

**ORDINANCE # 065**

An ordinance relating to the sale, possession and use of tobacco, tobacco products and tobacco related devices in the County and to reduce the illegal sale, possession and use of such items to and by minors.

The County Board of the County of Itasca Ordains:

**Section 100. Purpose.** Because the County recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products and tobacco related devices and such sales, possession and use are violations of both State and Federal laws; and because studies 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 and tobacco related 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 and tobacco related 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.

This Ordinance must be liberally construed to carry out the following remedies/purposes:

1. to enforce the law;
2. to deter crime;
3. to reduce the economic incentive to engage in criminal conduct; and,
4. to increase the pecuniary loss resulting from the detection of criminal activity.

**Section 200. Definitions and Interpretations.** Except as may otherwise be provided or clearly implied by context, 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

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term "may" means permissive. The following terms shall have the definitions given to them:

Subd. 1 Tobacco or Tobacco Products. "Tobacco" or "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.

Subd. 2 Tobacco Related Devices. "Tobacco Related Devices" shall mean any tobacco product as well 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.

Subd. 3 Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco products or tobacco related devices in any manner where any person shall have access to the tobacco, tobacco products or tobacco related devices without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product or tobacco related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 4 Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic or other type of device which dispenses tobacco, tobacco products or tobacco related 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.

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Subd. 5 Individually Packaged. "Individually Packaged" shall mean 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 subdivision shall not be considered individually packaged.

Subd. 6 Loosies. "Loosies" shall mean the common term used to refer to a single or individually packaged cigarette.

Subd. 7 Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 8 Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco products or tobacco related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores and restaurants.

Subd. 9 Moveable Place of Business. "Moveable Place of Business" shall refer to 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.

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

Subd. 11 Compliance Checks. "Compliance Checks" shall mean the system the County uses to investigate and ensure that those authorized to sell tobacco, tobacco products and tobacco related devices are following and complying with the requirements of this ordinance.

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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 or tobacco related 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 and tobacco related devices.

Subd. 12 Package of Cigarettes. Shall mean 20 or more cigarettes contained in a single unbroken container or wrapper.

**Section 300 License.** No person shall sell or offer to sell any tobacco, tobacco products or tobacco related device without first having obtained a license to do so from the County.

Subd. 1 Application. An application for a license to sell tobacco, tobacco products or tobacco related 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 Auditor/Treasurer shall immediately forward the completed application to the County Public Health Department for a report on the applicant's compliance with federal, state and local law and ordinance. The Public Health Department shall complete and return its report to the Auditor/Treasurer who shall forward the application and report to the Board for action at its next regularly scheduled Board meeting. If the Auditor/Treasurer 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.

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Subd. 2 Action. The Board may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or applicant it deems necessary. If the Board shall approve the license, the Auditor/Treasurer shall issue the license to the applicant. If the 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 Board's decision.

Subd. 3 Term. All licenses issued under this ordinance shall expire on December 31st of the year for which they were issued.

Subd. 4 Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

Subd. 5 Transfers. All licenses issued under this ordinance 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 Board.

Subd. 6 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 ordinance.

Subd. 7 Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

Subd. 8 Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for renewal shall be made at least sixty (60) days but no more than ninety (90) days before the expiration of the current license. The issuance of a license issued under this ordinance shall be considered a privilege

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and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

**Section 400. 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 \$50.00. The County Board may, by resolution, set this fee on an annual basis. This fee shall be prorated on a monthly basis where less than a full year remains at the time of original application, but shall in no event be less than \$50.00.

**Section 500. Basis for Denial of License.** The following shall be grounds for denying the issuance or renewal of a license under this ordinance; 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. If a license is mistakenly issued or renewed to a person, it may be revoked upon the discovery that the person was ineligible for the license under this Section:

- A. The applicant is under the age of eighteen (18) years.
- B. The applicant has been convicted within the past five (5) years of any violation of a Federal, State or local law ordinance provision or other regulation relating to tobacco or tobacco products or tobacco related devices.
- C. The applicant has had a license to sell tobacco, tobacco products or tobacco related devices revoked within the preceding twelve (12) months of the date of application.
- D. The applicant fails to provide any information required on the application or provides false or misleading information.
- E. The applicant is prohibited by Federal, State or other local law, ordinance or other regulation from holding such a license.

