

DATE December 21, 2010

DEPARTMENT Public Health and Environment

MOTION BY COMMISSIONER Peterson

SECONDED BY COMMISSIONER Weik

RESOLUTION ADOPTING THE WASHINGTON COUNTY
YOUTH ACCESS TO TOBACCO ORDINANCE NO. 185

WHEREAS, Minn.Stat § 461.12 to 461.18 regulates the sale of tobacco and tobacco products in an attempt to decrease its access by youth; and

WHEREAS, Minn. Stat. § 461.12 permits the County Board to license and regulate the retail sale of tobacco in the unincorporated area of the County and in those towns or cities that do not license and regulate retail tobacco sales; and

WHEREAS, the 2010 Minnesota Tobacco Modernization and Compliance Act was passed by the state to include new tobacco, tobacco products, tobacco related devices and nicotine delivery products; and



WHEREAS, the current Youth Access to Tobacco Ordinance is No.133 adopted on June 2, 1998 and No.135 amended on September 22, 1998; and

WHEREAS, on November 16, 2010 a presentation was made by the Department of Public Health and Environment to the County Board about youth access to tobacco, the prevalence of smoking among youth, the new tobacco products being sold, and proposed revisions to the ordinance; and

WHEREAS, on December 21, 2010 the Washington County Board of Commissioners conducted a public hearing to consider adopting a new Youth Access to Tobacco Ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Washington County Board of Commissioners hereby adopts the Washington County Youth Access to Tobacco Ordinance No. 185 to take effect upon the passage of this resolution and its publication according to law.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that Washington County Ordinance No. 133 and No. 135 are hereby repealed, said repeal to take effect on the date Washington County Ordinance No. 185 becomes effective.

ATTEST: 
COUNTY ADMINISTRATOR

COUNTY BOARD CHAIR

	YES	NO
HEGBERG	<u>X</u>	___
KRIESEL	<u>X</u>	___
PETERSON	<u>X</u>	___
PULKRABEK	<u>X</u>	___
WEIK	<u>X</u>	___

Washington County Youth Access to Tobacco Ordinance #185



Adopted
December 21, 2010
by the
Washington County Board

**WASHINGTON COUNTY
YOUTH ACCESS TO TOBACCO ORDINANCE
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**WASHINGTON COUNTY DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
YOUTH ACCESS TO TOBACCO ORDINANCE**

An ordinance relating to the sale, possession and use of Tobacco, Tobacco Products, Nicotine Delivery Products and Tobacco Related Devices in Washington County and to reduce the illegal sale, possession, and use of such items to and by Minors. This ordinance is enacted pursuant to the authority contained in Minnesota Statute § 145A.05, § 375.51 and § 461.12 to § 461.18.

Section 1 Purpose and Scope

- 1.1 Purpose.** Because Washington County recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use Tobacco, Tobacco Products, Nicotine Delivery Products and Tobacco Related Devices, and such sales, possession and use are violations of both State and Federal laws; and because studies, which are hereby accepted and adopted¹, have shown that most smokers begin smoking before they reach the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking 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 is intended to regulate the sale, possession and use of Tobacco, Tobacco Products, Nicotine Delivery Products and Tobacco Related Devices for the purpose of enforcing and furthering existing laws, to protect Minors against the serious effects associated with the illegal use of Tobacco, Tobacco Products, Nicotine Delivery Products and Tobacco Related Devices 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.
- 1.2 Scope.** This ordinance is applicable in any unorganized territory of the county and in any town or home rule charter or statutory city which does not license and regulate retail tobacco sales. Retail establishments licensed by a town or city to sell tobacco are not required to obtain a second license for the same location pursuant to this ordinance.

¹ Washington County has relied upon the following sources: Preventing Tobacco Use Among Young People, A Report of the Surgeon General; Youth Access to Tobacco - Summary Points, Youth and Elders Against Tobacco Use; Cigarette Use by School District; Youth Access to Tobacco, Minnesota Assist; Tobacco Sales to Youth and Nicotine Addiction in Adolescence, both by the Centers for Disease Prevention and Control; Minnesota Statute § 609.685

Section 2 Definitions and Interpretations

For the purpose of this ordinance the following words shall have the following meanings:

- 2.1 Tobacco or Tobacco Products** means cigarettes and 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, cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for legal 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.
- 2.2 Tobacco Related Devices** means any Tobacco Product as well as a 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 Products.
- 2.3 Self-service Merchandising** means open displays of Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related Devices in any manner where any person shall have access to the Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related 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 Product, Nicotine Delivery Product or Tobacco Related Device between the customer and the licensee or employee. Self-service Merchandising shall not include vending machines.
- 2.4 Vending Machine** means any mechanical, electric or electronic, or other type of device which dispenses Tobacco, Tobacco Products, Nicotine Delivery 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 purchase the Tobacco, Tobacco Product, Nicotine Delivery Product or Tobacco Related Device. Vending Machine includes, but is not limited to, those machines equipped with manual, electric or electronic locking devices which may only be activated by the Licensee for each individual sale.
- 2.5 Individually Packaged** means the practice of selling any Tobacco or Tobacco Product or Nicotine Delivery 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 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.

