

Itasca County Tobacco Ordinance #065

An ordinance relating to the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products in the county and to reduce the illegal sale of such items to persons under the age of 21.

The county Board of the county of Itasca Ordains:

Section 100. Purpose and Findings. Because the county recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21, violates, both state and federal laws: and because studies which county accepts and adopts, have shown that youth use of any commercial tobacco products has increased to 27.6% in Minnesota; and because nearly 90% of people who smoke begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the County Board accepts the conclusions and recommendations of: the U.S. Surgeon General reports, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking — 50 Years of Progress* (2014) and *Preventing Tobacco Use Among Youth and Young Adults* (2012); the Centers for Disease Control and Prevention in their studies, *Tobacco Use Among Middle and High School Students — United States, 2011– 2015* (2016), and *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997* (1998); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. *Health Reports*, 9(4), 39-46; D’Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at starting smoking and number of cigarettes smoked. *Annals of Epidemiology*, 4(6), 455–459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. (1999). Initiation of cigarette smoking and subsequent smoking behavior among U.S. high school students. *Preventive Medicine*, 29(5), 327–333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. *Oncogene*, 21(48), 7326–7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673–677; Minnesota Department of Health. (2018). *Data Highlights from the 2019 Minnesota Youth Tobacco Survey*. Saint Paul, MN; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. *American Journal of Preventive Medicine*, 48(3), 326–333, copies of which are adopted by reference.

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

- 1 to enforce the law,
- 2 to promote public health and reduce youth access to tobacco products,
- 3 to reduce the economic incentive to engage in illegal conduct; and,
- 4 to increase the pecuniary loss resulting from the detection of illegal 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 term "may" means permissive. The following terms shall have the definitions given to them:

Subd. 1 Child-Resistant Packaging. "Child resistant packaging" means 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.

Subd. 2 Cigar. "Cigar" means 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 may be amended from time to time.

Subd. 3 Compliance Checks. "Compliance Checks" mean 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. "Compliance Checks" involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. "Compliance Checks" may also be conducted by the county or other units of government for educational, research and training purposes or for investigating or enforcing appropriate Federal, State, or local laws and regulations relating to licensed products.

Subd. 4 Delivery Sale. "Delivery Sale" means the sale of any licensed product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. "Delivery Sale" includes but is not limited to the sale of any licensed product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. "Delivery Sale" includes delivery by licensees or third parties by any means, including curbside pick-up.

Subd. 5 Electronic Delivery Device. "Electronic Delivery Device" means 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.

Subd. 6 Flavored Product. "Flavored Product" means any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

Subd. 7 Imitation Tobacco Product. "Imitation Tobacco Product" means any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. "Imitation Tobacco Product" includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. "Imitation Tobacco Product" does not include electronic delivery devices or nicotine or lobelia delivery products.

Subd. 8 Indoor Area. "Indoor area" means 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.

Subd. 9 Licensed Products. "Licensed Products" shall mean any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

Subd. 10 Loosies. "Loosies" shall mean 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.

Subd. 11 Moveable Place of Business. "Moveable Place of Business" shall refer to any form of business 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.

Subd. 12 Nicotine or Lobelia Delivery Product. "Nicotine or Lobelia Delivery Product" means any product containing or delivering nicotine or lobelia 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.

Subd. 13 Pharmacy. "Pharmacy" means a place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

Subd. 14 Retail Establishment. "Retail Establishment" shall mean any place of business where licensed products are available for sale to the general public. "Retail Establishment" shall include, but not be limited to, grocery stores, tobacco product shops, convenience stores, liquor stores, gasoline service stations, bars, and restaurants.

Subd. 15 Sale. A "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 16 Self-Service Display. "Self-Service Display" means 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 in order to access the licensed products.

Subd. 17 Smoking. "Smoking" means 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. "Smoke" also includes carrying or using an activated electronic delivery device.

Subd. 18 Tobacco. "Tobacco" means 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 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 tobacco. "Tobacco" 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.

Subd. 19 Tobacco-Related Device. "Tobacco-Related Device" means 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.

Subd. 20 Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses licensed products upon the insertion of money, tokens, or other form of payment into the machine by the person seeking to purchase the licensed product.

Subd. 21 Youth-Oriented Facility. "Youth-Oriented Facility" means any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. "Youth-Oriented Facility" includes, but is not limited to, schools, playgrounds, recreation centers, and parks.

Section 300 License. No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the County.

Subd. 1 Application. An application for a license to sell licensed products 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. 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.

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 application, 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 Sections 1200 and 1300 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. The transfer of any license to another location or person is prohibited.

Subd. 6 Display. All licenses shall always be posted and displayed in plain view of the general public on the licensed premises.

Subd. 7 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.

Subd. 8 Issuance as a Privilege not a Right. 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. 9 Samples prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost.

Subd. 10 Instructional programs. Licensees must ensure that all employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the county at the time of renewal, and whenever requested to do so during the license term.

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 \$100.00. The County Board may, by resolution, set this fee on an annual basis.

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 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 licensed products.
- B. The applicant has had a license to sell licensed products suspended or revoked within the preceding twelve (12) months of the date of application.
- C. The applicant fails to provide any information required on the licensing application or provides false or misleading information.
- D. The applicant is prohibited by Federal, State, or other local law, ordinance or other regulation from holding such a license.
- E. The business for which the license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.
- F. The applicant is under 21 years of age.

