

Retail Tobacco Sales Ordinance 17

AN ORDINANCE REGULATING THE SALE OF TOBACCO-RELATED PRODUCTS

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1.0 TITLE.

This ordinance shall be known, cited and referred to as the Scott County Retail Tobacco Sales Ordinance and shall be referred to herein as the Ordinance.

2.0 PURPOSE.

The Scott County Board of Commissioners finds that substantial scientific evidence exists that use of tobacco-related products causes cancer, heart disease, and various other medical disorders. This Ordinance is adopted for the purpose of promoting the health, safety and general welfare of the residents of Scott County, particularly those residents under eighteen (18) years of age, by prohibiting the sale or dispensing of tobacco products through vending machines and regulating self-service merchandising and sales of tobacco products.

3.0 JURISDICTION.

The provisions of this Ordinance will apply to all businesses selling tobacco-related products within the unincorporated areas of Scott County, and in any town or a home rule charter or statutory city within the county, if the town or city does not license and regulate retail tobacco sales.

4.0 APPLICATION OF RULES.

The language contained in this Ordinance shall be interpreted in accordance with

the following rules as applicable:

1. The singular includes the plural and the plural includes the singular.
2. The present includes the past and future tenses, and the future tense includes the present tense.
3. The word “shall” is mandatory, and the word “may” is permissive.
4. In the event of conflicting provisions, the more restrictive shall apply.
5. The provisions of this Ordinance shall be construed and interpreted to give full force and effect to its intent and purpose.
6. In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of health, safety and welfare.
7. The meanings of words, unless otherwise defined herein, shall have the meaning given in other applicable Scott County ordinances, state statutes and rules, and federal laws.

5.0 DEFINITIONS.

The following words and terms when used in this Ordinance shall have the following meanings unless the context clearly indicates otherwise:

Adult - A person eighteen (18) years of age or older.

Applicant - A person as defined herein, who completes or signs an application for a license to sell tobacco-related products individually or on behalf of a business.

Business - A business selling tobacco-related products.

License Holder - The owner of a business licensed to sell tobacco related products.

Finance Division - The Scott County department charged with the enforcement of the Ordinance.

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

Movable Place of Business - A business whose physical location is not permanent or is capable of being moved or changed.

Person - One (1) or more natural persons; a partnership, including a limited partnership; a corporation, including a foreign, domestic, or nonprofit corporation; a trust; a political subdivision of the state; or any other business organization.

Self-service merchandising - A method of displaying tobacco-related products so as to make the products accessible to the public without the intervention of an applicant, license holder or their agents or employees.

Tobacco-related products - Cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimpl cut, ready, rubbed and other smoking tobacco; snuff, snuff flower, cavendish, plug and twist tobacco; fine cut and other chewing tobaccos; shorts, refuse scripts, clippings, cuttings, and sweepings of tobacco; and other kinds of forms of tobacco prepared in such manner as to be suitable for chewing, sniffing, or smoking in a pipe, rolling paper or other tobacco-related devices.

Vending machine - Any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products and includes vending machines equipped with manual, electric or electronic locking devices.

6.0 LICENSE REQUIRED.

No person shall keep for retail sale, sell at retail or otherwise dispense any tobacco-related product at any place within the jurisdiction of this Ordinance without first obtaining a license and paying a license fee.

1. Application. An application for a license to sell tobacco or tobacco-related products or devices shall be made on a form provided by the Finance Division. The application shall include, but is not limited to, requiring the full name of the applicant, the applicant's residential and business address and telephone numbers, the name of the proposed license holder, the business location for which the license is sought, and a copy of the educational materials the applicant intends to use to educate employees. The completed application along with the application fee shall be submitted to the Finance Division for approval. If the Finance Division determines that an application is incomplete, it shall be returned to the applicant with notice of the deficiencies.

2. Action. The Finance Division may either approve or deny the license or may delay action for such reasonable period of time to permit the completion of any investigation of the application or the applicant deemed necessary. If the license application is approved, a license shall be issued to the applicant. If the application is denied, a notice of denial shall be sent to the applicant at the business address provided on the application with the reason(s) for the denial. The notice shall also inform the applicant of the right to appeal the Finance Division's decision to the hearing officers, as appointed by the Scott County Board, or his designees, pursuant to the process set forth in section 11.0 herein. If a license is mistakenly issued to an applicant

or license holder, or renewed, it shall be revoked by the Finance Division upon the discovery that the person, applicant, or license holder was ineligible for the license under this section.

3. Term. All licenses shall be issued for a period of one year. The license period is from January 1 to December 31.

4. Revocation or Suspension. Any license issued under this section may be revoked or suspended as provided in the Violations and Penalties section of this ordinance pursuant to the process set forth in section 10.0.

5. Transfers. All licenses issued under this section shall be valid only on the business premises for which the license is issued and shall be exhibited to any person upon request.

6. Display. Every license shall be conspicuously posted at the place of business for which the license is issued and shall be exhibited to any person upon request.

