, Wright County Board of Commissioners

ATTEST:



Lee Kelly
Wright County Coordinator