Section 2 Definitions and Interpretations

- 2.6 **Loosies** means the common term used to refer to a single or individually packaged cigarette.
- 2.7 **Minor** means any natural person who has not yet reached the age of eighteen (18) years.
- 2.8 **Retail Establishment** means any place of business where Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related Devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores and restaurants.
- 2.9 **Moveable Place of Business** means 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.
- 2.10 **Sale** means any transfer of goods for money, trade, barter or other consideration.
- 2.11 **Compliance Checks** means the system the county uses to investigate and ensure that those authorized to sell Tobacco, Tobacco Products, Nicotine Delivery Products and Tobacco Related Devices are following and complying with the requirements of this ordinance. Compliance Checks shall involve the use of Minors as authorized by this ordinance. Compliance Checks shall also mean the use of Minors who attempt to purchase Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related 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, Nicotine Delivery Products and Tobacco Related Devices.
- 2.12 **Licensing Authority** means the Washington County Department of Public Health and Environment.
- 2.13 **Nicotine Delivery Products** means a product 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 Statute § 609.685.

Section 3 License

It shall be illegal for anyone to sell or offer to sell any Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related Devices in Washington County without first having obtained a license to do so from the Licensing Authority.

Section 3 License

- 3.1 Application.** An application for a license to sell Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related Devices shall be made on a form provided by the Licensing Authority. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name and location of the business for which the license is sought and any additional information the Licensing Authority deems necessary. If the Licensing Authority shall determine 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.
- 3.2 Action.** The Licensing Authority may either approve or deny the license or it may delay action for such reasonable period of time as is necessary to complete any investigation of the application or the applicant. If the designated Licensing Authority shall approve the license, the designated official shall issue the license to the applicant. If the designated Licensing Authority denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.
- 3.3 Term.** All licenses issued under this ordinance shall be valid for one calendar year from January 1 through December 31.
- 3.4 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.
- 3.5 Transfers.** All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the applicant 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 Licensing Authority.
- 3.6 Moveable Place of Business.** No license shall be issued to a Moveable Place of Business. Only fixed location businesses may be eligible to be licensed.
- 3.7 Display.** All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- 3.8 Renewals.** The renewal of a license issued under this section shall be done in the same manner as the original application. A request for a renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license.

Section 4 Fees

No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The license fee will be established annually by the County Board.

Section 5 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 Licensing Authority 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.

- 5.1 The applicant is under the age of 18 years.
- 5.2 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 or Tobacco Products or Nicotine Delivery Products or Tobacco Related Devices.
- 5.3 The applicant has had a license to sell Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related Devices revoked within the preceding 12 months of the date of application.
- 5.4 The applicant fails to provide any information required on the application or provides false or misleading information.
- 5.5 The applicant is prohibited by Federal, State or other local law, ordinance or other regulation from holding such a license.

Section 6 Prohibited Sales

It shall be a violation of this ordinance for anyone to sell or offer to sell any Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related Devices:

- 6.1 Without first having obtained a license to do so from the Licensing Authority.
- 6.2 To any person under the age of 18 years.
- 6.3 To sell tobacco use cessation products as described in Minnesota Statute § 609.685 to any person under the age of 18 except as legally allowed by the United States Food and Drug Administration with a prescription.
- 6.4 By means of any type of Vending Machine, as limited according to Minnesota Statute § 461.18.

Section 6 Prohibited Sales

- 6.5 By means of Self-service Merchandising 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, Nicotine Delivery Product or Tobacco Related Device and whereby there is not a physical exchange of the Tobacco, Tobacco Product, Nicotine Delivery Product or Tobacco Related Device between the licensee or the licensee's employee and the customer.
- 6.6 By means of Loosies as defined in Section 2 of this ordinance.
- 6.7 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.
- 6.8 By any other means, to any other person or in any other manner or form prohibited by Federal, State or other Washington County ordinance provision or other regulation.

Section 7 Self-Service Sales

All Tobacco, Tobacco Products, Nicotine Delivery Products and Tobacco Related Devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public.

Section 8 Responsibility

All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of Tobacco, Tobacco Products, Nicotine Delivery 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. 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 appropriate law or regulation.

