OTTER TAIL COUNTY TOBACCO ORDINANCE

An Ordinance relating to the sale, possession and use of tobacco and tobacco- related devices in the County of Otter Tail and for the reduction of the illegal sale, possession, and use of such items to and by minors.

The County Board of Otter Tail County ordains:

Section I. **General Provisions.**

A. **Title.** The title of this Ordinance shall be the Otter Tail County Tobacco Ordinance.

B. **Purpose and Authority.** Because the County recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco and tobacco-related devices and that such sales, possession and use are violations of both state and federal law; and there exists substantial scientific evidence that the use of tobacco products causes cancer, heart disease and various other medical disorders; and whereas the use of tobacco products commences primarily in adolescence; and the County desires to prevent young people from starting to use tobacco; this Ordinance is intended to regulate the sale, possession and use of tobacco and tobacco-related devices for the purpose of enforcing and furthering existing laws and to protect minors from the serious affects associated with the use of tobacco. This Ordinance applies in unorganized territory of the County and in all towns and cities which do not license and regulate retail tobacco sales. This Ordinance is enacted pursuant to Minnesota Statutes, Chapter 461.

C. **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.

D. **Responsibility**. All licensees under this Ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco or tobacco-related devices on the licensed premises, and the sale of such 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 employee to whatever penalties are appropriate under this Ordinance, state or federal law or other applicable law or regulation.

Section II. **Definitions.**

For purposes of this Ordinance, certain terms and words are herein defined as follows:

A. **Minor**. Minor means any natural person who has not yet reached the age of 18 years.

B. **Sale**. "Sale" or "sell" means any transfer of goods for money, trade, barter or other consideration.

C. **Self-serve merchandising**. "Self-serve merchandising" means open displays of tobacco or tobacco-related devices in any manner where any person shall have access to the tobacco 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 or tobacco-related device between the customer and the licensee or licensee's employee.

D. **Tobacco**. "Tobacco" means cigarettes; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; snuff flower; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or other tobacco-related devices.

E. **Tobacco-related devices**. "Tobacco-related devices" means 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.

F. **Vending machine**. "Vending machine" means any mechanical, electric, electronic or other type of device which dispenses tobacco 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 tobacco, tobacco product or tobacco-related devices.

Section III. **License**.

A. **License Requirement**. No person shall sell or offer to sell any tobacco or tobacco-related device without first having obtained a license to do so from the County.

1. **Application**. An application for a license to sell tobacco or tobacco-related devices shall be made to the County Auditor 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 being sought and any additional information the County deems necessary. If the County Auditor shall determine that an application is incomplete, the application will

be returned to the applicant with a notice of the information necessary to make the application complete.

Upon receipt of the completed application and performing a record check on the applicant, the County Auditor shall forward the application to the County Board for action.

2. **Action**. The County 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 the applicant it deems necessary. If the County Board approves the license, the County Auditor shall issue the license to the applicant. If the County Board denies the license, notice of the denial shall be given to the applicant along with a notice of the applicant's right to appeal the decision to District Court.

3. **Term**. All licenses issued under this Ordinance shall be valid for one calendar year from the date of issue.

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.

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 approval of the Otter Tail County Board.

6. **Movable place of business**. No license shall be issued to a movable place of business. "Movable place of business" means any form of business operated out of a truck, van, automobile, trailer or other type of vehicle or transportable shelter rather than a fixed address storefront or other permanent type of structure authorized for sales transactions. Only fixed location businesses shall be eligible to be licensed under this Ordinance.

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

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 a renewal shall be made at least 30 days, but no more than 60 days, before the expiration of the current license.

9. **Fees**. The fee for an annual license under this Ordinance shall be set by the Otter Tail County Board, and no license shall be issued or renewed until the fee has been paid in full.

B. **Basis for Denial of License**. A license shall not be issued if any of the following circumstances exist:

1. The applicant is under the age of 18 years.

2. The applicant has been convicted four times within the past five years of any violation of a federal, state or local law, ordinance provision or other regulation relating to tobacco or tobacco-related devices.

3. The applicant has had a license to sell tobacco or tobacco-related devices revoked within the preceding 12 months of the date of application.

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

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

C. **Mistaken Issuance**. If a license is mistakenly issued or renewed to an applicant, it shall be revoked upon the discovery that the applicant was ineligible for the license under this section.

Section V. **Violations.**

A. **Prohibited Sales**. It shall be a violation of this Ordinance for any person to sell or offer to sell any tobacco or tobacco-related device:

1. Without having first obtained a license to sell tobacco and tobacco-related devices.

2. To any person under the age of 18 years.

3. By means of any type of vending machine.

4. By means of self-service merchandising.

5. 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.

