

ORDINANCE NO. 5

AN ORDINANCE REGULATING THE POSSESSION, SALE AND CONSUMPTION OF TOBACCO AND TOBACCO RELATED DEVICES AND PRODUCTS WITHIN HOUSTON COUNTY MINNESOTA

THE COUNTY COMMISSIONERS OF HOUSTON COUNTY, MINNESOTA DOES ORDAIN:

Section

- 1 Purpose and intent
- 2 Definitions
- 3 License
- 4 Fees
- 5 Basis for denial of license
- 6 Prohibited sales
- 7 Self-service sales
- 8 Responsibility
- 9 Compliance checks and inspections
- 10 Other illegal acts
- 11 Exceptions and defenses
- 12 Severability
- 13 Violations and penalty

SECTION 1. PURPOSE AND INTENT.

Because the county recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices, and the sales, possession, and use are violations of both state and federal laws; and because studies, which the county hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking 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, possession and use of tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery 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, tobacco-related devices, and nicotine or lobelia delivery devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time. In making these findings, the County Board accepts the conclusions and recommendations of Center for Disease Control in their study "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997," and of the following medical professionals in these medical journals: Khuder SA, et al., "Age at Smoking Onset and its Effect on Smoking Cessation," *Addictive Behavior* 24(5):673-7, September-October 1999; D'Avanzo B, et al., "Age at Starting Smoking and Number of Cigarettes Smoked," *Annals of Epidemiology* 4(6):455-59, November 1994; Chen, J & Millar, WJ, "Age of Smoking Initiation: Implications for Quitting," *Health Reports* 9(4):39-46, Spring 1998; Everett SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," *Preventive Medicine*, 29(5):327-33, November 1999, copies of which are adopted by reference.

SECTION 2. DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMPLIANCE CHECKS. The system the county uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices are following and complying with the requirements of this ordinance. **COMPLIANCE CHECKS** shall involve the use of minors as authorized by this ordinance. **COMPLIANCE CHECKS** shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices 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 tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices.

ELECTRONIC DELIVERY DEVICES. “Electronic Delivery Device” shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

INDIVIDUALLY PACKAGED. 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 of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this definition shall not be considered individually packaged.

INDOOR AREA. 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.

LOOSIES. The common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term “loosies” does not include individual cigars with a retail price, before any sales taxes, of more than \$2.50 per cigar.

MINOR. Any natural person who has not yet reached the age of 18 years.

MOVEABLE PLACE OF BUSINESS. 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.

NICOTINE OR LOBELIA DELIVERY DEVICES. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco 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.

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants, and drug stores.

SALE. Any transfer of goods for money, trade, barter or other consideration.

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, electronic delivery device, or nicotine or lobelia delivery devices, without the assistance or intervention of the licensee or the licensee's employee or other personnel, or any placement of a retail roll-your-own machine in an open area of a retail establishment where any person shall have access to the machine without the assistance or intervention of the licensee or the licensee's employee or other personnel. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, tobacco-related device, electronic delivery devices, or nicotine or lobelia delivery device between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

SMOKING. Inhaling or exhaling smoke from any lighted or heated cigarette, cigar, pipe, or any other lighted or heated tobacco or plant product, or inhaling or exhaling vapor from an electronic delivery device or any electronic delivery device. Smoking shall include carrying a lighted or heated cigarette, cigar, or pipe or any other lighted or heated tobacco or plant product intended for inhalation or carrying an electronic delivery device that is turned on or otherwise activated.

SYNTHETIC CANNABINOIDS (1) A synthetic equivalent of the substance contained in the Cannabis plant, or in the resinous extractives of the genus Cannabis, or a synthetic substance or derivative with similar chemical structure or pharmacological activity; (2) Products, by whatever trade name, that are treated, sprayed, or saturated with one or more of the above chemicals. Some currently marketed products containing synthetic cannabinoids identified in subdivision (1) include K2, Spice, Mojo, Smoke, Genie, Yucatan Fire, Diamond Spice, Red Dragon Smoke, Skunk, K2 Summit, Bath Salts, and Pandora Potpourri.

TOBACCO or TOBACCO PRODUCTS. Tobacco and tobacco products includes cigarettes and 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; 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 tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

TOBACCO PRODUCTS SHOP. "Tobacco Products Shop" shall mean any licensed retail establishment that derives at least 90 percent of its revenue from tobacco or tobacco products and where no person under the age of eighteen (18) is present, or permitted to enter, at any time.

