

HENNEPIN COUNTY

MINNESOTA

FINAL COMMITTEE AGENDA

BOARD OF HENNEPIN COUNTY COMMISSIONERS
HEALTH AND HUMAN SERVICES COMMITTEE
TUESDAY, JUNE 25, 2019
1:30 PM

Chair: Angela Conley, District 4
Vice-Chair: Debbie Goettel, District 5
Members: Mike Opat, District 1
Irene Fernando, District 2
Marion Greene, District 3
Jan Callison, District 6
Jeff Johnson, District 7

1. Minutes From Previous Meeting

- A. 5/30/19 Meeting Minutes

2. New Business

Routine Items

- A. **19-0258**

Human Services & Public Health resolution, including contracts and amendments to contracts with providers – Report 1910

Items for Discussion and Action

- B. **19-0259**

Acceptance of the 2018 Health and Human Services' Special Gift Fund Annual Report

- C. **19-0260**

Agmt A199662 with the MN Dept of Human Services for medicated assisted therapy and social supports to county residents diagnosed with opioid use disorder, 07/01/19-09/29/20, \$937,990 (recv); supp appr of \$300,000 to the 2019 HSPH budget

- D. **19-0261**

Agmt A199677 with the MN Dept of Human Services for Naloxone training and Naloxone kit distribution services, 07/01/19-12/31/20, \$250,000 (recv); supp appr of \$97,207 and incr staff complement by 1.0 FTE grand funded pos for 2019 budget

- E. **19-0262**

Agmt A199673 with the MN Dept of Human Services accepting grant funding for the Projects for Assistance in Transition from Homelessness, 07/01/19-06/30/21, \$1,030,000 (recv)

- F. **19-0263**

Authorize contingency transfer of \$80,000 to 2019 HSPHD budget for YouthLink's supportive housing program for young adults - offered by Commissioner Fernando

- G. **19-0264**

Amend Hennepin County Ordinance 21, regulating the sale of tobacco in areas without city regulation

HENNEPIN COUNTY

MINNESOTA

COMMITTEE MINUTES

BOARD OF HENNEPIN COUNTY COMMISSIONERS HEALTH AND HUMAN SERVICES COMMITTEE

THURSDAY, MAY 30, 2019
1:30 PM

Chair: Angela Conley, District 4
Vice-Chair: Debbie Goettel, District 5

Members: Mike Opat, District 1
Irene Fernando, District 2
Marion Greene, District 3
Jan Callison, District 6
Jeff Johnson, District 7

Commissioner Conley, Chair, called the meeting of the Health and Human Services Committee for Thursday, May 30, 2019 at 1:58 PM. All Commissioners were present with the exception of Commissioner Debbie Goettel who was absent.

1. Minutes From Previous Meeting

A. 5/14/19 Committee Meeting Minutes

APPROVED

Commissioner Mike Opat moved to approve the Minutes from the Previous Meeting, seconded by Commissioner Irene Fernando and approved - 6 Yeas 1 Absent: Goettel

2. New Business

Routine

Items

A. 19-0212

Human Services & Public Health resolution, including contracts and amendments to contracts with providers – Report 1908

CONSENT

Commissioner Marion Greene moved to Consent, seconded by Commissioner Jan Callison and approved - 6 Yeas 1 Absent: Goettel

B. 19-0213

Amd 2 to Agmt A188719 with MN Dept of Human Services for the provision of adult mental health services, ext end date to 06/30/20, incr recv by \$216,769; supp appr of \$216,768 to the 2019 HSPH budget

CONSENT

Commissioner Irene Fernando moved to Consent, seconded by Commissioner Marion Greene and approved - 6 Yeas 1 Absent: Goettel

Items for Discussion and Action

C. 19-0214

Supp appr of \$167,355 to the 2019 HSPH budget, add 1 grant funded FTE for the provision of early intervention and prevention services for families

CONSENT

Commissioner Irene Fernando moved to Consent, seconded by Commissioner Jan Callison and approved - 6 Yeas 1 Absent: Goettel

3. Adjourn

On motion, the Health and Human Services Committee adjourned at 2:07 PM.

