

**TITLE AND SUMMARY
OF
AMENDED ROCK COUNTY TOBACCO ORDINANCE**

The following Ordinance is hereby published by title and summary:

1. **Title of Ordinance:** Rock County Tobacco Ordinance
2. **Summary of Ordinance:** The Ordinance amends the prior Tobacco Ordinance and provides as follows:

Section 1: Defines the purpose of the Ordinance to regulate the sale, possession, and use of tobacco and tobacco-related products and specifically to protect minors from the serious effects associated with the illegal use of tobacco and tobacco products.

Section 2: Sets forth definitions of terms used in the Ordinance and offers definitions for imitation tobacco products, loosies, nicotine or lobelia delivery device, tobacco or tobacco products, tobacco products shop, and tobacco-related devices, and other terms used in the Ordinance.

Section 3: Provides that a county tobacco retail license is required prior to offering for sale tobacco or tobacco-related products. Specifies the procedure for applying for a license. Establishes the license term and provides for renewals. Restricts the sale of tobacco and tobacco products within 1,000 feet of schools, playgrounds, public parks, or houses of worship and within 2,000 feet of other tobacco retailers in cities with more than 2,500 residents. Establishes the maximum number of retail tobacco licenses.

Section 4: Provides that every license must designate a manager and an agent for service of process.

Section 5: Sets the fee for a license in the amount of \$170.

Section 6: Sets forth the basis for denial of a license.

Section 7: Indicates that licensee is responsible for actions of employees. Sets the minimum age for persons employed by a licensee at 16 years of age.

Section 8: Provides for mandatory compliance checks.

Section 9: Designates Southwest Health & Human Services as the enforcement authority for the Ordinance.

Section 10: Prohibits sales of certain tobacco products including, but not limited to, blunt wraps and imitation tobacco products. Restricts the sale of nicotine or lobelia

delivery devices (e-cigarettes) to require that the product be kept in locked dispensers and secure locations. Prohibits vending machine sales or self-service sales.

Section 11: Describes other prohibited acts, including possession by a minor, use by a minor, procurement by a minor, false identification, and procuring and providing tobacco and tobacco-related products to a minor.

Section 12: Provides certain exceptions to the Ordinance if the smoking is a part of a lawfully recognized traditional, religious, spiritual, or cultural ceremony.

Section 13: Provides for the administrative review for enforcement of the Ordinance setting forth notice requirements, hearing requirements, hearing officer requirements, costs, and appeals.

Section 14: Sets forth administrative penalties for violations of \$150 for the first offense, \$250 for the second offense, and \$500 for the third offense along with mandatory minimum suspension of 30 days.

Section 15: Contains a severability and savings clause.

Section 16: Provides that the Ordinance is to be effective on this date of publication and provides that existing licensees shall have until June 1, 2013, to sell and remove inventories of tobacco products that would no longer be permitted to be sold under the provisions of the Ordinance.

3. **Availability of Ordinance:** A complete printed copy of this Ordinance is available for inspection by any person during regular business hours in the office of the County Administrator located at 204 East Brown, Luverne, Minnesota 56156. This Ordinance was passed by the Board of Commissioners of the County of Rock on the 5th day of March, 2013, and shall become effective seven (7) days after the date of publication.

/Ken Hoime 
Board Chairperson

ATTEST:

Kyle J. Oldre
County Administrator

Introduced: March 5, 2013
Passed: March 4, 2013
Published: March 14, 2013
Effective: March 21, 2013

Rock County Tobacco Ordinance

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Rock County Tobacco Ordinance

Section 1. 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 State and Federal laws; and because studies (e.g., as cited by the Centers for Disease Control and Prevention or the Minnesota Department of Health), which are hereby accepted and adopted, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who have reached 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; the intent of this ordinance shall be 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 to prevent young people from starting to smoke, as stated in Minnesota Statutes, section 144.391 and sections 461.12 to 461.18.

Section 2. 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 them:

Subd. 1. Blunt Wraps. "Blunt Wraps" shall mean rolling papers or similar tobacco-related devices that are manufactured or packaged for use as wraps or hollow tubes that are designed or intended to be filled with loose tobacco, plant products, or other fillers to create custom cigars or cigar-like products.

Subd. 2. 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. 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, and tobacco-related devices, and nicotine or lobelia delivery devices.

Subd. 3. Imitation Tobacco Product. "Imitation Tobacco Product" shall mean either any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product, that is designed to be used by children as toy. Examples of imitation tobacco products include but are not limited to candy or chocolate cigarettes or cigars, bubble gum cigars, shredded bubble gum resembling chew tobacco, and

shredded beef jerky in containers resembling tobacco snuff tins. A nicotine or lobelia delivery device is not an imitation tobacco product.

Subd. 4. 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 definition shall not be considered individually packaged.