Section 600. Prohibited Sales.

Subd. 1 It shall be a violation of this ordinance for any person to sell or offer to sell any licensed product:

- A. By means of any type of vending machine.
- B. By means of loosies as defined in Section 200 of this ordinance.
- C. 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.
- D. 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. Any retailer selling licensed products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.
- E. By means of delivery sales. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.
- F. By any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

Subd. 2 Legal age. No person shall sell any licensed product to any person under the age of 21.

A. 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 subdivision.

B. 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.

Subd. 3 Liquid Packaging. No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the county, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Section 900. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to 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. Nothing in this section shall be construed as prohibiting the County from also subjecting the clerk to any civil penalties that the county deems to be 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. In accordance with state law, the county shall conduct a compliance check that involves the participation of a person at least 17 years of age, but less than 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 shall be supervised by County-designated law enforcement officers or other designated County personnel. No person used in compliance checks shall attempt to use a false identification misrepresenting the person's age and all persons lawfully engaged in compliance checks shall answer all questions about their 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. Prohibited Furnishing or Procurement. It shall be a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a

person under the age of 21. It shall further be a violation for any person 21_years of age or older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product.

Section 1200. Violations.

Subd. 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 his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.

Subd. 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.

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. The hearing officer will be an impartial employee of the county or an impartial person retained by the county to conduct the hearing.

Subd. 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 county and 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 and a copy will be provided to the county and 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 subdivision (5) of this section.

Subd. 5 Appeals. Appeals of any decision made by the hearing officer shall be filed in the Itasca County district court within 10 business days of the date of the decision.

Subd. 6 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 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 36 months of the first violation; and [\$1,000] for a third or subsequent offense at the same location within 36 months of the first violation. Upon the third violation, the license will be suspended for a period of not less than [30] consecutive days. And the licensee will be required to submit a written plan to the county board explaining any changes made to the establishment's technology, physical environment, training and/or procedure to avoid the sale of licensed products to persons less than 21 years of age. Upon a fourth violation within 60 months of the first violation, the license will be revoked.

Subd. 2 Employees of licensees and other Individuals. Individuals, other than persons under the age of 21 regulated by subdivision 3 of this section, found to be in violation of this ordinance may be charged an administrative fine of \$50.00.

Subd. 3 Persons under the Age of 21. Persons under the age of 21 who violate this ordinance may only be subject to noncriminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary civil penalty that the county determines to be appropriate. The County Board will consult with court personnel, educators, parents, guardians, persons under the age of 21, public health officials, and other interested parties to determine an appropriate remedy for persons under the age of 21_in the county in the best interest of the underage person. The remedies may be established by ordinance and amended from time to time.

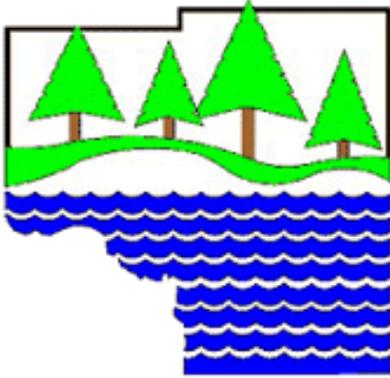
Subd. 4 Misdemeanor. Nothing in this section shall prohibit the County from seeking prosecution as a misdemeanor for any an alleged second violation of this ordinance by persons 21 years or older_within five years of a previous conviction under the ordinance.

Section 1400. Exceptions and Defenses. Nothing in this ordinance shall prevent 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. 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 or affect the validity and enforceability of any other section or provision of this ordinance.

Section 1600. Effective Date. This ordinance shall take effect on June 1, 2021.

Board Approval Dates: Original; 6/25/2002; 4/27/2021



**ITASCA COUNTY
BOARD OF COMMISSIONERS**

Itasca County Courthouse
123 NE 4th Street
Grand Rapids, MN 55744

Tuesday, April 27, 2021

REQUEST FOR BOARD ACTION: RBA-2021-1519

DEPARTMENT: Health & Human Services

TIME REQUESTED: 10 Minutes

PRESENTER: Kelly Chandler

AGENDA ITEM:

Updated Tobacco Ordinance

BOARD ACTION REQUESTED:

Approve updated tobacco ordinance.

BACKGROUND:

The MN Legislature approved Tobacco 21 in 2020. We are not able to have an ordinance that is less restrictive locally. The ordinance language attached aligns our ordinance with the MN ordinance with updated penalties for sales to minors and language on compliance checks including age of persons utilized for the compliance checks. If we did not update the compliance check language, it would create a very limited ability to carry out this required task due to limiting age groups we can utilize.

COUNTY ATTORNEY REVIEW: No

SUPPORTING DOCUMENTATION:

1. Itasca Tobacco Ordinance Updated 2021
2. MN-Tobacco-21-FAQ FINAL

04/20/2021

RESULT:	RECOMMENDED FOR CONSENT	NEXT: 04/27/2021 2:30 PM
RESULT:	APPROVED (4 TO 0)	
MOVER:	Commissioner Terry Snyder	
SECONDER:	Commissioner Davin Tinquist	
AYES:	Davin Tinquist, Terry Snyder, Burl Ives, Ben DeNucci	
ABSENT:	Leo Trunt	