

Tobacco Ordinance #27

An ordinance relating to the sale, possession, and use of tobacco, tobacco products, and tobacco related devices in the county and to reduce the illegal sale, possession, and use of such items to and by minors.

The Hubbard County Board Ordains:

Section 100. Purpose. This ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco 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, 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.

Section 200. Definitions and Interpretations.

Subd. 1 Tobacco or Tobacco Products. "Tobacco" or "Tobacco products" shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; pipe tobacco; snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking.

Subd. 2 Tobacco Related Devices. "Tobacco related devices" shall mean 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.

Subd. 3 Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco products, or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco 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, or tobacco related device between the customer and the licensee or employee. Self-service merchandising 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 purchase the tobacco, tobacco product, or tobacco related device.

Subd. 5 Individually packaged. "Individually packaged" shall mean 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. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

Subd. 6 Loosies. "Loosies" shall mean the common term used to refer to a single or individually packaged cigarette.

Subd. 7 Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 8 Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco 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.

Subd. 9 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. 10 Sale. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 11 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 this ordinance.

Section 300 License. No person shall sell or offer to sell any tobacco, tobacco products, or tobacco related device without first having obtained a license to do so from the county. 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 an automatic renewal of the license.

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 properly completed application, the Auditor shall forward the application to the County Board for action at its next regularly scheduled meeting. Application should include mandatory disclosure of any prior violations or penalties if application is a renewal.

Applicant must meet the following requirements:

- A. The applicant is at least 18 years of age.
- B. The applicant has not 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 tobacco related devices.
- C. The applicant has not 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 must accurately provide any information required on the application.
- E. The applicant is not prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

Subd. 2 Action. The Hubbard 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 of the application or the applicant it deems necessary.

Subd. 3 Term. All licenses issued under this ordinance shall be valid for one calendar year from January - December with first time licenses prorated.

Subd. 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.

Subd. 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 person to whom the license was issued. No transfer of any license to another location or person shall be allowed.

Subd. 6 Moveable Place of Business. No license shall be issued to a moveable place of business.

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.

Section 400. 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 set by the County Board.

Section 500. 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, except as may otherwise be provided in this ordinance. (**Note:** See Section 600, "Vending Machines".)
- C. By means of self-service methods, loosies as defined in Section 200 of this ordinance or 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.
- 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.

Section 600. Vending Machines. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

Section 700. Self-Service Sales. All tobacco, tobacco 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. Any retailer selling tobacco, tobacco products, or tobacco related devices at the time this ordinance is adopted shall comply with this Section within 180 days. The FDA contains an exemption for stores where minors are, at all times, prohibited from entering. The State law further restricts this exemption to stores that generate ninety (90) percent or more of their revenues from the sale of tobacco and tobacco related products.

Section 800. Responsibility. All licenses 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. 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 applicable law or regulation.

Section 900. 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. At the discretion of local law enforcement, the county shall conduct unannounced 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 supervised by designated law enforcement officers or other designated county personnel. Minors used for compliance checks shall not be charged for 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 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 for which he or she is asked.

Section 1000. 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 or 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.

Section 1100 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, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Subd. 3 Hearing Officer. County Board Representative on the Planning Commission 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 1200 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 acquitted accused 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 Misdemeanor Prosecution. Nothing in this Section shall prohibit the county from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If the county elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Subd. 7 Continued Violations. Each violation, and every day in which a violation occurs or continues, may constitute a separate offense.

Section 1200 Penalties.

Subd. 1 Licensees. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$75 for a 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 days.

Subd. 2 Other Individuals. Other individuals, other than minors regulated by subdivision 3 of this Subsection, found to be in violation of this ordinance shall be charged an administrative fee of \$50.

Subd. 3 Minors. Minors found in unlawful possession of, or who unlawfully purchased or attempts to purchase, tobacco, tobacco products, or tobacco related devices, shall be cited and referred to Tobacco Offender Diversion Program.

Subd. 4 Misdemeanor. Nothing in this Section shall prohibit the county from seeking prosecution as a misdemeanor for any violation of this ordinance.

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 the 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 as an invalidation or effect the validity and enforceability of any other section or provision of this ordinance.

Section 1500 Effective Date. This ordinance shall take effect upon approval by county board and publication in official newspaper.

Adopted and passed by the Hubbard County Board of Commissioners the 6th day of May, 1998.

/s/ Dick Devine
Chairman, Hubbard County Board of Commissioners

ATTEST: /s/ Pam Heeren
Auditor, Hubbard County