Subd. 5. Loosies. "Loosies" shall mean 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 \$2.00 per cigar.

Subd. 6. Minor. "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.

Subd. 7. Moveable Place of Business. "Moveable Place of Business" shall mean any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address storefront or other permanent type of structure authorized for sales transactions.

Subd. 8. Nicotine or Lobelia Delivery Device. "Nicotine or Lobelia Delivery Device" shall mean a 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, but shall not include 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.

Subd. 9. Person. "Person" shall mean any natural person, firm, partnership, association, corporation, company, organization, or any other legal or commercial entity of any kind.

Subd. 10. Pharmacy. "Pharmacy" shall mean a registered pharmacy as defined in Minnesota Statutes, section 151.01, subd. 2, as amended from time to time.

Subd. 11. 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, gasoline service stations, bars and restaurants.

Subd. 12. Retail Roll-Your-Own Machine. "Retail Roll-Your-Own Machine" shall mean a mechanical device, however named or described, that is situated and used in a retail establishment to roll or wrap tobacco into cigarettes or other tobacco products. A retail roll-your-own machine shall not include a roll-your-own machine that is purchased by a private citizen

exclusively for personal, non-commercial, non-retail use, and is not located in a retail establishment or other business establishment or used in the sale or distribution of tobacco, tobacco products, or tobacco-related devices.

Subd. 13. Sale. A "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 14. Self-Service Merchandising. "Self-Service Merchandising" shall mean any open displays of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices 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.

Subd. 15. Smoking. "Smoking" shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

Subd. 16. Tobacco or Tobacco Products. "Tobacco or Tobacco Products" shall mean cigarettes and any products 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 cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff, snuff flour, Cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cutting and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco or tobacco products 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.

Subd. 17. 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.

Subd. 18. 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, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco-related devices shall include accessories or components of tobacco-related devices which may be marketed separately.

Subd. 19. Vending Machine. "Vending Machine" shall mean any mechanical, electric, electronic, or other type of device which dispenses tobacco, tobacco products, tobacco-related devices, or 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, tobacco-related device or nicotine or lobelia delivery device.

Section 3. County Tobacco Retailer License Required. No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices without first having obtained a tobacco retailer license from the County.

Subd. 1. License application. An application for a tobacco retailer license to sell tobacco, tobacco products, tobacco-related devices, 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 person applying for a tobacco retailer license, the applicant's residential and/or business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the County deems necessary. In addition, all natural persons applying for a tobacco retailer license, or the manager as required by Section 4, shall complete a criminal background check.

Subd. 2. Action on License. Upon receipt of a completed application and payment of the license fee, the County may either approve or deny the tobacco retailer license, using the criteria in Section 6. The County may also delay action for such reasonable period of time as necessary to complete any investigation of the application it deems necessary. If the County approves the license, a license shall be issued to the person applying for a tobacco retailer license. If the County denies the license application, notice of the denial shall be given to the applicant along with a notice of the applicant's right to appeal the decision.

Subd. 3. License Fees. Each application for a tobacco retailer license shall be accompanied by a license fee to be determined annually by the Rock County Board of Commissioners.

Subd. 4. License Term. The licensing period for all tobacco retailer licenses issued under this section begins on March 1 of a calendar year and ends on the last day of February of the next calendar year. Each license issued shall expire on the last day of February of the calendar year unless revoked sooner by the County. If a license is revoked, the person licensed under this ordinance shall immediately surrender the license to the County.

Subd. 5. Renewals. The renewal of a tobacco retailer 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 thirty (30) days but no more than sixty (60) days before the expiration of the current license.

Subd. 6. Moveable Place of Business. No tobacco retailer 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 of License. All tobacco retailer licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 8. Transfers. All tobacco retailer 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. If the name or form of a business changes, such as from a limited liability company to a corporation, but the percent owned by each individual owner does not change, a new license does not need to be issued.

Subd. 9. Revocation or Suspension. Any tobacco retailer license issued under this ordinance may be suspended or revoked as provided in Section 14 of the ordinance.

Subd. 10. Smoking Prohibited in Tobacco Retail Establishments. 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, or plant products shall be prohibited.

Subd. 11. Issuance as a Privilege and Not a Right. The issuance of a tobacco retailer license under this section to any person shall be considered a privilege and not an absolute right, and shall not entitle the person who holds a license to an automatic renewal of the license.

Subd. 12. Proximity to Schools, Playgrounds, Public Parks or Houses of Worship. In cities of more than 2,500 residents no tobacco retailer license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices within one thousand (1,000) feet of any school, playground, public park, or house of worship, occupied space of the school, playground, public park, or house of worship unless a licensed tobacco retailer has been in the business of selling such products in that location for at least one (1) year before the date this section was enacted into law.