Maria Rose
Clerk to the County Board

HENNEPIN COUNTY

MINNESOTA

Board Action Request 19-0258

Item Description:

Human Services & Public Health resolution, including contracts and amendments to contracts with providers – Report 1910

Resolution:

BE IT RESOLVED, that the contracts, contract amendments and administrative actions of the Human Services & Public Health Department and Department of Community Corrections and Rehabilitation made pursuant to Chapters 256E and 393 of Minnesota Statutes, as detailed in Human Services & Public Health Contract Report 1910 be approved; that the report be filed in Contract Management Services; that the Chair of the Board be authorized to sign the contracts, contract amendments and administrative actions on behalf of the County; and that the Controller be authorized to disburse funds as directed. Such contracts are subject to ministerial adjustment, when such adjustments are done within the constraints of the approved Hennepin County Budget and when signed by the County Department Director or Designee.

Background:

The contracted dollar amounts are based on estimates of program costs and/or utilization during prior periods. Funding for each contract is provided for within service categories in the Human Services & Public Health Department and Department of Community Corrections and Rehabilitation approved annual budgets. Occasionally new services are implemented which are not in the budget but which are fully funded under state or federal grants or other new funding.

Contracted dollar estimates are based upon prior year usage and are subject to fluctuation in placement patterns, service need, and cost shifts. Therefore, it may be necessary to process ministerial adjustments to contracts to increase or decrease contract amounts or to make minor service changes consistent with the department budget and strategic plan. Placement agreements are also processed administratively.

Contracts include services in the following areas: adult mental health; developmental disabilities; chemical health; adult housing; early intervention and family intervention services, day treatment services; emergency shelter; day care; training and employment services, interpreter services, health services, welfare advocacy, and various other human services. Expectations for ongoing outcome measurement are included in all new, renewal, or extended contracts. Outcome measures, which are developed by the county and contracted providers, assess the effectiveness of a service and its impact on an eligible recipient's condition or functioning level. Outcome information is used to modify or improve programs as well as to evaluate effectiveness of different types of intervention and providers. A detailed listing of the specific actions requested by this BAR and an explanation of all unusual items is reflected in the summary of the report.

HENNEPIN COUNTY

MINNESOTA

Board Action Request 19-0259

Item Description:

Acceptance of the 2018 Health and Human Services' Special Gift Fund Annual Report

Resolution:

BE IT RESOLVED, that the Hennepin County Board of Commissioners accept the Health and Human Services' Special Gift Fund 2018 Annual Report; and that pursuant to Minnesota Statute 465.03, donations made to the Hennepin County Health and Human Services' Special Gift Fund in 2018 be accepted.

Background:

The Hennepin County Special Gift Fund was established in 1970 to provide financial assistance to Health and Human Services clients who are faced with a crisis or have special needs when no other resources are available. The client's case manager makes the request for funds on behalf of the client. Individual requests are generally limited to \$200 per client and supply such needs as clothing, housing, food and treatment options. In addition to individual requests, the Fund has also been used to support the Backpack Challenge and the Giving Partners Programs. Minnesota Statute 465.03 requires that gifts to counties be accepted by resolution of the governing body and adopted by a two thirds majority. An annual report containing a summary of 2018 donations and expenditures is attached.

ATTACHMENTS:

Description	Upload Date	Type
SGF 2018 Annual Report	6/12/2019	Backup Material

**HEALTH AND HUMAN SERVICES
VOLUNTEERS AND COMMUNITY PARTNERSHIPS PROGRAM (VCP)
SPECIAL GIFT FUND – 2018 ANNUAL REPORT**

BACKGROUND:

The Hennepin County Special Gift Fund (SGF or Fund) was established in 1970 to provide financial assistance to Human Services and Public Health clients who are faced with a crisis or have special needs where all other financial resources to meet those needs have been exhausted. Access to the funds on behalf of a client is made by the client's case manager or social worker. Individual requests are generally limited to \$200.00 except in compelling cases. The Fund has also been used to support the Backpack Challenge and the Giving Partners Programs. All funds in the Special Gift Fund are donated, and no tax dollars are used.

PROGRAM HIGHLIGHT:

Laura had to leave her home due to severe domestic violence. The father of her children quit his job, so he was not paying child support to help his family. Laura's team used a variety of funding sources to pay for the security deposit on her new home, and secured subsidized housing that she could pay for moving forward. However, Laura was still short funds to pay the full amount of the deposit. The Special Gift Fund contributed to the security deposit payment, which also allowed the family to achieve safety, self-sufficiency and educational stability for the children.*

(Name has been changed.)*

2018 FINANCIAL SUMMARY:

1/1/18 Balance	\$60,968
2018 Cash & Check Donations	\$27,920
2018 Disbursements	<u>(\$29,118)</u>
12/31/18 Remaining balance	\$59,770

In addition to the cash and check donations, the Fund received \$7,800 in Target, Cub, Walmart and miscellaneous gift card donations. In 2018, \$4,940 of the gift cards were used for the Backpack Challenge and Giving Partners Programs, and to meet client needs, leaving a gift card balance of \$6,646.

