

# SIBLEY COUNTY

## Article 710 “Tobacco Ordinance” of the Code of Ordinances of the County of Sibley

## **ARTICLE 710. TOBACCO ORDINANCE**

### **SECTION 710.1 PURPOSE**

SUBD. 710.1.1 The county board of the County of Sibley, Minnesota, adopts this ordinance in the best interest of the citizens and to promote the health and safety of minor persons.

### **SECTION 710.2 LICENSE**

SUBD. 710.2.1 No person or entity shall keep for retail sale, sell at retail or otherwise dispose of any tobacco product at any place in the County without first obtaining a license from the County. A license is needed for each retail location. "Tobacco" is defined as and includes: cigarettes; cigars; little cigars;\_cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; sticks, orbs, strips, and other finely milled dissolvable tobacco products;\_fine cut and other chewing tobaccos; shorts, refuse scraps; clippings, cuttings and sweepings of tobacco; snus, and other smokeless, spitless tobacco products; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or other tobacco-related devices. "Tobacco related device" is defined 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; and e-cigarettes, and other electronic nicotine delivery devices that simulate smoking.

SUBD. 710.2.2. The Sibley County tobacco licensing year is considered to be January 1–December 31. The annual license fee for a retail tobacco license shall be \$50.00 per licensing year. All retail tobacco licenses shall be valid for only the licensing year in which they are paid, with no regard to when that license was issued within that licensing year. License fees will not be pro-rated for a partial year. All retail tobacco licenses will be renewed by January 1 of each year. A \$50.00 penalty will be assessed for all license reapplications received after January 1 of each licensing year. Retail tobacco license applications and re-applications will be reviewed annually by the County Board. All tobacco license fees collected will be maintained by the Sibley County Auditor and will be utilized for administration of licensing and enforcement activities, education and community awareness efforts by the Sheriff's Department and Public Health.

SUBD. 710.2.3 Every license shall be conspicuously posted in the place for which the license is issued and shall be exhibited to any person upon request.

SUBD. 710.2.4 No license issued under this ordinance may be transferred to any other person or entity. No refund of license fees shall be given by the County for any reason, once the license has been issued.

SUBD. 710.2.5 An application for a license to sell tobacco, tobacco products or tobacco-related devices shall be made on a form provided by the Sibley County Auditor. 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. If the Auditor determines that an application is incomplete, the application shall be returned to the applicant with notice of the information necessary to make the application complete. Upon receipt of a completed application, the Auditor shall determine whether the applicant is eligible for a license and then forward the application to Sibley County Public Health for coordination of retailer training with the Sibley County Sheriff's Department. Upon completion of the training, the Auditor shall forward the application to the Sibley County Board of Commissioners for action at its next regularly scheduled board meeting. The renewal of a license issued under this section shall be handled in the same manner as the original application. Establishments licensed in the previous twelve (12) months will receive notice and an application for renewal by the Sibley County Auditor at least sixty (60) days before the expiration of the current license. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

SUBD. 710.2.6 The County, in its sole discretion, shall determine whether to grant a retail tobacco license to any applicant. Among other factors which the County shall consider will be any past violation of the ordinance or similar state laws by the applicant, and whether the applicant's business location and floor plan is of a type which will allow applicant to effectively control its tobacco inventory to comply with this ordinance. If the County declines to issue a retail tobacco license to an applicant, the County shall notify the applicant of its reasons for such denial by written notice, served or mailed to the applicant within 15 days after the County has made its decision. The applicant shall then have a period of 30 days following receipt of said notice in which to appeal said decision to the County Board by written notice served or mailed to the County Auditor. The County Board shall then set a time at the next regular County Board meeting following receipt of the notice of appeal for the applicant to appear and be heard by the County Board. The County Board's redetermination after any such appeal hearing shall be final.

### **SECTION 710.3 SALES PROHIBITED TO MINORS**

SUBD. 710.3.1 No person shall sell any tobacco or tobacco product to any person under eighteen (18) years of age.

SUBD. 710.3.2 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 710.4 PENALTIES**