TOBACCO-RELATED DEVICES. Tobacco-related devices shall mean any 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 or the inhalation of vapor from an electronic delivery device. Tobacco-related devices shall include accessories or components of tobacco-related devices which may be marketed or sold separately.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products or tobacco-related or electronic delivery device, nicotine or lobelia delivery 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.

SECTION 3. LICENSE.

(A) *License required.* No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device without first having obtained a license to do so from the county.

(B) *Application.* An application for a license to sell tobacco, tobacco products, tobacco-related devices, electronic delivery device, or nicotine or lobelia delivery 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 completed application, the County Clerk shall forward the application to the County Board for action at its next regularly scheduled County Board meeting. If the County Board 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.

(C) *Action.* The County Board may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the County Board shall approve the license, the County Clerk shall issue the license to the applicant. If the County Board denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the County Board's decision.

(D) *Fees.* No license shall be issued under this Section until the appropriate license fee shall be paid in full. The annual tobacco license fee shall be established by resolution of the County Board.

(E) *Term.* All licenses issued under this section shall be valid for one calendar year from the date of issue.

(F) *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in Section 14.

(G) *Transfers.* All licenses issued under this section 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 valid without the prior approval of the County Board.

(H) *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this section.

(I) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

(J) *Renewals.* The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.

(K) *Smoking Prohibited in Tobacco Product Shop* Smoking shall not be permitted and no person shall smoke indoors at any location with a tobacco retailer license. Smoking for the purposes of sampling tobacco, tobacco-related products, plant products, or electronic delivery devices shall be prohibited.

(L) *Issuance as 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.

(M) *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 tobacco and tobacco related products, and electronic delivery device, or nicotine or lobelia delivery devices are prohibited. Penalty, see Section 14.

(N) *Minimum Clerk Age.* An individual must be at least 18 years of age to sell tobacco products, tobacco-related devices, or electronic delivery devices on behalf of a person licensed under this ordinance.

(O) *Proximity to youth-oriented facilities.* No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, or electronic delivery devices within 1000 feet of any school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been in the business of selling such products in that location before the date this section was enacted into law for at least one year. For the purpose of this section, a youth-oriented facility is defined to include any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21.

(P) *Product placement.* A license holder must have all tobacco products or tobacco related devices located behind the service counter.

SECTION 4. 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 established in the County's Ordinance Establishing Fees and Charges, as it may be amended from time to time.

Penalty, see Section 14.

SECTION 5. BASIS FOR DENIAL OF LICENSE.

(A) Grounds for denying the issuance or renewal of a license under this chapter include but are not limited to the following:

- (1) The applicant is under the age of 18 years.
- (2) 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 tobacco, tobacco products, tobacco-related devices, electronic delivery device, or nicotine or lobelia delivery devices.
- (3) The applicant has had a license to sell tobacco, tobacco products, tobacco-related devices, electronic delivery device, or nicotine or lobelia delivery devices revoked within the preceding 12 months of the date of application.

(4) The applicant fails to provide any information required on the application, or provides false or misleading information.

(5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.

(B) However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the County must deny the license.

(C) 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 chapter.

(E) It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, tobacco-related devices, electronic delivery device or nicotine or lobelia delivery devices 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 an in-person physical exchange of the tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device between the licensee or his or her employee and the customer.

Penalty, see Section 14.

SECTION 6. PROHIBITED SALES.

It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device:

(A) To any person under the age of 18 years.

(B) By means of any type of vending machine.

(C) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer.

(D) By means of loosies as defined in Section 2.

(E) 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. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.

(F) No person shall use, possess, purchase, sell, give away, barter, exchange, dispense, deliver, distribute or manufacture any synthetic cannabinoid, as defined in this chapter, within the County. A violation of this section shall be a misdemeanor.

(G) 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.

Penalty, see Section 14.

SECTION 7. SELF-SERVICE SALES.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices by any means where by the customer may have access to those 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 tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco-related devices, electronic delivery device, and nicotine or lobelia delivery 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, tobacco-related devices, electronic delivery device, or nicotine or lobelia delivery devices at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter.

Penalty, see Section 14.

SECTION 8. RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices, electronic delivery device, or nicotine or lobelia delivery devices on the licensed premises and the sale of 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 chapter, state or federal law, or other applicable law or regulation.