SUMMARY OF 2018 DONATIONS:

The Fund is 100% funded by donations. In 2018, 226 individual, corporate and employee donations ranging from \$5.00 to \$2,000 were received. This is more than the number of donations received in 2017. Employees are able to contribute to the Fund via the County's Charitable Contribution Campaign, by participating in the annual Bake Sale and, of course, individually.

The Fund is also used to manage donations to and purchases for the annual Backpack Challenge and the Giving Partners Programs. In 2018, almost \$5,376 in cash donations were received for the Backpack Challenge, while the Giving Partners Program received \$8,682 in direct donations. The Hennepin County Retiree Alumni group donated \$1,863. More staff and volunteer time was dedicated to the annual Bake Sale fundraising events, resulting in donations of \$6,094.17. This included sales held at the Government Center as well as the South Minneapolis and South Suburban Human Service Centers for the first time.

In addition, backpacks and school supplies were donated that had an estimated value of \$73,000. Volunteers and donors contributed enough to distribute 1,403 backpacks to children, which is a significant increase over 2017.

VCPP's Giving Partners Program had another successful year bringing in over \$165,700 in donations, which included gift cards with a cash value of \$8,882 and donated gifts. These corporate, employee, community member and individual donations enabled the program to provide client requested gifts of winter clothes, toys, necessities, etc. to 1,479 clients and families during the month of December.

The Knitters and Stitchers Program brought in donated yarn with an estimated value of \$6,060. The program volunteers worked 1,212 hours and used the yarn to make blankets, hats, mittens, and scarves that were distributed at homeless shelters and to children who are in foster care.

SUMMARY OF 2018 EXPENDITURES:

In Health and Human Services, 147 clients received a grant from the Fund in 2018, which is more than the number of requests received in 2017. The vast majority of grants went to support health, housing and mental health and to provide clothing. Grants, which were issued with checks or gift cards, ranged from \$30.00 to \$200.00, and totaled \$29,275.85 for the year, which is an increase over 2017.

The Fund also distributed checks or gift cards totaling \$3,790.11 to support the Backpack Challenge Program and \$1,528 to support client transportation needs.

Prepared by:
Sharlene Shelton
Community Based Services Development Service Area Manager
Hennepin County Health and Human Services
5-21-19

HENNEPIN COUNTY

MINNESOTA

Board Action Request 19-0260

Item Description:

Agmt A199662 with the MN Dept of Human Services for medicated assisted therapy and social supports to county residents diagnosed with opioid use disorder, 07/01/19-09/29/20, \$937,990 (recv); supp appr of \$300,000 to the 2019 HSPH budget

Resolution:

BE IT RESOLVED, that Agreement A199662 with the Minnesota Department of Human Services for medicated assisted therapy and social support to county residents diagnosed with opioid use disorder during the period July 1, 2019 through September 29, 2020 in the receivable amount of \$937,990, be approved; that the Chair of the Board be authorized to sign the Agreement on behalf of the county; and the Controller be authorized to accept and disburse funds as directed; and

BE IT FURTHER RESOLVED, that the Human Services and Public Health budget be authorized to receive a supplemental appropriation of \$300,000 to the 2019 Human Services and Public Health budget; and

BE IT FURTHER RESOLVED, that sponsorship and acceptance of grant funding for this program by the Hennepin County Board of Commissioners does not imply a continued funding commitment by Hennepin County for this program if grant funds become no longer available.

Background:

The Minnesota Department of Human Services has awarded grant funds in response to a proposal developed in line with the Hennepin County Comprehensive Opioid Prevention Strategic Framework. The funds will allow the County to increase treatment options and transitional planning in correctional settings, and for high risk populations an objective of the strategic framework.

The target population for this project is 480 Hennepin County adults with opioid use disorder who are booked into the downtown Adult Detention Center, sentenced to the Adult Corrections Facility in Plymouth, or diverted to the Behavioral Health Care Center at 1800 Chicago Avenue. The new project will support medication-assisted therapy (MAT) from opioid use disorder at these locations.