SUBD. 710.4.1 If a licensee or employee of a licensee sells tobacco to a person under the age of 18 years, or violates any other provision of this ordinance, the licensee shall be charged an administrative penalty of \$150. For a second violation at the same location an administrative penalty of \$300 will be charged to a licensee and the licensee's authority to sell tobacco at that location will be suspended for not less than 7 days. For a third or subsequent violation at the same location, an administrative penalty of \$350 will be charged to the licensee, and the licensee's authority to sell tobacco at that location will be suspended for a period of thirty (30) days. If a licensee has two successive years of successful compliance checks, the next failed compliance check will be treated as a first violation. Any person employed by a licensee who is found to have sold tobacco to a minor person shall be in violation of this ordinance and shall be charged an administrative penalty of \$100. All fees collected, as administrative penalties, shall be placed in a trust account earmarked for education and community awareness efforts by law enforcement and Public Health. Retailers who fail a compliance check shall be required to have the manager or owner and the employee seller of the tobacco to attend a mandatory training session presented by the Sibley County Sheriff's Department and Sibley County Public Health focused on preventing illegal sales of tobacco products to minors. Merchant training will be offered to the licensee within the first week following notification by the Auditor's office of a failed compliance check. First time compliance check offenders, where there is no license suspension, will be required to complete the merchant training scheduled during the first week following notification by the Auditor's office of a failed compliance check. Tobacco license suspension following a failed 2<sup>nd</sup> or subsequent compliance check will be continued until the training session is complete

SUBD. 710.4.2 It shall be a violation of this ordinance for any minor to use, purchase or attempt to purchase or be in possession of any tobacco, or for any minor to attempt to disguise his or her true age by use of a false form of identification in an attempt to obtain tobacco. Any minor found in violation of this section by law enforcement or the witness program may be fined by the Sibley County court system and may be required to attend tobacco free education programs, perform community service or participate in other programs, the nature and scheduling of said programs or service to be determined by Court Services.

SUBD. 710.4.3 Any person who procures or attempts to procure tobacco, for possession or use by a minor person shall be in violation of this ordinance and shall be charged an administrative penalty of \$100.00.

SUBD. 710.4.4 Sibley County Sheriff's Department will provide notice of a failed compliance check to the Auditor's office within 7 days of completing the checks. Retailer shall receive notice of violation within 30 days of non-compliance. No suspension or penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the County Board, for the purpose of having the County Board determine whether there are sufficient grounds for imposition of the suspension or penalty.

SUBD. 710.4.5 Any violation of this ordinance by any adult person shall also constitute a misdemeanor. Any violation of this ordinance by any minor person shall constitute a petty misdemeanor.

SUBD. 710.4.6 The County may choose to treat any violation of this ordinance as either an administrative violation subject to the administrative penalties set out herein, or to prosecute the violation as a criminal act. If the county chooses to prosecute a violation of this ordinance as a criminal act then the administrative penalties noted in this ordinance shall not apply. Upon conviction of a criminal act under this ordinance, the offender shall be subject to the criminal penalties under State law set out for the appropriate level of offense.

SUBD. 710.4.7 All administrative penalties must be paid to the Auditor's office within 30 days of the dated notice of non-compliance.

## **SECTION 710.5 SELF-SERVICE SALES**

SUBD. 710.5.1. It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products or tobacco-related devices, excluding full cartons, 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 physical exchange of the tobacco, tobacco product, or tobacco-related device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, and tobacco-related devices, excluding full cartons, shall either be stored behind a counter or other area not accessible to customers, or in a locked case or other locked storage. Any retailer selling tobacco, tobacco products, or tobacco-related devices at the time this ordinance is adopted shall comply with this Article within sixty (60) days.

SUBD. 710.5.2 Any full carton displays or unlocked carton storage containers must be in full view of a staffed checkout counter at all times. Positioning an unlocked carton display or storage container out of full view from a staffed checkout counter shall constitute a violation of this ordinance.

SUBD. 710.5.3 No person shall sell tobacco, tobacco products, or tobacco related devices from vending machines or other mechanical or token tobacco storage device. This section applies to all establishments unless minors are at all times prohibited from entering.

## **SECTION 710.6 COMPLIANCE CHECKS**

SUBD. 710.6.1 The County shall conduct unannounced compliance checks at least annually at each location where tobacco is sold to test compliance with Minnesota Statutes Section 609.685 and the Sibley County Tobacco Ordinance. At the discretion of Law Enforcement and/or Public Health, additional compliance checks will be conducted at each location following a violation of this ordinance. Compliance checks shall utilize minors over the age of 15, but under the age of 18, who with the prior written consent of a parent or guardian will attempt to purchase tobacco under the direct supervision of a law enforcement officer or an employee of the licensing authority. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, when such items are obtained as a part of the compliance check.

SUBD. 710.6.2 No minor used in compliance checks shall attempt to use 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.

SUBD. 710.6.3 Conduction of compliance checks shall be the responsibility of the Sheriff's Department and Public Health Department, acting in concert. For all compliance checks, the supervising adult shall be a licensed peace officer. All minor participants shall receive training prior to engaging in compliance check activities. Transportation shall be provided by the supervising adult, or other adult employee of the County as designated by the Sheriff's Department.

SUBD. 710.6.4 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 710.7 RESPONSIBILITY**

SUBD. 710.7.1 All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting Sibley 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 710.8 SEVERABILITY AND SAVINGS CLAUSE**

SUBD. 710.8.1 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.