

SWIFT COUNTY TOBACCO ORDINANCE

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SWIFT COUNTY TOBACCO ORDINANCE

SECTION 1. PURPOSE

Because the County recognizes that the sale of commercial tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products to persons under the age of 21 violates state and federal law; and because studies, which are hereby accepted and adopted (i.e. CDC, Minnesota Department of Public Health/ASSIST) have shown that youth use of any commercial tobacco product has increased to 27.6% in Minnesota; and because most people who smoke begin smoking before they have reached the age of 21 years and that those persons who have reached the age of 21 years without having started smoking are significantly less likely to begin smoking; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use 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 shall be intended to regulate the sale of commercial tobacco, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products, for the purpose of enforcing and furthering existing laws 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 2. DEFINITIONS AND INTERPRETATIONS

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural, and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given them:

Subd. 1. Child-resistant packaging. "Child-resistant packaging" shall mean packaging that meets the definition as set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, when tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

Subd. 2. Compliance Checks. "Compliance Checks" shall mean the system used by the County investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. Compliance checks may involve the use of persons under the age of 21 as authorized by this Ordinance and applicable state and federal laws. Compliance checks may also mean the use of persons under the age of 21 who attempt to purchase licensed products 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 licensed products.

Subd. 3. Electronic Delivery Device. "Electronic Delivery Device" shall mean any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic Delivery Device includes but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other product name or descriptor. Electronic Delivery Device shall include any component part of such a product whether or not sold separately. Electronic Delivery Device excludes drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

Subd. 4. Indoor Area. "Indoor Area" shall mean all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A standard (0.011) gauge window screen is not considered a wall.

Subd. 5. Licensed Products. "Licensed Products" shall mean any tobacco, tobacco related device, electronic delivery device, or nicotine or lobelia delivery device, as they are defined by this section.

Subd. 6. Loosies. "Loosies" shall mean the common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. "Loosies" does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

Subd. 7. Moveable Place of Business. "Moveable Place of Business" shall refer to any form of business whose physical location is not permanent, including, but not limited to, any business operated out of a motorized vehicle, mobile sales kiosk, trailer, or other structure or equipment not permanently attached to the ground.

Subd. 8. Nicotine or Lobelia Delivery Products. "Nicotine or Lobelia Delivery Products" shall mean any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section, not including any product that 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.

Subd. 9. Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco related devices, electronic delivery devices, or nicotine

or lobelia delivery products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

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

Subd. 11. School. A "School" shall mean any public or private educational institution with the purpose of providing academic classroom instruction, trade, craft, computer or other technical training to pupils ordinarily enrolled in prekindergarten through grade 12 and as defined by Minn. Stat. § 120A.05, subsds. 9, 10a, 11, 13, and 17.

Subd. 12. Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of licensed products in any manner where any person shall have access to licensed 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 licensed products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 13. Smoke or Smoking. "Smoke" or "Smoking" shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product, whether natural or synthetic, or inhaling or exhaling aerosol or vapor from any electronic delivery device. Smoking shall include being in possession of a lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product or an activated electronic delivery device intended for inhalation.

Subd. 14. Tobacco or Tobacco Products. "Tobacco" or "Tobacco Products" shall mean 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 cigarettes, cigars, cheroots, stogies, perique, granulated, plug 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. Tobacco excludes any drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

Subd. 15. Tobacco Related Devices. "Tobacco Related Devices" shall mean any pipe, wraps, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of aerosol or vapor of tobacco or tobacco products. Tobacco related devices shall include accessories or components of tobacco related devices which may be marked or sold separately.

Subd. 16. Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses licensed products, upon the insertion of money, tokens, or other form of payment directly into the machine by the

person seeking to purchase the licensed product.

Subd. 17. Tobacco Products Shop. "Tobacco Products Shop" shall mean a retail establishment that has an entrance door opening directly to the outside, that cannot be entered at any time by persons younger than 21 years of age, and that derives more than 90 percent of its gross revenue from the sale of tobacco, tobacco-related devices, and other electronic delivery devices, as defined in Minn. Stat. § 609.685, and in which the sale of other products is merely incidental. Tobacco Products Shop does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

SECTION 3. COUNTY TOBACCO RETAILER LICENSE

No person shall sell or offer to sell any tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products, without first having obtained a license from the county.

Subd. 1. License Application. An application for a license to sell a licensed product 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 deemed necessary. Upon receipt of a completed application, the County Auditor shall forward the application to the County Board of Commissioners, or its designee for action at its next regularly scheduled meeting. If the County Auditor, or designee, 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.

Subd. 2. Action on License. Within thirty (30) days, the County Board or its designee 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 it deems necessary. If the County Board shall approve the license, the County Auditor or designee shall issue the license to the applicant. If the license is denied or delayed, notice of the denial or delay, which shall include the reason for the denial or delay, shall be given to the applicant along with the notice of the applicant's right to appeal the decision. Notice of the County Board's decision shall be sent to the applicant within five (5) business days by the County Auditor.