In 2018, the Adult Detention Center had 2,893 admissions complicated by opioid use involving 1,985 individuals. The Adult Correction Facility (ACF) identified about 100 residents who experienced opioid withdrawal while incarcerated at the ACF in both 2017 and 2018. Incarceration puts addicted people into forced withdrawal without medical relief. There are serious consequences to forced withdrawal including overdose deaths after release from detention. The project will allow individuals to continue or enter into medication-assisted therapy. By improving access to MAT and transition services for justice-involved populations, Hennepin County will better engage residents who are at imminent risk for opioid-related death, and prevent other adverse outcomes related to opioid use in our communities. The result is improved health and wellbeing for county residents.

Grant funds will support two county social workers for the period of the grant. The county will subcontract with Hennepin HealthCare Services for an additional 1.5 nurse practitioners and another agency for 2 peer recovery specialists to provide staff services.

ATTACHMENTS:

Description	Upload Date	Type
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HENNEPIN COUNTY

MINNESOTA

Board Action Request 19-0261

Item Description:

Agmt A199677 with the MN Dept of Human Services for Naloxone training and Naloxone kit distribution services, 07/01/19-12/31/20, \$250,000 (recv); supp appr of \$97,207 and incr staff complement by 1.0 FTE grand funded pos for 2019 budget

Resolution:

BE IT RESOLVED, that Agreement A199677 with the Minnesota Department of Human Services for Naloxone training and Naloxone kit distribution services during the period of July 1, 2019 through December 31, 2020 in the receivable amount of \$250,000, be approved; that the Chair of the Board be authorized to sign the agreement on behalf of Hennepin County; and the Controller be authorized to accept and disburse funds as directed; and

BE IT FURTHER RESOLVED, that the Human Services and Public Health Department's staffing complement be increased by 1.0 full time equivalent grant funded position and a supplemental appropriation of \$97,207 be made to the 2019 budget; and

BE IT FURTHER RESOLVED, that sponsorship and acceptance of grant funding for this program by the Hennepin County Board of Commissioners does not imply a continued funding commitment by Hennepin County for this program when grant funds are no longer available.

Background:

The Minnesota Department of Human Services (DHS) offered a State Opioid Response grant to provide targeted training education and distribution of naloxone in accordance with the Substance Abuse and Mental Health Services Administration. This is an effort to weave and expand current state funding for opioid crisis planning efforts together in a working whole. Services within the grant will be targeted to the disproportionately impacted Native American community. DHS will reimburse Hennepin County Human Services and Public Health for costs to:

- Provide 15 hours of weekly walk-in naloxone distribution hours within the Red Door Clinic.
- Increase number of naloxone kits distributed through clinic-based programming.
- Conduct targeted naloxone education and kit distribution to residents of Little Earth.

APEX Information

Revenues 42067

Fund: 20

Department ID: 531099

Project ID: 1007045

Account/Source: State 42360

Amount (Total): \$97,207

Expenditures

Fund: 20

Department ID: 531099

Project ID: 1007045

Account/Source: Salaries 50020

Amount (Total): \$97,207; FTE: 1.0

HENNEPIN COUNTY

MINNESOTA

Board Action Request 19-0262

Item Description:

Agmt A199673 with the MN Dept of Human Services accepting grant funding for the Projects for Assistance in Transition from Homelessness, 07/01/19-06/30/21, \$1,030,000 (recv)

Resolution:

BE IT RESOLVED, that Agreement A199673 with the Minnesota Department of Human Services for grant funding for the Projects for Assistance in Transition from Homelessness during the period July 1, 2019 through June 30, 2021, in the receivable amount of \$1,030,000, be approved; that the Chair of the Board be authorized to sign the Agreement on behalf of the county; and the Controller be authorized to accept and disburse funds as directed;

BE IT FURTHER RESOLVED, that sponsorship and acceptance of grant funding for this program by the Hennepin County Board of Commissioners does not imply a continued funding commitment by Hennepin County for this program when grant funds are no longer available.

Background:

Projects for Assistance in Transition from Homelessness (PATH) staff in Initial Contact and Access, Healthcare for the Homeless, and Adult Behavioral Health areas of Health and Human Services work with approximately 800 homeless individuals every year. Grant funds make it possible to provide outreach, case management, and other supportive services for persons with serious mental illness (SMI), or with a SMI and co-occurring substance use disorder. The PATH program has partnered with St. Stephen's Street Outreach to increase outreach services. Eligible persons are homeless, long term homeless, or at imminent risk of homelessness including persons who will be homeless upon exit from an institutional setting. In 2018, 215 clients were housed that were previously chronically homeless.

