

**ORDINANCE NO. 2011-02**

**ORDINANCE REGULATING  
SALES AND LICENSING OF TOBACCO,  
TOBACCO PRODUCTS AND  
TOBACCO-RELATED DEVICES  
FOR  
CASS COUNTY, MINNESOTA**



**EFFECTIVE DATE: November 15, 2011**



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TOBACCO PRODUCTS AND TOBACCO-RELATED DEVICES**

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The Cass County Board of Commissioners Hereby Ordains:

**Section 100. Purpose.** Pursuant to authority granted under Minnesota Statutes Chapter 461, the purpose of this ordinance is to regulate sales and licensing of tobacco, tobacco products and tobacco-related devices and to restrict access to tobacco, tobacco products and tobacco-related devices for persons under the age of 18 years.

**Section 200. Definitions.** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following terms shall have the definitions given to them:

**Subd. 1 Tobacco, Tobacco Products.** “Tobacco” and “tobacco products” shall have the same meaning as that contained in Minnesota Statutes Section 609.685, subdivision 1(a) (2010).

**Subd. 2 Tobacco-Related Devices.** “Tobacco related devices” shall have the same meaning as that contained in Minnesota Statutes Section 609.685, subdivision 1(b) (2010).

**Subd. 3 Self-Service.** “Self-service” shall mean open displays of tobacco, tobacco products or tobacco-related devices in a manner where any person has access to the tobacco, tobacco products or tobacco-related devices, without assistance from a clerk/employee of the licensee. Self-service shall not include vending machines.

**Subd. 4 Vending Machine.** “Vending machine” shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products or tobacco-related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to make a purchase.

**Subd. 5 Minor.** “Minor” shall mean any natural person who has not yet reached the age of eighteen (18) years.

**Subd. 6 Retailer.** “Retailer” shall have the same meaning as that contained in Minnesota Statutes Section 297F.01 Subd. 14 (2010).

**Subd. 7 Moveable Place of Business.** “Moveable Place of Business” shall refer to 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.

**Subd. 8 Sale.** “Sale” shall have the same meaning as that contained in Minnesota Statutes Section 297F.01 Subd. 16 (2010).

**Subd. 9 Compliance Checks.** “Compliance Checks” shall mean the system the county uses to investigate and ensure that those authorized to sell tobacco, tobacco products and tobacco-related devices are following and complying with the requirements of State law to prohibit youth access through this ordinance. Compliance checks shall be conducted in accordance with the laws of the State of Minnesota. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws relating to tobacco, tobacco products and tobacco-related devices.

**Section 300. License.** No person shall sell or offer to sell any tobacco, tobacco product or tobacco-related device without first having obtained a license to do so from the county, unless located within a town or a home rule charter or statutory city that has retained licensing authority under Minnesota Statutes 461.12, Subdivision 1.

**Subd. 1 Application.** An application for a license to sell tobacco, tobacco products or tobacco-related 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 and any additional information the county deems necessary. Upon receipt of a completed application, the County Auditor-Treasurer shall forward the application to the County Board for action at its next regularly scheduled Board meeting. If the County Auditor-Treasurer determines that an application is incomplete, the application shall be returned to the applicant with notice of the deficiencies.

**Subd. 2 Action.** The County Board may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation it deems necessary. If the County Board approves the license, the County Auditor-Treasurer shall issue the license to the applicant. If the County Board denies the license, the notice of the denial shall be given to the applicant along with the basis for denial.

**Subd. 3 Term.** Generally, licenses issued under this ordinance shall be valid for one calendar year from the date of issuance beginning January 1<sup>st</sup>. Licenses may be issued and granted under this ordinance for a fractional year thereof upon their expiration under another licensing authority, or in the case of a new license application. A license issued for a period of less than one calendar year will expire on December 31<sup>st</sup> of that year.

**Subd. 4 Revocation or Suspension.** Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties sections of this ordinance.

**Subd. 5 Transfers.** All licenses 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.

**Subd. 6 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. 7 Display.** All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

**Subd. 8 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 issued 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.

**Section 400. Fees.** No license shall be issued under this ordinance until the appropriate license fee is paid in full. The fee for a license under this ordinance shall be established by resolution of the County Board.

**Section 500. Basis for Denial of License.** The following shall be grounds for denying the issuance or renewal of a license under this ordinance. 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 eighteen (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, tobacco products or tobacco-related devices.
- C. The applicant has had a license to sell tobacco, tobacco products or tobacco-related devices revoked within the preceding twelve months of the date of application.
- D. The applicant fails to provide 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.
- F. The applicant is delinquent in the payment of Federal, State, or local taxes.
- G. The applicant or proposed business location is in violation of any local ordinances.

**Section 600. Prohibited Sales.** It shall be a violation of this ordinance for any person to sell or offer to sell 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 methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product or tobacco-related device and whereby there is not a physical exchange of the tobacco, tobacco product or tobacco-related device between the licensee or the licensee's employee and the customer.
- D. 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.
- E. Including any product sold to minors containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined by Minnesota Statutes 609.685, unless that product 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.
- F. 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.

## **Section 700. Responsibility.**

**Subd. 1 Licensees.** All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products or tobacco-related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder.

**Subd. 2 Clerks/Employees.** Notwithstanding Section 700 Subd. 1, the clerk or employee specifically involved in a compliance check violation or determined to have violated the provisions of this ordinance in connection with the sale of tobacco, tobacco products or tobacco-related devices shall be personally liable to pay an administrative fee in addition to any fees imposed upon the employer or license holder.