Subd. 3. License Fees. Each application for a tobacco retailer's license shall be accompanied by a fee as set by the Swift County Board of Commissioners. Application for licenses issued after June 30 of a calendar year shall be accompanied by a prorated fee.

Subd. 4. License Term. The licensing period begins on June 30 of a calendar year and ends June 30 of the following calendar year. Each license issued shall expire on the

30th day of June 30 following issuance of the license unless sooner revoked by the County or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the County Auditor.

Subd. 5. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for renewal shall be made at least thirty days, but no more than sixty days before the expiration of the current license.

Subd. 6. Issuance as a Privilege and Not a Right. The issuance of a license issued under this section 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. 7 Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

Subd. 8. 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.

Subd. 9. Revocation or Suspension. Any license issued under this Ordinance may be revoked or suspended as provided in Sections 4 and 11 of this Ordinance.

SECTION 4. BASIS FOR DENIAL OF TOBACCO RETAILER'S LICENSE

Subd. 1. Denial of License. Any one or more of the following shall be grounds for denying the issuance or renewal of a license under this Ordinance:

- A. The applicant is under the age of 21 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 licensed products.
- C. The applicant has had a license to sell tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products, suspended or revoked within 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 applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding such a license.

F. The applicant seeks a license for a retail establishment that is located within 500 feet of a School, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a School. This restriction shall not apply to an existing license holder who has been licensed to sell licensed products in that same location for at least one year prior to the enactment of this provision.

G. The applicant seeks licensure for a moveable place of business.

The existence of any particular ground for denial is sufficient for denial of licensure. 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.

Subd. 2. Right to Administrative Review. An applicant whose application for license was denied shall have the right to request review. Upon receipt of the County Board's decision, the applicant shall request a review within ten (10) days of receipt of the decision. The review hearing shall be heard at the next regularly scheduled meeting of the County Board, and the applicant shall be allowed to present information to the County Board regarding its license application and the basis for denial. The County Board shall receive the information at its public meeting and shall make a decision regarding issuance of the license. If the County Board denies the license, it must detail why the license was denied pursuant to the factors listed in Section 4, subd. 1.

SECTION 5. LICENSEES RESPONSIBLE FOR ACTION OF EMPLOYEES

All licensees under this Ordinance shall be responsible for the actions of their employees in regard to the sale of licensed products 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 employee to whatever penalties are appropriate under this Ordinance, state or federal law, or other applicable law or regulation.

SECTION 6. MANDATORY COMPLIANCE CHECKS

All licensed premises shall be open to inspection by the Swift County Sheriff's Department or its designee, Countryside Public Health, or other authorized County official during regular business hours. From time to time, but at least once per year, the County shall conduct a compliance check that shall include the use of a person who is at least 17 years of age, but under the age of 21, to enter the licensed premises to attempt to purchase licensed products under the direct supervision of a law enforcement officer or an employee of Countryside Public Health. Prior written consent of a parent or guardian is required for any person under the age of 18 to participate in a compliance check. The

age requirements for persons participating in compliance checks under this section or pursuant to Minn. Stat. § 461.12, subd. 5 shall not affect the age requirements in federal law for persons participating in federally required compliance checks of these locations.

SECTION 7. PROHIBITED SALES

Subd. 1. General. It shall be a violation of this Ordinance for any person to sell or offer to sell any licensed products:

- A. To any person under the age of twenty-one (21) years.
- B. By means of loosies as defined in Section 2, subd. 6 of this Ordinance.
- C. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substance except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intent of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.
- D. By any other means, to any other person, in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

Subd. 2. Vending Machines. It shall be unlawful for any person licensed under this Ordinance to allow the sale of licensed products by the means of a vending machine unless persons under the age of 21 are at all times prohibited from entering the licensed establishment.

Subd. 3. Self-Service Sales. Except where the licensee is a Tobacco Products Shop, it shall be unlawful for a licensee under this Ordinance to allow the sale of licensed products by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the licensed products between the licensee or his or her clerk and the customer.

Subd. 4. Liquid Packaging. The sale of any liquid, whether or not such liquid contains nicotine, intended for human consumption and use in an electronic delivery device, that is not contained in child-resistant packaging is prohibited. All licensees under this chapter must ensure that any liquid intended for use in an electronic delivery device is sold in child-resistant packaging. Upon request, a licensee shall provide a copy of the certificate of compliance or the full protocol laboratory testing report for the packaging used.

SECTION 8. PROHIBITED ACTS

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

Subd. 1. Illegal Procurement. It shall be a violation of this Ordinance for any person 21 years of age or older to purchase or otherwise obtain such items on behalf of a person under the age of 21. It shall further be a violation for any person 21 years of age or older to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain or use any licensed products.

