

ORDINANCE NO. 98-23

(As amended on September 26, 2000 by Resolution # 00-86 & 03-99)

The County Board of the County of Olmsted, Minnesota, Ordains:

Section 100. Title.

This ordinance shall be known and referenced as the Olmsted County Tobacco Sales and Youth Access Ordinance.

Section 200. Jurisdiction.

The Olmsted County Tobacco Sales and Youth Access Ordinance shall apply to all incorporated and unincorporated areas within Olmsted County that do not have a retail tobacco license and regulation in effect.

Section 300. Definitions and Interpretations.

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.

Subd. 1 Administrative Fee. "Administrative fee" shall mean the license and service fees that are assessed to individuals, as authorized by the ordinance. Administrative fees are not penalties assigned in a criminal court.

Subd. 2 Administrative Penalty. "Administrative penalty" shall mean the fees that are assessed to individuals for violation of the ordinance as authorized by the ordinance.

Subd. 3 County. "County" means the entire area within the perimeter boundaries of Olmsted County, Minnesota and/or the staff or other officials serving under the authority of the County Board.

Subd. 4 County Board. "County Board" means the Olmsted County Board of Commissioners duly elected by and currently serving the citizens of Olmsted County, Minnesota.

Subd. 5 County Official. "County Official" shall mean the person or persons authorized by the administrator of the department assigned by the County Board to implement this ordinance.

Subd. 6 Moveable Place of Business. "Moveable Place of Business" shall refer to any business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter without a fixed location, address and structure.

Subd. 7 Person. "Person" shall mean any individual, business, public or private corporation, partnership, joint venture, association, trust, unincorporated association, or government or any agency or political subdivision thereof; and any receiver, trustee, assignee, agent or other legal representative of any of the foregoing.

Subd. 8 Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco products are available for sale to the general public at retail. Retail establishments shall include, but not be limited to tobacco shops, grocery stores, service stations, convenience stores, restaurants and taverns.

Subd. 9 Revocation. "Revocation" shall mean the termination of the tobacco product sales license and its privileges.

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

Subd. 11 Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco products in any manner where any person shall have access to the tobacco products, without the assistance or intervention of the licensee or the licensee's employee.

Subd. 12 Suspension. "Suspension" shall mean the temporary loss of the privilege to sell tobacco products with reinstatement of the privileges allowed according to action of the County Official.

Subd. 13 Tobacco Hearing Officer. The "Tobacco Hearing Officer" shall be the individual appointed by the County Board to conduct hearings pursuant to Minnesota Statute Chapter 461.12.

Subd. 14 Tobacco Products. "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. Tobacco products shall also include any pipe, rolling papers, or other device intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

Subd. 15 Youth. "Youth" shall mean any person who has not yet reached the age of eighteen (18) years.

Subd. 16 Licensee. "Licensee" shall mean the person and the retail establishment where tobacco products are made available for sale to the public.

Subd. 17 Tobacco Product Vending Machine. "Tobacco Product Vending Machine" shall mean any mechanical, electric, electronic, or other type of device that dispenses tobacco products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco product.

Subd. 18 Tobacco Product Vending Type Machine. "Tobacco Product Vending Type Machine" shall mean a tobacco product vending machine, as defined in this ordinance, that is equipped with a remote control switch that is activated by the licensee to dispense the tobacco product for each individual sale.

(As amended on September 26, 2000 by Resolution # 00-86)

Section 400. License.

No retail establishment shall sell or offer to sell any tobacco product without first having obtained a license to do so from the County, unless such person obtained a license from a city or local governmental agency.

Subd. 1 Application. An application for a license to sell tobacco products shall be made on a form provided by the County. The application shall contain the full name of the applicant, residential and business addresses, telephone numbers, the name of the business and any additional information the County deems necessary.

Subd. 2 Action. The County Official shall approve, deny or delay license action, for a reasonable period of time, to complete any investigation of the application or the applicant. Investigation may include, but is not limited to, a background check. If the County Official determines that an application is incomplete, the Official shall return the application to the applicant with notice of the information necessary to complete the application. When the Official determines that the license application can be approved, the official shall issue the license to the applicant. If the Official denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's rights and the appeal process.

Subd. 3 Term. All licenses shall be valid for twelve months from the date of issuance. The license shall terminate upon the anniversary date. The length of license time may be modified from time-to-time by resolution of the County Board.