7. Renewals. The renewal of a license 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. 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 automatic renewal of the license.

8. Instructional Program. No person shall be issued a license or renewal license to sell tobacco-related products unless an applicant or license holder has an approved program for instructing all employees regarding the legal requirements pertaining to the sale of tobacco-related products at the business premises for which the license was issued. The instructional program shall include, but is not limited to, reviewing the law on the sale of tobacco-related products and requiring employees to request identification from every customer who is under 27 years of age. No license shall be issued unless the applicant or license holder signs a county form attesting that each employee of the applicant or license holder has received training and instruction on the sale of tobacco-related products and the date such training occurred. The training shall include information that the sale of tobacco-related products to minors is illegal, explanation of what proof of age is legally acceptable, and that a sale to a minor can subject the applicant or license holder and their employees to criminal and/or civil liability.

9. Denials. The following shall be grounds for denying the issuance or renewal of a license under this section. The following list is not exhaustive or exclusive:

- a. The applicant is under the age of eighteen (18) years.

b. The applicant has been convicted within the past five (5) years of a violation of any provisions of this Ordinance or a violation of a federal, state, or local law, ordinance, or other regulations relating to tobacco or tobacco-related products or devices.

c. The applicant or license holder has had a license to sell tobacco or tobacco-related products or devices revoked within the preceding twelve (12) months of the date of application, or is subject to penalties under section 10.0.

d. The applicant fails to provide any information required on the license application, or provides false or misleading information.

e. The applicant or license holder has outstanding fines, penalties, or property taxes owed to the county.

7.0 LICENSEE FEE.

The application fee shall be determined by the Scott County Board of Commissioners and shall be paid at the time of application. License fees are not prorated.

8.0 PROHIBITED SALES.

1. Prohibited Sales. No person shall sell, offer for sale, give away, furnish, or otherwise deliver any tobacco, tobacco product, or tobacco-related 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 merchandising or any means whereby the customer may have access to such items without having to request the item from the license holder, their agents or employees. All tobacco-related products shall be stored behind a counter.

d. By any other means, or to any other person, prohibited by federal, state, or other local law, ordinance provision, or other regulation.

2. Exception. A license holder who operates an establishment that sells only tobacco-related products is exempt from the self-service merchandising provision if the license holder prohibits anyone under eighteen (18) years of age from entering the establishment, unless accompanied by a parent, and the license holder conspicuously displays a notice prohibiting persons under eighteen (18) years of age from entering the establishment unless accompanied by a parent.

9.0 MOBILE SALES.

No license shall be issued for the sale of tobacco-related products at a movable place of business, including but not limited to, motorized vehicles, mobile sales kiosks, or trailers.

10.0 VIOLATIONS AND PENALTIES.

1. Revocation or Suspension. Any violation of this Ordinance shall be grounds to revoke or suspend a license.
2. Criminal Penalty. As set forth in Minnesota Statutes Chapter 609:
 - a. It shall be a gross misdemeanor for anyone to sell tobacco or tobacco-related products to a person under the age of eighteen (18) years.
 - b. It shall be a misdemeanor to furnish tobacco-related products to a person under the age of eighteen (18) years.
 - c. It shall be a petty misdemeanor for anyone under the age of eighteen (18) years to smoke, chew, sniff or otherwise use, tobacco or tobacco-related products.
 - d. It shall be a petty misdemeanor for anyone under the age of eighteen (18) years of age to have in his or her possession any tobacco-related products. This section shall not apply to an employee of the license holder under the age of eighteen (18) years while stocking tobacco-related products or lawfully involved in a compliance check..
 - e. It shall be a petty misdemeanor for anyone under the age of eighteen (18) years to purchase, or attempt to purchase tobacco-related products, or for any person to purchase or otherwise obtain such items on behalf of a minor. This section shall not apply to a person under the age of eighteen (18) years who purchases or attempts to purchase tobacco-related products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.
 - f. It shall be a petty misdemeanor for anyone under the age of eighteen (18) years to sell, furnish, or give away any tobacco-related products.
 - g. It shall be a petty misdemeanor 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 minor has been modified or tampered with to represent an age older than the actual age of the minor.
 - h. Upon discovery of a suspected violation, the Scott County Sheriff's Office shall investigate and if appropriate, shall issue a criminal citation to the individual

who made the prohibited sale and, where appropriate, to the minor who purchased the tobacco, as set forth in the previous paragraphs of this subsection.

3. Civil Enforcement. The license holder shall be responsible for the conduct of its agents or employees while they are on the licensed premises. Any violation of this Ordinance shall be considered an act of the license holder for purposes of imposing a civil penalty, license suspension, or revocation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

a. Notice of Violation. Upon the occurrence of a suspected violation, the Scott County Sheriff's Office shall inform the Finance Division of the suspected violation. The Finance Division shall then send to the license holder a written notice of the civil violation. The notice shall advise the license holder of the penalty and the license holder's right to request a hearing regarding the violation of this ordinance pursuant to section 11.0.

b. Civil Penalties. Each license issued hereunder shall be subject to suspension or revocation for violation of any provisions of this Ordinance or the laws of the State of Minnesota as follows:

1. First Violation. The first violation of this Ordinance shall be punishable by a civil penalty of \$300, a suspension of thirty (30) days and administrative costs of \$100.00.