The current award is a continuation of funding previously awarded to Hennepin County by the Minnesota Department of Human Services and incorporated in the Adult Mental Health Initiative Grant. The previous award was grant Agreement A177059, approved by the Board on March 28, 2017 (Board Resolution 17-0128) and amended with additional funding and term extension on June 26, 2018 (Board Resolution 18-0286).

Eligible individuals receive services that focus on recovery. Services are culturally competent and based on evidence-based practices; they build on existing strengths and the person's life goals.

Current Request: Agreement A199673 seeks acceptance of PATH grant funding from DHS in the receivable amount of from \$1,030,000 for July 1, 2019 through June 30, 2021.

Impact/Outcomes: Identified outcomes for the PATH grant include: connecting PATH enrolled individuals to behavioral health services; increasing access to federal, state, and county benefits for PATH enrolled individuals; increasing access to housing for PATH enrolled individuals; and to increase street outreach.

Fund: 20
Account: 42360
Dept. ID: 511099

HENNEPIN COUNTY

MINNESOTA

Board Action Request 19-0263

Item Description:

Authorize contingency transfer of \$80,000 to 2019 HSPHD budget for YouthLink's supportive housing program for young adults - offered by Commissioner Fernando

Resolution:

BE IT RESOLVED, that the Hennepin County Board of Commissioners authorizes a designated contingency transfer of \$80,000 to the 2019 Human Services and Public Health Department budget to provide additional funding for the YouthLink supportive housing program for young adults; that the Controller be authorized to disburse funds as directed; and

BE IT FURTHER RESOLVED, that the Human Services and Public Health Department's 2019 expenditure budget be increased by \$80,000 and the 2019 contingency budget be decreased by \$80,000.

Background:

YouthLink provides supportive services and life coaching for young adults residing at Downtown View apartments at 1205 Chestnut Avenue in Minneapolis. Hennepin County currently supports these services with funding through Agreement HS00000226 with YouthLink. YouthLink has requested an additional \$80,000 in 2019 to hire an additional staff person to fill a gap in their services for young adults living there. This funding will only be added to the contract's NTE in 2019 as they prepare to access other funding to support these services, potentially including, but not limited to, the new Medicaid Housing Stabilization Services and Targeted Case Management.

The Board has taken initial action regarding this request (Board resolution 19-0197) on May 21, 2019. This action advances that previous action and provides bridge funding so that YouthLink will be able to move to billable, mainstream state resources in the future for this program.

Current Request: This request seeks authorization to the transfer \$80,000 from the contingency fund to the 2019 HSPHD expenditure budget, to support YouthLink's supportive housing program for young adults with additional funding to bridge a gap in services until billable, mainstream state resources can be accessed.

Impact/Outcomes: Performance measure results for this program as of 12/31/2018, with the understanding that the program has only operated since February 2018:

Youth at Downtown View will maintain stable housing for at least 6 months:

- Goal: 80%
- Results: 72%

Youth at Downtown View will maintain stable housing for at least 1 year:

- Goal: 70%
- Results: NA (program had been operating only 11 months as of 12/31/18)

Youth leaving Downtown View will exit to safe, stable housing:

- Goal: 75%

- Results: 57%

Youth who have been in the program for 6 months or more will be enrolled in school and/or participating in a career pathway:

- Goal: 75%
- Results: 81%

HENNEPIN COUNTY

MINNESOTA

Board Action Request 19-0264

Item Description:

Amend Hennepin County Ordinance 21, regulating the sale of tobacco in areas without city regulation

WHEREAS, Tobacco use remains the leading cause of preventable death, disability and disease in the United States, linked to heart disease, stroke and other chronic lung diseases including lung cancer. For every smoking-related death there are at least 30 people living with a serious smoking-related illness. If smoking continues at the current rate among U.S. youth, 5.6 million of Americans younger than 18 are expected to die prematurely from smoking; and

WHEREAS, Tobacco kills over 6,300 people annually in Minnesota. One in seven Hennepin County deaths are tobacco related and costs Hennepin County \$585 million annually; and

WHEREAS, Nineteen percent of suburban Hennepin County 11th grade students used tobacco. Statewide, tobacco use among high school students has increased to 26%, driven largely by a 49% increase in e-cigarette use; and

WHEREAS, Nearly 90% of smokers begin smoking before reaching 18 years of age, and almost no one starts smoking after age 25. Studies show that youth and young adults are especially susceptible to tobacco product availability, advertising and price promotions at tobacco retail environments; and