Subd. 4 Renewals. The renewal of a license shall be handled in the same manner as the original application. The applicant's 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 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. 5 Transfers. All licenses 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 the license to another location or person shall be allowed.

Subd. 6 Moveable Place of Business. No license shall be issued to a movable place of business. Only fixed-location businesses shall be eligible to be licensed.

Subd. 7 Display. All licenses shall be posted and displayed on the licensed premise in plain view of the general public and shall be exhibited to any person upon request. The license shall include a statement to the effect of, "By law, all persons under the age of 27 years must present identification to purchase tobacco products."

Subd. 8. The licensing requirements of this section shall not apply to wholesaler's activity of selling tobacco products to retail establishments.

Section 500. Administrative Fees for Licenses and Services.

Subd. 1. There shall be fees for licenses administered under the authority of the ordinance. The license fee shall be determined according to the following factors and amounts:

- a. Base fee for each retail establishment where tobacco product sales will occur:

\$205

(As amended by Resolution # 03-99)

- b. Number of registers within the retail establishment used to process and record each tobacco product sales transaction:

\$103 each up to 5 with \$515 maximum

(As amended by Resolution # 03-99)

- c. Number of tobacco product vending machines. This includes, but is not limited to, those vending machines equipped with a remote control switch, which must be activated by a retail clerk for each tobacco product sale transaction:

\$50 each with \$250 maximum

(As amended by Resolution # 03-99)

Subd. 2. Reduction in license fees shall be authorized for the following conditions:

- a. The licensee, all managers and all employees that are engaged in tobacco product sales can document attendance and successful completion of tobacco sales and youth access training (acceptable to the County Official) within the past 3 years. **0% reduction in total fees**

OR

The licensee and all managers of tobacco product sales, but not all employees, can document attendance and successful completion of tobacco sales and youth access training (acceptable to the County Official) within the past 3 years. **0% reduction in total fees**

- b. The establishment is actively managed to prevent youth from entering the establishment.

0% reduction in total fees

(As amended by Resolution # 03-99)

Subd. 3. The following administrative fees, set by Resolution of the County Board, will be applied to recover service costs as applicable.

- a. Late or incomplete application and payment of license fees caused by the applicant.

5% of fee total/month or fraction thereof

(As amended by Resolution # 03-99)

- b. Additional retail inspections, sales-compliance checks and correspondence needed to determine or achieve compliance after noncompliance or violation is found at the licensed retail establishment.

\$50 per hour
(As amended by Resolution # 03-99)
- c. Inspection and enforcement service fees for municipalities that contract with the County to regulate tobacco sales and youth access as required by Minnesota law.

\$62 per hour
(As amended by Resolution # 03-99)
- d. Persons attending "Tobacco Sales and Youth Access Training" provided by the County.

\$50/class hour
(As amended by Resolution # 03-99)
- e. Late or incomplete payment of administrative penalty fees (as indicated in Section 1100, Subd. 2.a.).

\$10 per week until paid not to exceed 8 (eight) calendar weeks
(As amended on September 26, 2000 by Resolution # 00-86)
- f. Fee for administrative time pursuing payment of license and/or administrative penalty fees after 8 calendar weeks due. **\$62 per hour**
(As amended by Resolution # 03-99)

Subd. 4. Administrative fees, applied during the license term that have not been paid in full, shall be added to and become part of the license renewal fee.

Subd. 5. A license fee refund for business termination may be authorized. Any refund amount will be according to the schedule set by Resolution of the County Board.

Subd. 6. Any of the fees for the categories in this section may be modified, from time to time, by Resolution of the County Board.

Subd. 7. Administration of, or appeals to Sections 200, 300, 400, 500, and 600 of this ordinance shall be according to the provisions of the Olmsted County Environmental Services Administrative Ordinance.
(As amended on September 26, 2000 by Resolution # 00-86)

Section 600. Basis for Eligibility, and for Denial of License.

Subd. 1. No retail license, or license renewal, shall be issued to a person:

- a. Under the age of 18.
- b. Convicted of a criminal (gross misdemeanor or felony) violation of Federal or State law, or any local government ordinance or regulation relating to tobacco products
- c. Currently under terms of a suspension or revocation of a license to sell tobacco products
- d. Who has failed to pay the appropriate licensing, service and/or administration fees.
- e. Fails to provide any information required by the application or County Official, or provides false or misleading information.
- f. Prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.
- g. Who fails to display or present tobacco products in a manner that is consistent with Federal regulation, State law or this Ordinance.