Subd. 13. Proximity to Other Tobacco Retail Establishments. In cities of more than 2,500 residents no tobacco retailer license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices within two thousand (2,000) feet of any other tobacco retail establishment, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the nearest existing licensee, unless a licensed tobacco retailer has been in the business of selling such products in that location for at least one (1) year before the date this section was enacted into law.

Subd. 14. Maximum Number of Tobacco Retail Establishments. The number of tobacco retailer licenses in effect at any given time shall be one (1) per 500 county residents as determined by the latest US Census data. A new applicant for a tobacco retailer license who applies at a time when the maximum number of licenses has been issued may be placed on a waiting list and shall be eligible to apply for a license on a first-come, first-serve basis as licenses

are not renewed or are revoked, provided that new applicants who are applying as the result of purchasing a business location previously holding a license shall be entitled to first priority in the issuance of a license. If the number of licenses decreases because of a decline in population the number of licenses then in place shall be maintained and renewed until an existing licensee is not renewed or revoked.

Subd. 15. Retail Roll-Your-Own Machines Prohibited in Tobacco Retail Establishments. The placement, operation, or use of a retail roll-your-own machine by any person shall be prohibited at any retail establishment, and no person shall place, operate, or use a retail roll-your own machine to make cigarettes or any other rolled tobacco or plant product at any licensed premises. This prohibition shall apply to any new application for a tobacco retailer license and to any application for renewal.

Subd. 16. Sales Prohibited by Pharmacies. The sale of tobacco, tobacco products, tobacco-related devices, and nicotine and lobelia delivery devices shall be prohibited in any pharmacy and in any retail establishment that operates or contains an on-site pharmacy. Any pharmacy or retail establishment that operates or contains a pharmacy and that possesses a tobacco retailer license as of the date this ordinance is enacted shall not be eligible for renewal of that license.

Section 4. Manager or Licensee Presence Required. Before a license is issued to someone other than a natural person who is a resident of the county, there shall be designated in writing a natural person, a manager or agent. The manager or agent shall be primarily responsible for the conduct of the licensed premises. There shall also be designated an agent for service of notices and other process relating to the license, and if such agent is not a resident of the State of Minnesota the licensee and/or the agent shall waive any objections to service or jurisdiction. The manager must be a natural person who, by reason of age, character, reputation, and other attributes, could qualify individually as a licensee. The licensee shall notify the County, in writing, of any change in the designation of manager or agent.

Section 5. Fees. No tobacco retailer license shall be issued to a person under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be \$170.00.

Section 6. Basis for Denial of a Tobacco Retailer License.

Subd. 1. Grounds for denial. Grounds for denial of a new tobacco retailer license or renewal of a license include but are not limited to the following:

- 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 Felony or Gross Misdemeanor, or any Federal, State, or local law, ordinance provision or other regulation related to tobacco, alcohol, or other drugs.

- C. The applicant has had a license to sell tobacco, tobacco products, tobacco-related devices or nicotine or lobelia delivery devices suspended or 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 local law, ordinance, or other regulation from holding such a license.

Subd. 2. Discovery of Grounds after Issuance of License. If a tobacco retailer license is mistakenly issued or renewed to any person based on false or misleading information or other grounds defined in this section, the license shall be revoked upon the discovery by the County that the person was ineligible for the license under this section. Notice of revocation shall be sent by certified mail to the address printed on the application.

Section 7. Licensees Responsible for Action of Employees. All persons licensed under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery 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 an employee or other personnel to whatever penalties are appropriate under this ordinance, State, or Federal law, or other applicable law or regulation.

Subd. 1. Minimum Age. Individuals employed by a person licensed under this ordinance must be at least sixteen (16) years of age to sell tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices.

Section 8. Mandatory Compliance Checks. All licensed premises shall be open to inspection by the County, its designee, or other authorized County officials during regular business hours. From time to time, but at least once a 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 premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices. Minors used for the purpose of compliance checks shall be supervised by the County's law enforcement officers or other designated County personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase, or attempted purchase, nor the unlawful possession of tobacco, tobacco products, or tobacco related devices when such items are obtained or attempted to be obtained as part of the compliance check. No minor used in compliance checks shall attempt to use 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.

Section 9. Enforcement Authority. It shall be the duty of the County to enforce the provisions of this ordinance and Southwest Health and Human Services is hereby delegated authority to enforce the provisions of this ordinance including the power to inspect retail establishments, issue administrative penalties, orders, and revoke a tobacco retailer license.

Section 10. Prohibited Sales.

Subd. 1. General. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device:

- A. To any minor; or
- B. By means of loosies, as defined in Section 2, Subd. 5, of this ordinance, to any person, no matter their age; or
- 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; or
- D. By any other means, to any other person, in any other manner or form prohibited by Federal, State, or local law, ordinance provision, or other regulation.