WHEREAS, The National Academy of Medicine report predicts that increasing the sales age for tobacco to 21 years of age will reduce smoking initiation by 25% among 15-17 year olds; and

WHEREAS, Menthol and other flavored products appeal to young people. Thirty percent of suburban Hennepin County 11th graders who use tobacco use menthol tobacco and 42 percent use other flavored tobacco. Marketing analysis, public health research, and tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to attract youth and young adults and that the presence of such flavors can make it more difficult to quit; and

WHEREAS, Restrictions on flavored products in other cities have resulted in significant declines in the sale of flavored products; the odds of teens ever trying flavored products; and the odds of teens using any tobacco products. Based on earlier studies and conservative scenarios to estimate the impact of a menthol ban, it is expected that a 10% quit rate among menthol smokers would prevent over 4,000 smoking attributable deaths in the first ten years and 300,000 in forty years. Nearly one-third, or almost 100,000, of the deaths averted are among African Americans; and

WHEREAS, Raising the price of tobacco products is one of the most effective strategies for preventing and reducing tobacco use. A 10% increase in little cigar price was associated with a 25% decrease in little cigar sales in convenience stores; and

WHEREAS, Studies indicate that youth access tobacco through other youth working in retail stores and that high school age clerks contribute to illegal sales. The age of clerk is a primary reason for youth being able to purchase or steal tobacco; and

WHEREAS, On April 1, 2019, all cities in the county that do not currently license and regulate tobacco sales were provided notice electronically of the proposed amendments. 11. On April 2, 2019, all

tobacco retailers currently licensed pursuant to Ordinance 21 were mailed notice of the proposed amendments; and

WHEREAS, On April 16, 2019 two information sessions on the proposed amendments were held in the cities of Mound and Rogers. These information sessions were open to members of the public. Nineteen individuals attended; and

WHEREAS, On June 11, 2019, a public hearing to receive comments on the proposed amendments was held; and

WHEREAS, Therefore, the Board finds it appropriate to regulate tobacco sales to protect youth and young adults against the serious health effects associated with tobacco use and initiation.

Resolution:

BE IT RESOLVED, that the Hennepin County Board of Commissioners authorizes the amendment of Ordinance 21 to include language limiting the sale of tobacco products to persons 21 years of age and older; and

BE IT FURTHER RESOLVED, that the Hennepin County Board of Commissioners authorizes the amendment of Ordinance 21 to include language limiting the sale of flavored products, including menthol, to adult-only stores; and

BE IT FURTHER RESOLVED, that the Hennepin County Board of Commissioners authorizes the amendment of Ordinance 21 to include language imposing a minimum cigar price of \$3.00, and

BE IT FURTHER RESOLVED, that the Hennepin County Board of Commissioners authorizes the amendment of Ordinance 21 to include language requiring sales clerks who sell tobacco to be at least 18 years of age; and

BE IT FURTHER RESOLVED, that the effective date of these changes is January 1, 2020.

Background:

This resolution amends Hennepin County Ordinance 21, which regulates the sale of tobacco in places where cities do not regulate. The new ordinance aims to protect youth and young adults in Hennepin County from the serious health effects associated with tobacco. This will be done by reducing youth access and exposure to tobacco in a number of ways, most notably by:

1. limiting the sale of tobacco products to persons 21 years of age and older
2. limiting the sale of flavored products, including menthol, to adult-only stores
3. imposing a minimum cigar price of \$3.00, and
4. requiring sales clerks who sell tobacco to be at least 18 years of age.

The proposed amendments adopt model language developed by the Public Health Law Center at Mitchell Hamline Law School.

Hennepin County is authorized to regulate tobacco sales pursuant to Minnesota Statutes, Section 461.12, but may only license tobacco sales in places where cities do not regulate. Most cities in Hennepin County choose to regulate and license tobacco sales. However, sales in the following places are presently subject to County regulation:

- Greenfield
- Mound
- Rockford
- Rogers
- St. Bonifacius, and
- Minneapolis-St. Paul Airport.

The County issues approximately 34 licenses per year to sell tobacco in these places. Ordinance 21 was last amended in November, 2016 to make clear that it regulated e-cigarettes.

Tobacco use among Hennepin County youth is increasing. Nineteen percent of suburban Hennepin County 11th grade students used tobacco. Thirty percent of 11th graders who use tobacco use menthol tobacco and 42 percent use other flavored tobacco.

Staff is now recommending further amendments to Ordinance 21 in order to adopt a more complete set of best practices for curbing youth tobacco use.