2. Second Violation. A second violation of this Ordinance within any 36-month period shall be punishable by a civil penalty of \$700, a suspension of the license of ninety (90) days and administrative costs of \$125.00.

3. Subsequent Violation. A third or subsequent violation of this Ordinance within any 36-month period shall be punishable by a civil penalty of \$1,000, the revocation of the license and administrative costs of \$150.00. Any licensee whose license is revoked under this section shall not be eligible for renewal for a period of two (2) years after the revocation.

c. Any individual under the age of eighteen (18) years who attempts to purchase, purchases or possesses tobacco shall be subject to a civil fine of \$100 and administrative/education costs of \$50.00. Any individual under the age of eighteen (18) years who attempts to purchase or purchases tobacco with a false, forged or fake identification shall be subject to a civil fine of \$100 and administrative/education costs of \$50.00.

d. Any civil penalty, suspension or revocation or combination thereof under this section does not preclude criminal prosecution under this ordinance or

Minnesota Statutes Section 609.685.

11.0 HEARING ON DENIAL OR VIOLATION.

1. Notice of violation. Upon discovery of a suspected violation, the alleged violator shall be issued, personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of the right to be heard regarding the alleged violations.

2. Hearing. Following receipt of a notice of denial issued under section 6.0 or a notice of a violation and penalty issued under section 10.0, an applicant or license holder may request a hearing before the Scott County Administrator, as appointed hearing officer by Scott County Board of Commissioners, or his designees. A request for a hearing shall be made by the applicant or license holder in writing and filed with the Finance Division within ten (10) days of the mailing of the notice of denial or alleged violation. Following receipt of a written request for hearing, the applicant or license holder shall be afforded an opportunity for a hearing before the hearing officer.

3. Findings. If after the hearing, the applicant or license holder is found ineligible for a license, or in violation of this ordinance, the hearing officer may affirm the denial, impose a fine, issue a suspension or revocation, or impose any combination thereof as set forth in section 10.0. The decision shall be in writing and set forth the reasons for the findings of the hearing officer. A copy shall be provided to the applicant or license holder. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and copy provided to the applicant or license holder.

4. Appeal. Appeals of any decision made by the hearing officer may be filed with the Scott County Board of Commissioners. Any appeal of the decision of the hearing officer must be filed in writing within ten days of the mailing of the hearing officer's decision. Appeals of the decision of the Scott County Board of Commissioners shall be filed in District Court.

5. Default. If the applicant or license holder has been provided written notice of the denial or violation and if no request for a hearing is filed within the ten (10) day period, then the denial, penalty, suspension and/or revocation imposed pursuant to section 10.0 shall take immediate effect by default. The Finance Division shall mail notice of the denial, fine, suspension, and/or revocation to the applicant or license holder. The Scott County Sheriff's Office shall investigate compliance with the suspension or revocation.

12.0 COMPLIANCE CHECKS.

All licensed premises shall be open to inspection by local law enforcement during regular business hours. The Scott County Sheriff's Office shall conduct unannounced compliance checks at least once each calendar year at each location where tobacco is

sold to test compliance with Minnesota Statutes Section 609.685 and this ordinance. Compliance checks shall utilize minors over the age of fifteen (15), but under the age of eighteen (18), who, with the prior written consent of a parent or guardian, attempt to purchase tobacco under the supervision of a law enforcement officer or other designated personnel. 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.

13.0 AFFIRMATIVE DEFENSE.

It is an affirmative defense to a charge under this Ordinance if the license holder proves by a preponderance of the evidence that the license holder reasonably and in good faith relied on proof of age as described in Minnesota Statutes Section 340A.503, subd. 6, in making the sale of tobacco-related products.

14.0 SEVERABILITY.

If any provision of this Ordinance is for any reason held to be invalid, that provision of the Ordinance shall be considered severable from the rest of the Ordinance and any decision declaring a provision of this Ordinance to be invalid shall not affect the validity of the remaining provisions of this Ordinance.

15.0 NOTICE.

The County shall make reasonable efforts to send the Scott County Community Health Services and tobacco retailers thirty (30) days mailed notice of proposed amendments to this ordinance.

16.0 EFFECTIVE DATE.

This Ordinance shall be in full force and effect from and after _____, 1998.

Adopted this _____ day of _____, 1998, by the Scott County Board of Commissioners

SCOTT COUNTY

By _____
Art Bannerman, Chair
Scott County Board of
Commissioners

Date: _____, 1998

Attest:

David J. Unmacht
Scott County Administrator

Date: _____, 1998

Approved as to form:

Thomas J. Harbinson
Scott County Attorney

Date: _____, 1998