B. **Vending Machines and Self-Service Merchandising**. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco or tobacco-related devices by means of a vending machine or self-service merchandising. Any retailer selling tobacco or tobacco-related devices at the time this ordinance is adopted shall comply with this section within 90 days of the date of adoption.

C. **Other Illegal Acts**. Unless otherwise provided, the following act shall be a violation of this Ordinance:

1. **Sales**. It shall be a violation of this Ordinance for any person to sell or otherwise provide any tobacco or tobacco-related device to any minor.

2. **Possession**. It shall be a violation of this Ordinance for any minor to have in his or her possession any tobacco or tobacco-related device.

3. **Use**. It shall be a violation of this Ordinance for any minor to smoke, chew, sniff or otherwise use any tobacco or tobacco-related device.

4. **Procurement**. It shall be a violation of this Ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco or tobacco-related device, and it shall be a violation of this Ordinance for any person to purchase or otherwise obtain such item on behalf of a minor. It shall further be a violation of this Ordinance for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco or tobacco-related device.

5. **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 in order to represent an age older than the actual age of the minor.

Section IV. **Penalties and Procedures.**

A. **Compliance Checks and Inspections**. All licensed premises shall be open to inspection by the Otter Tail County Public Health Department or other authorized County officials 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 premise to attempt to purchase tobacco or tobacco-related devices. Minors used for the purpose of compliance checks shall be supervised by members of the Otter Tail County Public Health Department. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco or tobacco-related devices when such items are obtained or attempted to be obtained as part of a 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 the licensee's employee and shall produce any identification, if any exists, for which the minor 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 particular state or federal law.

B. **Civil Penalties.**

1. **Administrative penalties**. If a licensee or employee of a licensee violates provisions of this Ordinance, the licensee shall be charged an administrative penalty of $75.00. The administrative penalties for any subsequent violations within a five-year period shall be as follows: For a second violation, an administrative penalty of $250.00 shall be imposed. For a third violation, an administrative penalty of $500.00 shall be imposed, and the licensee's authority to sell tobacco or tobacco-related devices shall be suspended for 30 days. For a fourth violation, an administrative penalty of $700.00 shall be imposed, the license to sell tobacco or tobacco-related devices shall be revoked and the licensee shall not be entitled to another license for one calendar year.

An individual, other than a licensee, who sells tobacco or tobacco-related devices to a minor shall be charged an administrative penalty of $50.00.

2. **Citation**. 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. The person may either admit to the violation by paying the administrative fee or may request a hearing.

3. **Hearing Procedure**. If a person accused of violating this Ordinance requests a hearing to the County Auditor, a hearing shall be scheduled before the Otter Tail County Board of Commissioners, and shall be open to the public.

a. **Notice**. A person accused of violating the Ordinance shall be given notice of the hearing. The notice shall include a statement of the time, place and nature of the hearing, and a reference to the section of the Ordinance involved.

b. **Conduct of the hearing**. The accused may be represented by counsel. The County shall present evidence. All testimony shall be sworn under oath. All parties shall have full opportunity to respond to and present evidence, cross-examine witnesses and present argument.

c. **Burden of Proof**. The County shall have the burden of proving a violation of the Ordinance by a preponderance of the evidence, and all findings of fact, conclusions and decision by the County Board shall be based on evidence presented and matters officially noticed.

d. **Evidence**. All evidence which possesses probative value, including hearsay, may be admitted if it is the type of evidence on which prudent persons are accustomed to rely in the conduct of their serious affairs. Evidence that is incompetent, irrelevant, immaterial or unduly repetitious may be excluded. The hearing shall be confined to matters raised in the written notice of hearing.

4. **Decision**. Following the hearing, the County Board shall make written findings, and if a violation is found to have occurred, shall impose the administrative penalties outlined in this Ordinance. A copy of the Findings and Order shall be provided to the person accused.

5. **Appeals**. Appeals of any decision made by the County Board shall be filed in the District Court.

C. **Criminal penalties**. Any violation of the terms or provisions of this Ordinance constitutes a misdemeanor, subject to a fine of up to $700.00 and imprisonment not to exceed 90 days. A minor violating the terms and provisions of this Ordinance shall be subject to dispositions authorized by Minnesota Statutes, Chapter 260, including §260.195.

D. **Exceptions and defenses**. Nothing in this Ordinance shall prevent the providing of tobacco 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.

E. **Effective date**. This Ordinance shall be effective on and after January 1, 1999.

Passed and approved this ___ day of _____, 1998.

OTTER TAIL COUNTY BOARD OF COMMISSIONERS

By_____
Malcolm Lee, Chair

ATTEST:

_____
Larry Krohn, Clerk