ATTACHMENTS:

Description	Upload Date	Type
ordinance 21 changes-redline	6/17/2019	Backup Material
ordinance 21 changes-final	6/17/2019	Backup Material

Ordinance 21: RETAIL TOBACCO SALES

Adopted on August 31, 1999 by the Hennepin County Board of Commissioners.

Amended on November 1, 2016 by the Hennepin County Board of Commissioners.

Amended on ____, 2019 by the Hennepin County Board of Commissioners.

An ordinance relating to the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products in Hennepin County and to reduce the illegal sale of such items to and by minors. This ordinance is enacted pursuant to ~~the requirements of~~ Minnesota Statutes §§ 461.12 to 461.~~18~~21.

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The Hennepin County Board of Commissioners Ordains:

Section 1: PURPOSE AND SCOPE

This ordinance aims to protect youth and young adults in Hennepin County from the serious and harmful health effects associated with tobacco use. This ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products.

Section 2: APPLICABILITY AND JURISDICTION

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

Section 3: DEFINITIONS

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

CHILD-RESISTANT PACKAGING. Packaging that meets the definition set forth in Minn. Stat. § 461.20(a), as may be amended from time to time.

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

COMPLIANCE CHECKS. The system the county uses to investigate and ensure that those authorized to sell ~~L~~icensed ~~P~~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 ~~L~~icensed ~~P~~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 federal, state or local laws and regulations relating to ~~L~~icensed ~~products~~Products.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic Delivery Device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. Electronic Delivery

Device includes any component part of a product, whether or not marketed or sold separately. Electronic Delivery Device does not include any product that has been approved or certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

FLAVORED PRODUCT. Any ~~L~~icensed ~~P~~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 ~~L~~icensed ~~P~~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-Flavored productProduct~~.

HEALTH AUTHORITY. The Community Health Services Administrator as defined by Minn. Stat. § 145A.02 subd. 6a, as may be amended from time to time, and other employees, agents, or contractors as the Hennepin County Board may designate.

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A standard window screen (0.011 gauge with an 18 by 16 mesh count) is not considered a wall.

LICENSED PRODUCTS. The term that collectively refers to any ~~tobaccoTobacco~~, ~~tobaccoTobacco-related-Related deviceDevice~~, ~~electronic-Electronic delivery-Delivery deviceDevice~~, or ~~nicotine-Nicotine~~ or ~~lobelia-Lobelia delivery-Delivery productProduct~~.

LOOSIES. The common term used to refer to single or individually packaged ~~cigars-Cigars~~ or cigarettes, or any other ~~L~~icensed ~~P~~product that has been removed from its intended retail packaging and offered for ~~saleSale~~. Loosies does not include individual ~~cigars-Cigars~~ with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least \$3.00 per ~~cigarCigar~~.

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for ~~sales-Sales~~ transactions.

NICOTINE OR LOBELIA DELIVERY PRODUCT. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a ~~tobaccoTobacco~~ or an ~~electronic-Electronic delivery-Delivery device-Device~~ as defined in this section. Nicotine Or Lobelia Delivery Product does not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-

cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

RETAIL ESTABLISHMENT. Any place of business where Licensed Products are available for ~~sale~~ Sale to the general public. The phrase includes but is not limited to grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants.

SALE. Any transfer of goods for money, trade, barter or other consideration.

SELF-SERVICE DISPLAY. The open display of Licensed Products in any manner where any person has access to the Licensed ~~products-Products~~ without the assistance or intervention of the licensee or the licensee's employee.

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

TOBACCO. 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~~ 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 product that has been approved by the U.S. 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.

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

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device that dispenses Licensed ~~products-Products~~ upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the ~~licensed~~ Licensed ~~product~~ Product.

Section 4: LICENSE

(A) **License required.** No person shall sell or offer to sell any Licensed ~~product~~ Product without first having obtained a license to do so from the county.

(B) **Application.** An application for a license to sell ~~licensed~~ Licensed ~~products-Products~~ must be made on a form provided by the county. The application must 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 Health Authority will timely review the application. If an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.

