

BECKER COUNTY TOBACCO ORDINANCE
ORDINANCE NO. 14

The County Board of the County of Becker, Minnesota, hereby ordains:

1. **Purpose.** Because the Becker County Board recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, and such sales, possession, and use are violations of both state and federal laws; and because many studies have shown that tobacco usage causes 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, to protect minors against the serious effects associated with the illegal use of tobacco and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as state in Minnesota Statute Section 144.391.
2. **Application.** This ordinance shall apply to all of Becker County, Minnesota except for those townships or cities that license and regulate the retail sale of tobacco under an ordinance enacted pursuant to the requirements of Minnesota Statute Section 461.12.
3. **Definitions.**
 - a. **Tobacco or Tobacco Products:** "Tobacco" or "tobacco products" shall mean any substance or item containing tobacco leaf, including, but not limited to, cigarettes; cigars; cheroots; stogies; perique; granulated, lug 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, prepared in such manner as to be suitable for chewing or smoking in a pipe or other tobacco-related devices.
 - b. **Self-Service Merchandising:** "Self-service merchandising" shall mean open displays of tobacco or tobacco products where any person shall have access to tobacco or tobacco 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 tobacco or tobacco products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.
 - c. **Vending Machine:** "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispense tobacco or tobacco products upon the

insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco or tobacco product.

- d. **Individually Packaged:** "Individually packaged" shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco or tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.
 - e. **Minor.** "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.
 - f. **Retail Establishment.** "Retail establishment" shall mean any place of business where tobacco or tobacco products are available for sale to the general public.
 - g. **Sale.** A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.
 - h. **Compliance Checks.** "Compliance Checks" shall mean the system the County uses to investigate and ensure that those authorized to sell tobacco and tobacco products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance.
4. **License.** No person shall sell or offer to sell any tobacco or tobacco products without first having obtained a license to do so from the County.
5. **Application.** An application for a license to sell tobacco or tobacco products shall be made on a form provided by the County Auditor. 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 Becker County Board of Commissioners for action at its next regularly scheduled board meeting. If the County Auditor 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.

6. **Action.** The County Board may either approve or deny the license, or it may delay action for such reasonable period of time necessary to complete any investigation of the application or the applicant it deems necessary.
7. **Term.** All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.
8. **Revocation or Suspension.** Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance or for failure of a licensee to pay any administrative penalty imposed for a violation of this ordinance.
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. No transfer of any license to another location or person shall be valid without the prior approval of the Becker County Board of Commissioners.
10. **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.
11. **Display.** All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
12. **Renewals.** The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but no more than sixty days before the expiration of the current license. 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.
13. **Fees.** No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be established from the time to time by resolution of the Becker County Board of Commissioners.
14. **Basis for Denial of License.** The following shall be grounds for denying the issuance or renewal of a license under this ordinance: however, except as may otherwise be provided by law,

the existence of any particular ground for denial does not mean that the County must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section:

- 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 tobacco or tobacco products.
- c. The applicant has had a license to sell tobacco or tobacco products revoked with 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 application is prohibited by Federal, State or other local law, ordinance or other regulation, from holding such a license.

15. **Sale Prohibited to Minors.** It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco or tobacco product to any minor.

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

17. **Self-Service Sales.**

- a. No license shall offer for sale individually packaged tobacco or tobacco products through means of self-service merchandising.
- b. Cartons and other multipack units may be offered and sold through open displays accessible to the public.
- c. Section 17(b) of this ordinance will expire upon the effective date and implementation of Code of Federal Regulations. Title 21, Part 897. 16(c)
- d. The self-service restrictions described in this section 17 shall not apply to retail stores which derive at least 90 percent of their revenue from tobacco and tobacco-related

products and which cannot be entered at any time by persons younger than 18 years of age.

18. **Responsibility.** All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco or tobacco products on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder.
19. **Illegal Possession.** It shall be a violation of this Ordinance for any minor to have in his or her possession any tobacco or tobacco product. This paragraph shall not apply to minors lawfully involved in a compliance check.
20. **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 tobacco or tobacco products. This paragraph shall not apply to minors lawfully involved in a compliance check.
21. **Compliance Check and Inspections.** All licensed premises shall be open to inspection by the Becker County Sheriff or other authorized county officials 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, minors over the age of fifteen (15) years but less than eighteen (18) years, to enter licensed premises to attempt to purchase tobacco or tobacco products. 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 or tobacco products when such items are obtained or attempted to be obtained as a part of a compliance check. No minor, used in compliance checks shall use or attempt to use false identification misrepresenting the minor's age. All minors lawfully engaged in a compliance check shall truthfully 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.
22. **Violations.**
 - a. **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.

- b. **Hearings.** If a person accused of violation this ordinance requests a hearing shall be scheduled, the time and place of which shall be provided to the accused violator.
- c. **Hearing Offer.** The Becker County Board shall name a hearing officer to serve on an annual basis. The hearing officer shall preside over all hearings conducted under this Ordinance.
- d. **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 penalty to be imposed under Section 21 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 accused violator.
- e. **Appeals.** Any person aggrieved by a decision of the hearing officer may have the decision reviewed in the District Court in the same manner and procedure provided for in Minnesota Statute Section 462.361.
- f. **Criminal Prosecution.** Nothing in this ordinance shall prohibit an alleged violator from being prosecuted criminally under State or Federal law.
- g. **Continuing Violation.** Each violation and every day in which a violation occurs or continues, shall constitute a separate offense.

23. Administrative Penalties.

- a. **Licensee.** If a licensee or employee of a licensee sells tobacco or tobacco products to a minor, or violates any other provision of this ordinance, the licensee shall be charged an administrative penalty of \$75. For a second violation at the same location within 24 months after the initial violation, an administrative penalty of \$200 must be imposed. For a third violation at the same location with 24 months after the initial violation, an administrative penalty of \$250 must be imposed, and the licensee's authority to sell tobacco at that location must be

suspended for not less than seven days.

- b. **Other Individuals.** An individual who sells tobacco or tobacco products to a minor must be charged an administrative penalty of \$50.
- c. **Minors.** Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco or tobacco products, shall be charged an administrative penalty of @25. For second and subsequent offenses, minors shall be charged an administrative penalty of \$25 and may be required to participate in an appropriate educational program.

24. **Exceptions or Defenses.** Nothing in this ordinance shall prevent the providing of tobacco or tobacco products to a minor as a part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as describe by State law.

25. **Severability and Savings Clause.** If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this ordinance.

26. **Effective Date.** This ordinance shall take effect on November 1, 1998.

This Ordinance was enacted by a majority vote of all the members of Becker County Board of Commissioners at a meeting held on the 22nd day of September, 1998.

Dated:

John Murray, Chairperson
Becker County Board

Attested by:

Dated:

Michael Williams, Clerk
Becker County Board