(As amended on September 26, 2000 by Resolution # 00-86)

Subd. 2.

If it is discovered that a license was mistakenly issued or renewed to an

ineligible person, the license shall be revoked by the County Official.

Subd. 3. Decisions made by the County Official, under the authority of Sections 200, 300, 400, 500, and 600, may be appealed as provided in the Olmsted County Environmental Services Administrative Ordinance.

(As amended on September 26, 2000 by Resolution # 00-86)

Section 700. Vending Machines.

Tobacco product vending machine location and sales shall be limited, according to the provisions of Minnesota Statute Chapter 461, Federal law, and this ordinance as amended from time-to-time.

Section 800. Self-Service Merchandising and Sales.

Subd. 1. Self-service merchandising and sales of tobacco products are limited according to Minnesota Statute Chapter 461, as amended from time-to-time, and further limited according to the following subdivisions, in this section.

Subd. 2. All tobacco products, offered for sale, shall either be a) stored in an area or container that may be visible but is not accessible to customers, or b) in a vending type machine located where the licensee shall check the identity of the patron and watch the patron purchase.

Subd. 3. A licensee shall only allow merchandising and/or sales of tobacco products by a) a physical exchange of the tobacco product between the licensee or the licensee's employees and the customer, or b) a vending-type machine equipped with a switch that dispenses the product only when the licensee causes the switch to be briefly activated for each individual sale.

Subd. 4. The self-service merchandising restrictions shall not apply to retail establishments where the operator actively prohibits youth from entering the licensed establishment at all times, and where 90% or more of the retail establishments revenue is derived from tobacco product sales, as provided in Minnesota Statute Chapter 461.

Subd. 5. Any retailer, selling tobacco products at the time this ordinance is adopted, shall comply with this section on or before May 15, 1998 and maintain compliance thereafter.

Section 900. Responsibility.

All licensees shall be responsible for the actions of their employees, including a Tobacco Product Vending Type Machine, in regard to the sale of tobacco products on the licensed premises. The sale of tobacco products by an employee or from a Tobacco Product Vending Type Machine, shall be considered a sale by the license holder. Nothing in this section shall prohibit the County Official from subjecting the licensee and/or employee to appropriate administrative fees under this ordinance, or court imposed penalties according to other provisions of this ordinance, State or Federal law, or other applicable law or regulation.

(As amended on September 26, 2000 by Resolution # 00-86)

Section 1000. Sales-compliance checks.

Sales-compliance checks, as defined in Minnesota Statute Chapter 461, shall be performed under direction of the County Official for the purpose of testing compliance with Minnesota Statute §609.685, as amended from time-to-time, and for testing compliance with this ordinance.

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 administrative penalty fee. The notice shall inform the alleged violator of the right to an administrative hearing.

Subd. 2 Hearings.

- a. A person alleged to have committed a violation must pay the administrative penalty or may initiate a request for a hearing before the Tobacco Hearing Officer within 30 days of receiving the citation.
- b. When such request is provided to the County Official, the County Official shall provide the person (appellant), a) information that summarizes the hearing process and b) a "hearing request form". The hearing request form guides the appellant in clearly establishing the issues that are the basis for the hearing and information needed to help the Hearing Officer reach an informed decision. The request for hearing is not valid until the form is completed together with any relevant information and returned within seven regular office days to the County Official.
- c. Failure to initiate the appeal within 30 (thirty) days or prepare and return the appropriately completed hearing request form within 7 (seven) days can be found by the Hearing Officer as declaration of intent to pay the administrative penalty and withdrawal from the opportunity for a hearing.
- d. The time and place of the hearing shall be scheduled and provided to the alleged violator within 30 days of receiving the hearing request form.
- e. The hearing shall be open to the public. A notice shall be posted for public information at the Olmsted County Government Center and near the room at the building where the hearing will be held. Such notices shall be posted for at least 24 hours prior to the hearing.