**Section 600. Prohibited Sales.**

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Subd. (1) It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product or tobacco related device:

- A. To any person under the age of eighteen (18) years.
- B. By means of any type of vending machine.
- C. By means of loosies as defined in Section 200 of this ordinance.
- D. 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.
- E. By any other means, to any person, or in any other manner or form prohibited by Federal, State or other local law, ordinance provision or other regulation.

Subd. (2). It shall be a violation of this Ordinance for any person to sell or offer for sale any:

- A. Single, double or triple packages of cigarettes or smokeless tobacco in open displays which are accessible to the public 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 premises in order to receive the packages of cigarettes or smokeless tobacco and whereby there is not a physical exchange of the packages of cigarettes or smokeless tobacco.
- B. Any single unbroken container or wrapper of cigarettes which does not contain at least 20 cigarettes whether sold or offered for sale singly or in multi-packs.

**Section 700. Vending Machines.** It shall be unlawful for any person licensed under this ordinance to allow the sale of

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tobacco, tobacco products or tobacco related devices by the means of a vending machine.

**Section 800. Self-Service Sales.** It shall be unlawful for a licensee under this ordinance to allow the sale of single, double or triple packages of cigarettes or smokeless tobacco 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 a physical exchange of single, double or triple packages of cigarettes or smokeless tobacco between the licensee or his or her clerk and the customer. All single, double or triple packages of cigarettes or smokeless tobacco shall either be stored behind a counter or other area not freely accessible to the general public. Any retailer selling cigarettes or smokeless tobacco at the time this ordinance is adopted shall comply with this Section within 180 days.

This subdivision shall not apply to any retail store which derives at least 90% of the revenues from tobacco, tobacco-related products and which cannot be entered by persons younger than 18 years of age.

**Section 900. Responsibility.** 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 the 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 1000. Compliance Checks and Inspections.** All licensed premises shall be open to inspection by the County law enforcement 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 fifteen (15) years but less than eighteen (18) years, to enter the licensed premises to attempt to purchase tobacco, tobacco products or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by County



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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 or tobacco related devices when such items are obtained as 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 compliance checks 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.

**Section 1100. Other Illegal Acts.** Unless otherwise provided, the following shall be a violation of this ordinance.

Subd. 1 Illegal Sales. It shall be a violation of this ordinance for any person to sell or otherwise provide tobacco, tobacco products or a tobacco related device to any minor,

Subd. 2 Illegal Possession. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 3 Illegal Use. It shall be a violation of this ordinance for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product or tobacco related device.

Subd. 4 Illegal Procurement. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product or tobacco related device and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such 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,

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tobacco product or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 5 Use of False Identification. It shall be a violation of this ordinance 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.

**Section 1200. 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 which shall inform the alleged violator of his or her right to be heard on the accusation.

Subd. 2 Hearings. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

Subd. 3 Hearing Officer. The County Board shall serve as the hearing officer. The County Board may by resolution delegate this responsibility to such person or persons as it deems appropriate.

Subd. 4 Decision. 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 under Section 1300 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation has occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

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Subd. 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.

Subd. 6 Misdemeanor/Gross Misdemeanor Prosecution. Nothing in this section shall prohibit the County from seeking prosecution as a misdemeanor/gross misdemeanor for any alleged violation of this ordinance.

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

**Section 1300. Penalties.**

Subd. 1 Licensees. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$ 75.00 for a first violation of this ordinance; \$200.00 for a second offense at the same licensed premises within a thirty-six (36) month period; and, \$250.00 for a third or subsequent offense at the same location within a thirty-six (36) month period. In addition, after the third offense, the license shall be suspended for not less than seven (7) days, and the licensee shall be required to appear before the County Board to present a plan of: staffing changes, technology changes and/or physical environment changes.

Subd. 2 Other Individuals. Other individuals, other than minors regulated by subdivision 3 of this subsection, found to be in violation of this ordinance shall be charged an administrative fee of \$50.00.

Subd. 3 Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products or tobacco related devices, shall be charged an administrative fee of \$50.00. The administrative fee shall be increased by \$50.00 for each subsequent offense and any time false identification has been used by the offender. Up to

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\$50.00 of the fee may be suspended if the offender successfully completes an approved cessation class.

Subd. 4 Misdemeanor/Gross Misdemeanor. Nothing in this section shall prohibit the County from seeking prosecution as a misdemeanor/gross misdemeanor for any violation of this ordinance.