Section 9 Compliance Checks and Inspections

All licensed premises shall be open to inspection by the local law enforcement or other authorized county official during regular business hours. From time to time, but at least twice per year, the Licensing Authority shall conduct Compliance Checks by engaging, with the written consent of their parents or guardians, Minors over the age of 15 years but less than 18 years, to enter the licensed premise to attempt to purchase Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related Devices. Minors used for the purpose of Compliance Checks shall be 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, Nicotine Delivery Products or Tobacco Related Devices when such items are obtained or attempted to be obtained as a 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. 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.

Section 10 Other Illegal Acts

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

10.1 Illegal Possession. It shall be a violation of this ordinance for any Minor to have in his or her possession any Tobacco, Tobacco Product, Nicotine Delivery Product or Tobacco Related Device. This subdivision shall not apply to minors lawfully involved in a Compliance Check.

10.2 Illegal Use. It shall be a violation of this ordinance for any Minor to smoke, chew, sniff, inhale, snort, absorb, dissolve, or ingest by any other means or otherwise use any Tobacco, Tobacco Product, Nicotine Delivery Product or Tobacco Related Device.

10.3 Illegal Procurement. It shall be a violation of this ordinance for:

- (1) Any Minor to purchase or attempt to purchase or otherwise obtain any Tobacco, Tobacco Product, Nicotine Delivery Product or Tobacco Related Device
- (2) Any person to purchase or otherwise obtain such items on behalf of a Minor.
- (3) Any person to coerce or attempt to coerce a Minor to illegally purchase or otherwise obtain or use any Tobacco, Tobacco Product, Nicotine Delivery Product or Tobacco Related Device.

This subdivision shall not apply to minors lawfully involved in a Compliance Check.

10.4 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.

Section 10 Other Illegal Acts

10.5 Illegal Sales by Persons Under the Age of 16. It shall be a violation of this ordinance:

- (1) For any minor to sell Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related Devices.
- (2) For a licensee to cause or permit a minor to sell Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related Devices.

Section 11 Enforcement and Penalties

11.1 Enforcement. All provisions of this ordinance relating to licensing may be enforced pursuant to the Washington County Administrative Ordinance.

11.2 Misdemeanor Prosecution. Nothing in this section shall prohibit Washington County from seeking prosecution as a misdemeanor for any violation of this ordinance. If Washington County elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

11.3 Continued Violations. Each violation and every day in which a violation occurs or continues, shall constitute a separate offense.

11.4 Administrative Penalties. The Licensing Authority may issue the following administrative penalties for violations of this ordinance:

- (1) Licensee. Any licensee found to have violated this ordinance or whose employee shall have violated this ordinance shall be charged an administrative fine of \$200 for the first violation of this ordinance; \$400 for the second offense at the same licensed premises within a 24-month period; and \$600 for the third offense within a 24-month period after the first offense. In addition, after the third offense, the license shall be suspended for not less than thirty (30) days. After the fourth offense within a 24-month period, the license shall be revoked.
- (2) Other Individuals. Other individuals, other than Minors regulated by section, 11.4(3), found to be in violation of this ordinance shall be charged an administrative fee of \$50.
- (3) Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase Tobacco, Tobacco Products, Nicotine Delivery Products or Tobacco Related Devices, shall be referred to the Washington County Attorney's "Citations for Tobacco Offenses" procedure.

Section 12 Exceptions and Defenses

Nothing in this ordinance shall prevent the providing of Tobacco, Tobacco Products, Nicotine Delivery 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 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 serve as an invalidation or effect the validity and enforceability of any other section or provision of this ordinance.


Section 14 Repeal of Washington County Youth Access to Tobacco Ordinance #133 and #135


Washington County Youth Access to Tobacco Ordinance #133 and 135 as adopted on June 9, 1998 and September 22, 1998 respectively, is hereby repealed and superseded by this Ordinance.

Section 15 Effective Date

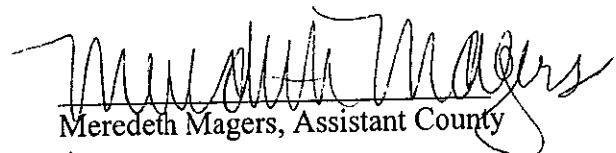
This Ordinance shall become effective immediately upon passage by the County Board and publication according to law.

Passed by the Board of County Commissioners of Washington County, Minnesota, December 21, 2010


Bill Pulkrabek, Chair
Board of County Commissioners

Attest

James R. Schug, County Administrator

Approved as to form and legality:


Meredith Magers, Assistant County
Attorney

Ordinance prepared by:

Washington County Department of
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