(As amended on September 26, 2000 by Resolution # 00-86)

Subd. 3 Tobacco Hearing Officer. The County Board shall appoint an individual to serve as the Tobacco Hearing Officer. The responsibilities of the Hearing Officer shall be assigned by the County Board and may include, but not be limited to, the following:

- a. Conducting hearings pursuant with Minnesota Statute 461.12 for appeals relative to administration of Sections 700, 800, 900, 1000, 1100, 1200, and 1300 of this ordinance.
(As amended on September 26, 2000 by Resolution # 00-86)
- b. Making recommendations to the County Board regarding this ordinance and associated policies and fees.
- c. Reviewing and guiding administration of the policies and services associated with this ordinance.
- d. Advising the County Official

Subd 4 Decision. The Officer's decision, along with the findings and administrative penalty fees to be imposed, if any, shall be recorded in writing and a copy shall be provided to the alleged violator served personally or by mail.

Subd. 5 Appeals. Appeals of any decision made by the Officer shall be made pursuant to Minnesota Statute Chapter 461.12 subd. 7, as amended from time-to-time.

Subd. 6 Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Section 1200. Administrative Penalties.

Subd. 1 Penalty Criteria.

- a. Administrative penalties for sales-compliance checks shall be defined and administered as provided in Minnesota Statute Chapter 461 as amended from time-to-time and according to Subd. 2 of this Section 1200.
- b. Administrative penalties for violations other than sales-compliance checks shall be \$75.

- c. Administrative actions and associated penalties are no bar to the initiation of court action or court ordered penalties authorized by this or other applicable regulation ordinance, State or Federal law.
(As amended on September 26, 2000 by Resolution # 00-86)

Subd. 2 Retail Establishment Employees. Any retail establishment employee found to have violated this ordinance shall be required to participate in "Tobacco Sales and Youth Access Training" that is accepted by the County Official. This training shall not be a substitute for an administrative penalty fee authorized by Minnesota Law.

Subd. 3 Penalty Fee Limits.

- a. Administrative penalty fees for sales-compliance checks are those identified in Minnesota Statute Chapter 461, as amended from time-to-time. The licensee shall also reimburse the tobacco product retail sales price in excess of 5 (five) dollars back to the County at the time the Administrative Penalty Fee is paid.
- b. Administrative penalty fees for violations other than sales-compliance checks may be modified from time-to-time by Resolution of the County Board.
(As amended on September 26, 2000 by Resolution # 00-86)

Subd. 4 Suspensions. Upon the third offense within a 24 month period, the license shall be suspended by the County Official, as provided in Minnesota Statute Chapter 461, as amended from time-to-time.

Subd. 5 Revocations. The license may only be revoked according to procedures provided in the Olmsted County Environmental Services Administrative Ordinance.
(As amended on September 26, 2000 by Resolution # 00-86)

Subd. 6 Removal of Products. The licensee shall remove all tobacco products from the point of sale area, keeping them out of public view and access (on or off the premises), during the entire suspension or revocation period.

Subd. 7 Notice. Administrative penalties, suspensions or revocations shall take effect after the alleged violator, licensee, or other responsible manager(s) have received notice of a) the alleged violation, and b) the process for requesting and obtaining a hearing to appeal their case before the Tobacco Hearing Officer. Such notice may be served personally or by mail.

Section 1300. Defenses and Exceptions.

Subd. 1. It shall be an affirmative defense for a person to have made a tobacco product sale when they can demonstrate they reasonably relied on proof of age as provided in Minnesota Statute §340A.503, as amended from time-to-time.

Subd. 2. This ordinance shall not prevent distribution of tobacco to Indian youth as provided in Minnesota Statute §609.685, as amended from time-to-time.

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 affect the validity and enforceability of any other section or provision of this ordinance.

Section 1500. Effective Date.

This ordinance shall be in full force and effect from and after its passage and approval, as provided by law.

Passed and approved this 3rd day of February, 1998 by the County of Olmsted.

s. Paul Wilson
Paul Wilson, Chairperson
Board of Commissioners

Attest: s. Richard Devlin
Richard G. Devlin, Clerk-Administrator

Amendments passed and approved this 26th day of September, 2000 by the County of Olmsted.
s. Carol Kamper
Carol Kamper, Chairperson
Board of Commissioners

Attest: s. Richard Devlin
Richard G. Devlin, Clerk-Administrator

Fees Resolution passed and approved this 28th day of October, 2003

s. Matt Flynn
Matt Flynn, Chairperson

Attest: s. Richard Devlin
Richard G. Devlin, Clerk-Administrator