**Section 1400. Exceptions and Defenses.** Nothing in this ordinance shall prevent the providing of tobacco, tobacco products or tobacco related 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 ordinance for a person to have reasonably relied on proof of age as described by State law.

**Section 1500. 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 of effect the validity and enforceability of any other section or provision of this ordinance.

**Section 1600. Effective Date.** This ordinance shall take effect the day following publication in the County's official newspaper.

Published in Grand Rapids Herald Review 3/24/99

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**TOBACCO ORDINANCE  
AMENDMENT**

**Section 1300. Penalties.**

Subd. 1 Licensees. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$100.00 for a first violation of this ordinance; \$200.00 for a second offense at the same licensed premises within a forty-eight (48) month period; \$250.00 for a third or subsequent offense at the same location within a forty-eight (48) month period and the licensee shall also be required to appear before the County Board to present a plan of: staffing changes, technology changes and/or physical environment changes and \$500.00 for a fourth or subsequent offense at the same location within a forty-eight (48) month period. In addition, after the fourth offense, the license shall be suspended for not less than seven days and the licensee shall comply with any additional requirements imposed by the board in regards to staffing changes, technology changes, physical environment changes, and/or mandatory staff training.

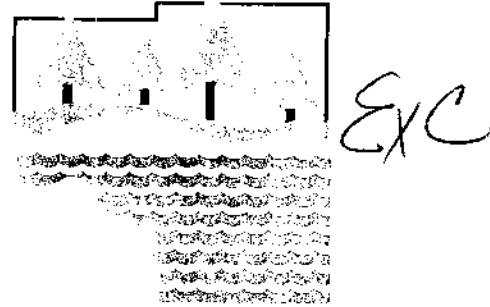
Subd. 2 Other Individuals. Other individuals, other than minors regulated by subdivision 3 of this subsection, found to be in violation of this ordinance shall be charged an administrative fee of \$100.00.

Subd. 3 Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products or tobacco related devices, shall be charged an administrative fee of \$50.00. The administrative fee shall be increased by \$50.00 for each subsequent offense and any time false identification has been used by the offender. Up to \$50.00 of the fee may be suspended if the offender successfully completes an approved cessation class.

Subd. 4 Misdemeanor/Gross Misdemeanor. Nothing in this section shall prohibit the County from seeking prosecution as a misdemeanor/gross misdemeanor for any violation of this ordinance.

# ITASCA COUNTY

## REQUEST FOR BOARD ACTION



Date: May 20, 2002

RBA No.:		Originating Department: Administrative Services	
Requested Board Date: June 25, 2002	Flexibility:	Presenter: Jack Muhar/Ruth Pierce	
Item: Public Hearing		Estimated Time: 1/2 hour - 3:05 p.m.	

**Board Action Requested:**

Hold a public hearing on an amendment of the Itasca County Tobacco ordinance.

**Background:**

Licensees - Notified 5/20/02 as well as Sheriff Pat Medure and Ruth Pierce;  
Public Hearing Notice for publication was sent to Herald Review on 5/20/02 for publication on May 22, 2002;

A copy of the proposed amendment to Section 1300. Penalties is attached as well as MS 4611.12 Municipal tobacco license and MS 461.19 Effect on local ordinance; notice.

Alternate Action:	<input type="checkbox"/>	Consent Agenda
	<input type="checkbox"/>	Regular Agenda
	<input type="checkbox"/>	Refer to
	<input type="checkbox"/>	Table until
	<input type="checkbox"/>	Other

Supporting Documents:	<input checked="" type="checkbox"/> Attached	<input type="checkbox"/> None
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Signature/Date: <i>Jack Muhar by Kto</i>	Distribution/Date: <u>5/23/02</u> <i>Ruth Pierce</i> <i>Jack Muhar</i> <i>also see note in Background</i>	Recommended for Consent Agenda: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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Clerk of Board Comments:

Signature/Date:  
*Ruth Pierce*

Board Action:	Distribution / Filing Instructions: <u>6/27/02</u>
Approved as Requested: <u>6/25/02</u>	<i>Ruth Pierce</i>
Denied: <u>4<sup>th</sup> appeal = \$50000</u>	<i>Jack Muhar</i>
Tabled: <u>effluent upon</u>	<i>Sue Ergar</i>
Other: <u>publication of Ord.</u>	<i>Policy Book</i>

*Auditor/Treasurer*