

STATE OF MINNESOTA

COUNTY BOARD

COUNTY OF SIBLEY

AN ORDINANCE AMENDING SIBLEY COUNTY CODE
ARTICLE 710 – TOBACCO ORDINANCE

NOW THEREFORE the County Board of Commissioners of Sibley County, Minnesota, ordains:

Section 1. That Article 710 – Tobacco Ordinance of the Sibley County Code is hereby deleted in its entirety and the following replacement Article 710 – Tobacco Ordinance is hereby adopted and substituted in its place:

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 underage 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 tobacco, a tobacco-related device, an electronic delivery device, as defined in Minnesota Statute 609.685, subdivision 1, or a nicotine or lobelia delivery product, as described in Minnesota Statute 609.6855, subdivision 1, at any place in the County without first obtaining a license from the County. A license is needed for each retail location.

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 set in the county fee schedule adopted each 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-Treasurer and will be utilized for administration of licensing and enforcement activities, education and community awareness efforts by the Sheriff's Department and Public Health and Human Services.

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-Treasurer. 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-Treasurer 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-Treasurer shall determine whether the applicant is eligible for a license and then forward the application to Sibley County Public Health and Human Services for coordination of retailer training with the Sibley County Sheriff's Department. Upon completion of the training, the Auditor-Treasurer 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 from the Sibley County Auditor-Treasurer 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-Treasurer. 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, GIVING OR FURNISHING PROHIBITED TO UNDERAGE PERSONS

SUBD. 710.3.1 No licensee or employee of a licensee shall sell, give, or otherwise furnish any tobacco, tobacco-related device, an electronic delivery device, as defined in Minnesota Statute 609.685, subdivision 1, or a nicotine or lobelia delivery product, as described in Minnesota Statute 609.6855, subdivision 1, to any person under twenty-one (21) 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, gives, or otherwise furnishes tobacco, a tobacco-related device, an electronic delivery device, as defined in Minnesota Statute 609.685, subdivision 1, or a nicotine or lobelia delivery product, as described in Minnesota Statute 609.6855, subdivision 1, to a person under the age of 21 years, or violates any other provision of this ordinance, the licensee shall be charged an administrative penalty of \$300 for the first violation. For a second violation at the same location within 36 months after the first violation an administrative penalty of \$600 will be charged to a licensee. For a third or any subsequent violation at the same location within 36 months after the initial violation, an administrative penalty of \$1,000 will be charged to the licensee, and the licensee's authority to sell tobacco, tobacco-related devices, electronic delivery devices, as defined in Minnesota Statute 609.685, subdivision 1, or a nicotine or lobelia delivery product, as described in Minnesota Statute 609.6855, subdivision 1, at that location will be suspended for a period of not less than 7 days and may be revoked. Any person employed by a licensee who is found to have sold tobacco, tobacco-related devices, electronic delivery devices, as defined in Minnesota Statute 609.685, subdivision 1, or a nicotine or lobelia delivery product, as described in Minnesota Statute 609.6855, subdivision 1, to an underage person shall be in violation of this ordinance and may be charged an administrative penalty of \$50. The notice provisions of the licensing statute apply. 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 and Human Services. Retailers who fail a compliance check shall be required to attend a mandatory training session presented by the Sibley County Sheriff's Department and Sibley County Public Health and Human Services focused on preventing illegal sales of tobacco products to underage persons. Merchant training will be offered to the licensee within the first week following notification by the Auditor-Treasurer'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-Treasurer's Office of a failed compliance check. Tobacco license suspension following a failed 3rd or subsequent compliance check will be continued until the training session is complete.

SUBD. 710.4.2 This ordinance does not regulate conduct of persons regulated by Minnesota Statute 609.685 and 609.6855.

SUBD. 710.4.3 Sibley County Sheriff's Department will provide notice of a failed compliance check to the Auditor-Treasurer'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. 710.4.4 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. 710.4.5 All administrative penalties must be paid to the Auditor-Treasurer'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-related devices, or electronic delivery devices, as defined in Minnesota Statute 609.685, subdivision 1, or a nicotine or lobelia delivery product, as described in Minnesota Statute 609.6855, subdivision 1, 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-related device, electronic delivery device, or a nicotine or lobelia delivery product, between the licensee or his or her employee and the customer. All tobacco, tobacco-related devices, electronic delivery devices, or a nicotine or lobelia delivery products, 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.

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 related devices, electronic delivery devices, or a nicotine or lobelia delivery products, 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.

SUBD. 710.5.4 Federal regulations, as amended from time to time, regarding sales of cartons and other multipack units are incorporated by reference.

SECTION 710.6 COMPLIANCE CHECKS

SUBD. 710.6.1 The County shall conduct unannounced compliance checks at least annually at each location where tobacco, tobacco-related devices, electronic delivery devices, or a nicotine or lobelia delivery products, are sold to test compliance with Minnesota Statutes Sections 609.685 and 609.6855, and the Sibley County Tobacco Ordinance. At the discretion

of Law Enforcement and/or Public Health and Human Services, additional compliance checks will be conducted at each location following a violation of this ordinance. Compliance checks shall utilize persons at least 17 years of age, but under the age of 21, who with the prior written consent of a parent or guardian if the person is under the age of 18 will attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or a nicotine or lobelia delivery products, under the direct supervision of a law enforcement officer or an employee of the licensing authority. Underaged persons used for compliance checks shall not be guilty of violations of this ordinance or state statute, when such items are obtained as a part of the compliance check.

SUBD. 710.6.2 No underage person used in compliance checks shall attempt to use false identification misrepresenting the person's age, and all persons lawfully engaged in a compliance check shall answer all questions about the person'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 and Human Services Department, acting in concert. For all compliance checks, the supervising adult shall be a licensed peace officer. All underage 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 related devices, electronic delivery devices, or a nicotine or lobelia delivery 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 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.

Section 2. That this amended Article 710 – Tobacco Ordinance shall take shall take effect upon publication of this ordinance in the County's official newspaper.

PASSED AND APPROVED BY THE COUNTY BOARD OF COMMISSIONERS OF SIBLEY COUNTY AT GAYLORD, MINNESOTA ON _____, 2020.

APPROVED:

Steve Saxton
Board Chair

ATTEST:

John Gliszinski
County Administrator