Subd. 2. Blunt wraps. It shall be unlawful for any person licensed under this ordinance to sell or offer to sell blunt wraps.

Subd. 3. Imitation Tobacco Products. It shall be unlawful for any person licensed under this ordinance to sell or offer for sale any imitation tobacco product. No licensed retail establishments shall give away, sell, or offer for sale any imitation tobacco product.

Subd. 4. Nicotine or Lobelia Delivery Device. It shall be unlawful for any person licensed under this ordinance to allow the sale of nicotine or lobelia delivery device in any retail establishment unless the products offered for sale are kept in a locked dispenser located in an area that is behind the counter and in an area which cannot be accessed by the general public without the assistance of a store employee.

Subd. 5. Vending Machines. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, tobacco related devices, or nicotine or lobelia delivery devices by the means of a vending machine.

Subd. 6. Self-service sales. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, tobacco-related devices, 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, or nicotine or lobelia delivery device between the licensee or his or her employee and the customer.

Section 11. Other Prohibited Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance.

Subd. 1. Illegal Possession. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 2. Illegal Use. It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device.

Subd. 3. Illegal Procurement by a Minor. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 4. Illegal Procurement. It shall be a violation of this ordinance for any person to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device 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 or nicotine or lobelia delivery 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 12. Exceptions and Defenses. Nothing in this ordinance shall prevent the furnishing of tobacco, tobacco products, or tobacco-related devices to a minor for smoking by a minor as part of a lawfully recognized traditional religious, spiritual, or cultural ceremony. It shall be an affirmative defense to an alleged violation of this ordinance, regarding a sale to a minor, for a person to have reasonably relied in good faith on proof of age as provided in Minnesota Statutes, section 340A.503, subd. 6, as amended from time to time.

Section 13. Administrative Review.

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 any applicable penalty and which shall inform the alleged violator of his or her right to be heard on the accusation. The citation shall provide the alleged violator with 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 requested promptly. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

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 by mail or personal delivery at least ten (10) business days prior to the hearing.

Subd. 3. Hearing Officer. The County Administrator will designate a person to 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.

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 14 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the County and the accused violator by mail or in-person delivery, as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy of that decision shall be provided to the County and the acquitted accused violator in the same manner as described above. The decision of the hearing officer is final, but may be appealed.

Subd. 5. Costs. If the hearing officer determines that violation of this ordinance by a person licensed under this ordinance did occur, the county's actual expenses in holding the hearing up to a maximum of one thousand dollars (\$1,000) shall be paid by that person.

Subd. 6. Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court for the jurisdiction of the county in which the alleged violation occurred within ten (10) business days.

Subd. 7. Misdemeanor Prosecution. Nothing in this section shall prohibit the County from seeking prosecution as a misdemeanor for any alleged violation of this ordinance. If the County elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Subd. 8. Continued Violation. Each violation, and every 24 hour period from midnight to midnight in which a violation occurs or continues, shall constitute a separate offense.

Section 14. Administrative Penalties.

Subd. 1. Licensees. Any person licensed under this ordinance found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fee. The fee for a violation under this ordinance shall be established as follows:

First Offense:	\$150.00
Second Offense:	At same licensed premise within 24 months of the first offense: \$250.00

Third and Subsequent Offense: At same licensed premise within 24 months of the first or second offense: \$500.00, and the license shall be suspended for not less than thirty (30) days.

Second and subsequent offenses occurring on the same licensed premise in excess of 24 months from a previous violation shall be treated as if it were a first offense.

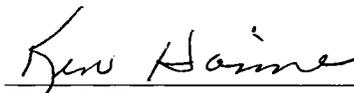
Subd. 2. Minors. A minor found to be in unlawful possession of, or found to have unlawfully purchased or attempted to purchase tobacco, a tobacco product, tobacco-related device or a nicotine or lobelia delivery device, may be subject to a petty misdemeanor or an administrative penalty that the court finds applicable and appropriate.

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

Subd. 4. Statutory penalties. If the administrative penalties authorized to be imposed by Minnesota Statutes, section 461.12, as amended from time to time, differ from those established in this ordinance, the statutory penalties shall prevail.

Section 15. 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 invalidate the effectiveness of any other section or provision of this ordinance.

Section 16. Effective Date. This ordinance adopted March 5, 2013 hereby repeals and replaces in its entirety the Rock County Tobacco Ordinance adopted on July 6, 2010. This ordinance shall become effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minnesota Statutes, section 412.191, subd. 4, as amended from time to time, which meets the requirements of Minnesota Statutes, section 331A.01, subd. 10, as amended from time to time. Notwithstanding the effective date of this ordinance, existing licensees shall have until June 1, 2013 to liquidate current inventories as of the effective date of the ordinance of products which will now be prohibited for sale by the terms of this Ordinance.


Board Chairperson

ATTEST:

County Administrator

March 5, 2013
Date