**Section 800. Compliance Checks and Inspections.** All licensed premises shall be open to an authorized county official during regular business hours. 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 the licensed premise to attempt to purchase tobacco, tobacco products or tobacco-related 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 or tobacco-related 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 employee and shall produce any identification, if any exists, for which he or she is asked.

**Section 900. Other Illegal 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 tobacco, tobacco product or tobacco-related device 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 tobacco, tobacco product or tobacco-related device. 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 tobacco, tobacco product or tobacco-related device.

**Subd. 4 Illegal Procurement.** It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product or tobacco-related device, and 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 for use any tobacco, tobacco product or tobacco-related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

**Subd. 5 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. 6 Distributing to Unlicensed Retailer.** It shall be a violation of this ordinance to distribute tobacco, tobacco products or tobacco-related devices to an unlicensed retailer within the county's jurisdiction.

**Subd. 7 Retailers Acquiring Tobacco, Tobacco Products or Tobacco-Related Devices Without a License.** It shall be a violation of this ordinance to acquire tobacco, tobacco products or tobacco-related devices to offer for sale without first obtaining a retail license within the county's jurisdiction.

### **Section 1000 Violations.**

**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 in writing to the County Administrator, a hearing shall be scheduled within 30 days of the request by the licensee or clerk/employee of a licensee, the time and place of which shall be published and provided to the alleged violator.

**Subd. 3 Hearing Officer.** The County Administrator or 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 1300 of this ordinance, shall be issued in writing to the violator. Violators whose administrative penalty or license suspension is upheld at the hearing must pay the administrative penalty within seven (7) days. License suspension shall begin on the 7<sup>th</sup> day following the hearing.

If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be issued to the acquitted 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 Continued Violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

**Section 1100 Administrative Penalties.** The County Board shall establish by resolution and make available to the public a schedule of administrative penalties for violations of this ordinance. Prior to consideration of proposed changes to the administrative penalty schedule, all license holders will be provided at least thirty (30) days written notice.

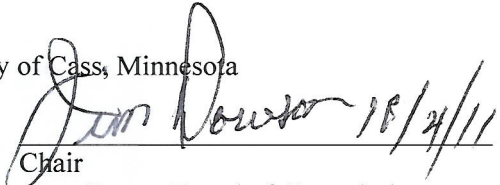
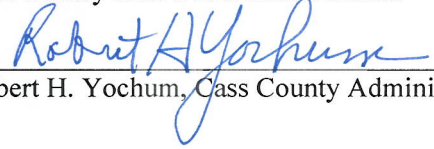
**Section 1200 Criminal Penalties.** Nothing in this ordinance shall prohibit the State of Minnesota or Cass County from seeking prosecution as a misdemeanor offense for any alleged violation of this ordinance, punishable according to the laws of the State of Minnesota.

**Section 1300 Exceptions and Defenses.** Nothing in this ordinance shall prevent the providing of tobacco, tobacco products 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 the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

**Section 1400 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 to invalidate or affect the validity and enforceability of any other section or provision of this ordinance.

**Section 1500 Effective Date.** This ordinance as amended shall take effect November 15, 2011.

**Section 1600 Adoption.** The Ordinance Regulating the Sale of Tobacco, Tobacco Products and Tobacco-Related Devices in Cass County, Minnesota is hereby adopted by the Cass County Board of Commissioners on this 7th day of November, 2006 and amended this 4<sup>th</sup> day of October, 2011.

County of Cass, Minnesota  
By:  10/24/11  
Chair  
Cass County Board of Commissioners  
Attest:   
Robert H. Yochum, Cass County Administrator

Commissioner Peterson offered Resolution No. 49-11 and moved its adoption, Commissioner Downham seconded:

**BE IT HEREBY RESOLVED by the Cass County Board of Commissioners, pursuant to Cass County Tobacco Ordinance 2011-02, Section 1100 Administrative Penalties, the following administrative penalties are established for ordinance violations:**

**Licensee.** Any licensee found to have violated this ordinance, or who employees shall have violated this ordinance, shall be charged an administrative fine of \$75 for the first violation of this ordinance; \$200 for a second offense at the same licensed premises within a twenty-four month period; and \$250 for a third or subsequent offense at the same location within a twenty-four month period. In addition, after the third offense, the license shall be suspended for not less than seven (7) days.

**Clerks/Employees.** Clerks or employees of a licensee found to be in violation of this ordinance shall be charged an administrative fine of \$50.

**Minors.** Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase tobacco, tobacco products or tobacco-related devices, shall be required to complete tobacco related education classes, diversion programs, community services or other penalty.

**Retailers Without License.** Any retailer found by a court of law to have violated this ordinance by the sale of tobacco, tobacco products, or tobacco-related devices without obtaining a valid license under this ordinance, shall be charged an administrative fine of \$200 for a first violation of this ordinance; \$250 for a second offense at the same licensed premises within a twenty-four month period; and \$300 for a third or subsequent offense at the same location within a twenty-four month period.

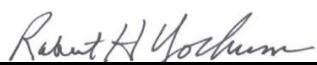
Resolution No. 49-11 was adopted by majority vote: Ayes: Downham, Dowson, Gaalswyk, Kangas, Peterson. Nays: None.

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STATE OF MINNESOTA            }  
County of Cass                 }    ss.  
Office of County Administrator    }

I, Robert H. Yochum, Administrator of the County of Cass, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 4<sup>th</sup> day of October A. D. 2011, and the same is a true and correct copy of the whole thereof.

WITNESS MY HAND AND SEAL OF MY OFFICE  
at Walker, Minnesota, this 4<sup>th</sup> day of October, A. D. 2011.

  
\_\_\_\_\_  
Robert H. Yochum  
Cass County Administrator