Penalty, see Section 14.

SECTION 9. COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the County police or other authorized County official during regular business hours. From time to time, but at least once per year, the County shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic delivery device, or nicotine or lobelia delivery devices. Minors used for the purpose of compliance checks shall be supervised by County designated law enforcement officers or other designated County personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, electronic delivery device, or nicotine or lobelia delivery devices when those items are 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 asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. 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.

Penalty, see Section 14.

SECTION 10. OTHER ILLEGAL ACTS.

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

(A) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device to any minor.

(B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device. This division (B) shall not apply to minors lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device.

(D) *Illegal procurement.* It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain those 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, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device. This division (D) shall not apply to minors lawfully involved in a compliance check.

(E) *Use of false identification.* It shall be a violation of this chapter 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.

Penalty, see Section 14.

SECTION 11. EXCEPTIONS AND DEFENSES.

Nothing in this chapter shall prevent the providing of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery 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 chapter for a person to have reasonably relied on proof of age as described by state law.

SECTION 12. SEVERABILITY.

If any section or provision of this ordinance is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

SECTION 13. VIOLATIONS AND PENALTY.

(A) *Misdemeanor prosecution.* Nothing in this section shall prohibit the County from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

(B) *Violations.*

(1) *Notice.* A person violating this chapter may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) *Hearings.*

(a) Upon issuance of a citation, a person accused of violating this chapter may request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the citation and delivered to the County clerk or other designated County officer. Failure to request a hearing within ten (10) business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The County clerk or other designated County officer shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

(3) *Hearing Officer.* The County official designated by the County Board shall serve as the hearing officer. The hearing officer must be an impartial employee of the County or an impartial person retained by the County to conduct the hearing.

(4) *Decision.*

(a) A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division (B) of this section, shall be recorded in writing, a copy of which shall be provided to the County and the accused violator by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the County and the acquitted accused violator by in person delivery or mail as soon as practicable.

(b) *Costs.* If the citation is upheld by the hearing officer, the County's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing.

(c) The decision of the hearing officer is final.

(5) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the County in which the alleged violation occurred within ten (10) business days.

(6) *Occurrence of Violations.* For purposes of determining the number of occurrences of violations, the County Board shall consider a violation as a second occurrence if it occurred within thirty-six (36) months of the first violation; shall consider a violation as a third occurrence if it occurred within forty-eight (48) months of the second violation; and shall consider a violation as a fourth occurrence if it occurred within sixty (60) months of the third violation. If there is a change of ownership (meaning at least fifty percent (50%) of the ownership is transferred to an unrelated party) of the licensed establishment, previous violation(s) will not apply. For purposes of this chapter, violations occurring prior to the effective date of this Ordinance shall be disregarded. Further, for purposes of this chapter, a first violation shall be disregarded if a second violation does not occur within thirty-six (36) months of such first violation. If another violation occurs more than thirty-six (36) months after the occurrence of a disregarded first violation, then that violation shall be deemed the first violation for purposes of this chapter.

(a) *Misdemeanor Prosecution.* Nothing in this section shall prohibit the County from seeking prosecution as a misdemeanor for any alleged violation of this section in addition to any administrative penalty, suspension or revocation.

(b) *Failure to Pay.* A failure to pay an administrative penalty imposed by operation of this section within the time limit set for the payment of such fine shall be grounds for the suspension of the licensee's license until the administrative penalty is paid.

(c) Continued violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense

(C) *Administrative penalties.*

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven consecutive days.

(2) *Other individuals.* Other individuals, other than minors regulated by division (C)(3) of this section, found to be in violation of this chapter shall be charged an administrative fine of \$50.

(3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, tobacco-related devices, electronic delivery device, or nicotine or lobelia delivery devices, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the County believes will be appropriate and effective. The administrative fine or other penalty shall be established by County Board ordinance upon the County Board's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the County. This administrative fine or other penalty may also be established from time to time by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

(4) *Statutory penalties.* If the administrative penalties authorized to be imposed by M.S. § 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.

SECTION 14. EFFECTIVE DATE.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Approved by the Houston County Board of Commissioners this 5th day of August, 2014.

By: _____
Teresa Walter, Chairperson

Attest: _____
Charlene Meiners,
Houston County Auditor