Subd. 2. Use of False Identification. It shall be a violation of this Ordinance for any person under the age of 21 to attempt to disguise their 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. 3. Smoking. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling licensed products is prohibited

SECTION 9. AGE VERIFICATION AND SIGNAGE REQUIRED

Subd. 1. Signage. At each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, the licensee shall display a sign in plain view to provide public notice that selling any of these products to any person under the age of 21 is illegal and subject to penalties. The notice shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase these products. The sign shall provide notice that all persons responsible for selling these products must verify, by means of photographic identification containing the bearer's date of birth, the age of any person under 30 years of age.

Subd. 2. Age Verification. At each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, the licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age. Verification is not required if the purchaser or person attempting to make the purchase is 30 years of age or older. It shall not constitute a defense to a violation of this subdivision that the person appeared to be 30 years of age or older.

SECTION 10. EXCEPTIONS AND DEFENSES

Subd. 1. Affirmative Defense – Reliance on Identification. It shall be an affirmative defense to an alleged violation of this Ordinance for a person to have reasonably relied on proof of age as described by state law.

Subd. 2. Spiritual or Cultural Ceremony.

Subd. 2a. Notwithstanding Section 8, subd. 1, an Indian may furnish tobacco to an Indian under the age of 21 years if the tobacco is furnished as part of a traditional Indian spiritual ceremony. For purposes of this subdivision, an Indian is a person who is a member of an Indian tribe as defined in Minn. Stat. § 260.755, subd. 12.

Subd. 2b. The penalties of this ordinance do not apply to a person under the age of 21 years who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices while under the direct supervision of a responsible adult for training education, research, or enforcement purposes.

SECTION 11. ADMINISTRATIVE REVIEW OF SUSPECTED VIOLATIONS

Subd. 1. Notice. Upon discovery of a suspected violation, the County Auditor shall issue the alleged violator, 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. The citation shall be issued within ten (10) business days of the suspected violation and shall provide notice that a hearing must be requested within ten (10) business days of receipt of the citation. Any uncontested citations duly served shall be subject to the appropriate Administrative Penalty set forth in Section 12. A copy of the citation shall be sent to the County Attorney's office for record keeping and for review of additional charging.

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. The Swift County Board or its 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 11 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. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

SECTION 12. ADMINISTRATIVE AND OTHER 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 fee as follows pursuant to the notice requirements of Section 11:

First Offense:	\$300.00
Second Offense:	\$600.00
Third and any subsequent Offense:.....	\$1,000.00

Upon a third or any subsequent violation, the license shall be suspended for not less than sixty (60) days and may be revoked. A subsequent offense ("Second," "Third") is an offense that occurs at the same licensed premises within a 36-month period following the preceding offense.

Subd. 2. Instructional Program for licensees. Any licensee who has violated this ordinance and all of that licensee's employees shall complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the County Board. Licensees must provide documentation of compliance with this requirement to the County within 30 days of notice of violation.

Subd. 3. Persons under the age of 21 - Alternative Penalties for Use of False Identification. The County Board shall consult with interested persons, as applicable, including but not limited to educators, parents, guardians, persons under the age of 21 years, and representatives of the court system to develop alternative penalties for persons under the age of 21 years who purchase, or attempt to purchase, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia deliver products using a driver's license, permit, Minnesota identification card, or any other type of false identification to misrepresent the person's age in violation of Minn. Stat. § 609.685 or 609.6855. The County Board and the interested persons shall consider a variety of alternative civil penalties, including, but not limited to, tobacco-free education; tobacco-cessation programs; notice to schools, parents, or guardians; community service; and court diversion programs. Alternative civil penalties shall not include fines or monetary penalties.

Subd. 4. Administrative Penalty for Sales and Furnishing. An individual who sells, gives or otherwise furnishes tobacco, tobacco-related devices, electronic delivery

devices, or nicotine or lobelia delivery products to a person under the age of 21 years may be charged an administrative penalty of \$50.00, which may only be imposed following all notice and other requirements of Section 11.

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 invalidate the effectiveness of any other section or provision of this Ordinance.

SECTION 14. REPEAL OF PRIOR ORDINANCES

This Ordinance, upon its adoption, shall repeal the Swift County Tobacco Ordinance dated January 5, 2016.

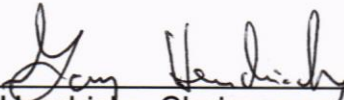
SECTION 15. EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication.

ADOPTION OF ORDINANCE

Passed and approved by the Board of County Commissioners, Swift County, Minnesota,

this 6 day of October, 2020.

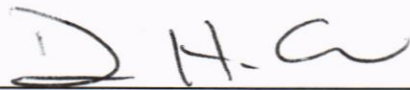


Gary Hendrickx, Chairperson

Attest: 

Kelsey Baker, County Administrator

APPROVED AS TO FORM AND EXECUTION:



Danielle H. Olson, County Attorney

Approved: 10-6-2020

Enacted: 10-6-2020

SECTION 15. EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication.