

**ORDINANCE NO. 106**

**OFFICIAL COPY**

**AN ORDINANCE REGULATING THE SALE OF TOBACCO AND RELATED DEVICES  
AND PRODUCTS WITHIN JACKSON COUNTY, MINNESOTA**

THE COUNTY BOARD OF JACKSON COUNTY, MINNEOTA DOES ORDAIN:

Section 1. Purpose	1
Section 2. Applicability and Jurisdiction	2
Section 3. Definitions	2
Section 4. License	4
Section 5. Fees	4
Section 6. Basis for Denial of License	4
Section 7. Prohibited Sales	5
Section 8. Responsibility	6
Section 9. Compliance Checks and Inspections	6
Section 10. Exceptions and Defenses	6
Section 11. Violations and Penalties	6
Section 12. Severability	8
Section 13. Effective Date	8
Section 14. Repeal	8

**Section 1. Purpose**

The purpose of ordaining these rules and regulations is to regulate the sale of tobacco, tobacco products, tobacco related devices, nicotine and lobelia delivery products, and electronic delivery devices for the purpose of enforcing and furthering existing laws, to protect underage persons against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, nicotine and lobelia delivery products, and electronic delivery devices, 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 Minn. Stat. § 144.391.

## **Section 2. Applicability and Jurisdiction**

This ordinance governs the licensing and regulation of the sale of tobacco, tobacco- related devices, electronic delivery devices, and nicotine or lobelia delivery products in any city or town located in Jackson County that does not license and regulate retail sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in conformance with the minimum requirements of Minn. Stat. § 461. Retail establishments licensed by a city or town are not required to obtain a second license for the same location under this ordinance.

## **Section 3. Definitions**

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

(A) Child-Resistant Packaging. Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

(B) Cigar. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as it may be amended from time to time.

(C) Compliance Checks. The system the County uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance.

(D) Electronic Delivery Device. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic Delivery Device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. Electronic Delivery Device includes any component part of a product, whether or not marketed or sold separately. Electronic Delivery Device does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

(E) 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.

(F) Licensed Products. The term that collectively refers to any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

(G) Licensing Authority. The licensing authority shall be the Jackson County Board of Commissioners.

(H) Loosies. 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.

(I) Moveable Place of Business. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

(J) Nicotine or Lobelia Delivery Product. Any product containing or delivering nicotine or lobelia, whether natural or synthetic, 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. Nicotine or Lobelia Delivery Product does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

(K) Retail Establishment. Any place of business where licensed products are available for sale to the general public. Retail Establishment includes, but is not limited to, grocery stores, pharmacies, tobacco product shops, convenience stores, liquor stores, gasoline service stations, bars, and restaurants.

(L) Self-service display. The open display of licensed products in a retail establishment in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee’s employee and where a physical exchange of the licensed product from the licensee or the licensee’s employee to the customer is not required to access the licensed products.

(M) Smoking. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device.

(N) Tobacco Product. Any product containing, made, or derived from commercial 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 commercial tobacco. A Tobacco Product does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

(O) Tobacco-Related Device. Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. Tobacco-Related Device includes components of tobacco-related devices or tobacco products which may be marketed or sold separately. Tobacco-Related Devices may or may not contain tobacco.

(P) Vending Machine. Any mechanical, electric or electronic, or other type of device that dispenses licensed products upon payment by any form by the person seeking to purchase the licensed product.

#### **Section 4. License**

(A) License required. No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the County.

(B) Application. An application for a license to sell licensed products must be made on a form provided by the County. Upon receipt of a completed application, it will be forwarded to the County Board for action.

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

(D) Term. All licenses issued are valid for one calendar year from the date of issue.

(E) Revocation or suspension. Any license issued may be suspended or revoked following the procedures set forth in Section 11.

(F) Transfers. All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.

(G) Display. All licenses must be posted and displayed at all times in plain view of the general public in the retail establishment.

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

(I) Issuance is a privilege and not a right. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.

#### **Section 5. Fees**

No license will be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the county's fee schedule and may be amended from time to time.

#### **Section 6. Basis for Denial of License**

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

(1) The applicant is under 21 years of age.

(2) The applicant has been penalized within the past five years for any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.

(3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.

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

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

(6) The business for which the license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.

(7) Any other suitable reason that the granting of a license to the applicant is inconsistent with public health, safety, and welfare, including the applicant's history of noncompliance with this ordinance and other laws relating to the sale of licensed products.

(B) If a license is mistakenly issued to a person or renewed, the county will revoke the license upon the discovery that the person was ineligible for the license under this ordinance. The county will provide the license holder with notice of the revocation, along with information on the right to appeal.

### **Section 7. Prohibited Sales**

(A) In general. No person shall sell or offer to sell any licensed product:

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

(2) By means of loosies.

(3) 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 products subject to this ordinance.

(4) By means of self-service display. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public.

(5) By any other means, to any other person, or in any other manner or form prohibited by Tribal, federal, state, or other local law, ordinance provision, or other regulation.

(B) Legal age. No person shall sell any licensed product to any person under the age of 21.

(1) Age verification. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

(2) Signage. Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the county, must be posted in a manner that is clearly visible to anyone who is, or is considering, making a purchase.

(C) Liquid Packaging. The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device, that is not contained in packaging that

is child-resistant, is prohibited. All licensees must ensure that any liquid intended for human consumption and use in an electronic delivery device is sold in child-resistant packaging.

### **Section 8. Responsibility**

All licensees are responsible for the actions of their employees regarding the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee.

### **Section 9. Compliance Checks and Inspections.**

(A) All licensed premises must be open to inspection by authorized County officials or their designees during regular business hours.

(B) From time to time, but at least once per year, the County will conduct compliance checks to ensure compliance with the provisions of this ordinance.

(C) In accordance with state law, the County will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

### **Section 10. Exceptions and Defenses**

(A) Religious, Spiritual, or Cultural Ceremonies or Practices. Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

(B) Reasonable Reliance. It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

### **Section 11. Violations and Penalties**

(A) Violations.

(1) **Notice**. A person violating this ordinance may be issued, either personally or by mail, a citation from the County that sets forth the alleged violation and that informs the alleged violator of their right to a hearing on the matter and 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 ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the County Auditor or other designated county officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.

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

(3) Hearing Officer. The County Board, or their designee, will serve as the hearing officer.

(4) Decision. A decision will be issued by the hearing officer within 10 business days of the hearing. 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, will be recorded in writing, a copy of which will be provided to the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded in writing and a copy will be provided to the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in Section 11, paragraph (A)(6) of this section.

(5) 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 must be paid by the person requesting the hearing.

(6) Appeals. Appeals of any decision made by the hearing officer must be filed in Jackson County district court within 10 business days of the date of the decision.

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

(B) Administrative penalties.

(1) Licensees. Any licensee cited for violating this ordinance, or whose employee has violated this ordinance, will be charged an administrative fine of \$300 for a first violation; \$600 for a second offense at the same licensed premises within a 36-month period; and \$1,000 for a third or subsequent offense at the same location within a 36-month period from the first violation. Upon a third or subsequent violation at the same location within a 36-month period from the first violation, the license will be suspended for a period of not less than seven (7) consecutive days and may be revoked. No suspension, revocation, or other 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 hearing officer. A decision that a violation has occurred must be in writing.

(2) Employees of licensees and other individuals. Individuals 21 years of age and older who are found to be in violation of this ordinance may be charged an administrative fine of no more than \$50 or required to attend an instructional program regarding the requirements of the tobacco retail licensing ordinance. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the hearing officer. A decision that a violation has occurred must be in writing.

(3) Alternative penalties for use of false identification; persons under age 21. The licensing authority 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 delivery 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 licensing authority 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 and parents or guardians; community service; and court diversion programs. Alternative civil penalties developed under this subdivision shall not include fines or monetary penalties.

(4) Statutory penalties. If the administrative penalty for violations against licensed retailers under Section 11(B)(1) authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.

**Section 12. Severability**

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

**Section 13. 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. § 375.51, subd. 3, 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.

**Section 14. Repeal**

Jackson County Ordinance 106 - An Ordinance Regulating Tobacco Sales, Possession and Use, adopted on September 28, 2010 with an effective date of January 1, 2011, will be repealed upon the effective date of this Ordinance as stated in section 13.

Duly passed and adopted this 5th day of July, 2023.

Jackson County Board of Commissioners

Phil Nasby  
Phil Nasby, Chairman

Attest:  
Ryan Krosch  
Ryan Krosch, County Administrator/Clerk to the Board

*Subscribed and sworn to before me this 5<sup>th</sup> day of July 2023.*

<u>Brandi Bourquin</u> Signature of Notary Public	<u>1/31/2026</u> Date Commission Expires
<u>Brandi Bourquin</u> Printed Name of Notary Public	<u>Jackson</u> County of Residence