- (C) **Action.** The Health Authority shall review the application for conformance with this Ordinance and all applicable law. The Health Authority may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the Health Authority approves the application, the county will issue the license to the applicant. If the Health Authority denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
- (D) **Appeal of license denial.** An applicant may appeal a denial following the procedure set forth in Section 12.
- (E) **Term.** All licenses issued are valid for one calendar year from the date of issue.
- (F) **Revocation or suspension.** Any license issued may be suspended or revoked following the procedure set forth in Section 12.
- (G) **Transfers.** All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- (H) **Moveable ~~place-Place~~ of ~~businessBusiness~~.** No license will be issued to a ~~moveable~~ Moveable place-Place of ~~businessBusiness~~. Only fixed location businesses are eligible to be licensed.
- (I) **Display.** All licenses must be posted and displayed at all times in plain view of the general public on the licensed premises.
- (J) **Renewals.** The renewal of a license issued under this ~~ordinance-Ordinance~~ will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days but no more than 60 days before the expiration of the current license.
- (K) **Issuance as privilege and not a right.** The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.
- (L) **Minimum clerk age.** Individuals employed by a licensed ~~R~~etail ~~establishment~~ Establishment under this ~~ordinance-Ordinance~~ must be at least 18 years of age to sell Licensed ~~P~~roducts.

~~(M) Smoking prohibited. Smoking, including smoking for the purpose of the sampling of licensed products is prohibited within the indoor area of any retail establishment licensed under this ordinance.~~

~~(N)(A) Samples prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost.~~

~~(O)~~(M) **Instructional program.** Licensees must ensure that all sales clerks complete a training program on the legal requirements related to the sale of Licensed Products and the possible consequences of license violations. Any training program must be pre-approved by the county. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the county at the time of renewal, or whenever requested to do so during the license term.

Section 5: FEES

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

Section 6. BASIS FOR DENIAL OF LICENSE

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

- (1) The applicant is under 21 years of age.
- (2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to Licensed Products.
- (3) The applicant has had a license to sell Licensed Products suspended or revoked within the preceding 12 months of the date of application.
- (4) The applicant fails to provide any of the information required on the licensing application, or provides false or misleading information.
- (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.

(B) Except as may otherwise be provided by law, the existence of any particular ground for denial does not compel the county to deny the license.

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

Section 7: PROHIBITED SALES

- (A) **In general.** No person shall sell or offer to sell any ~~L~~icensed ~~product~~Product:
- (1) By means of any type of ~~vending~~Vending machineMachine.
 - (2) By means of ~~L~~loosies as defined.
 - (3) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the ~~sale~~Sale of lawfully manufactured cigarettes or other products subject to this ~~ordinance~~Ordinance.
 - (4) By any other means, to any other person, ~~on or~~ in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.
- (B) **Legal age.** No person shall sell any ~~licensed~~Licensed ~~product~~Product to any person under the age of 21.
- (1) **Age verification.** Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 - (2) **Signage.** Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where ~~L~~icensed ~~P~~products are offered for ~~sale~~Sale. The required signage, ~~which will be provided to the licensee by the county,~~ must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (C) **~~Self-service~~ Service sales**Sales. No person shall allow the ~~sale~~Sale of ~~L~~icensed ~~P~~products by any ~~S~~self-~~S~~service ~~displays~~Displays where the customer may have access to those items without having to request the item from the licensee or the licensee's employee and where there is not a physical exchange of the ~~L~~icensed ~~P~~product from the licensee or the licensee's employee to the customer. All ~~L~~icensed ~~P~~products must be stored behind the sales counter, in another area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling ~~L~~icensed ~~P~~products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ~~ordinance~~Ordinance.
- (D) **Flavored ~~products~~**Products. No person shall sell or offer for ~~sale~~Sale any ~~flavored~~ Flavored ~~products~~Products. This prohibition does not apply to ~~R~~etail ~~establishments~~ Establishments that:

- (1) Prohibit persons under 21 from entering at all times;
- (2) Derive at least 90 percent of their gross revenues from the ~~sale~~Sale of Licensed Products; and
- (3) Meet all of the following building or structural criteria:
 - (a) Shares no wall with and has no part of their structure adjoined to any other business or retailer unless the wall is permanent, completely opaque, and without doors, windows, and pass-throughs to the other business or retailer;
 - (b) Shares no walls with and has no part of their structure directly adjoined to another licensed Tobacco retailer; and
 - (c) Is accessible by the public only by an exterior door.

Any ~~R~~etail ~~establishment~~Establishment that sells Flavored Products must provide financial records documenting its annual ~~sales~~Sales, upon request by the county.

- (E) **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~~Delivery deviceDevice, in packaging that is not ~~child~~Child-resistantResistant Packaging. 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.

- (F) **Cigars.** No person shall sell or offer to sell any ~~cigar~~Cigar, sold individually or as a multi-unit package, and regardless of whether it is within its intended retail packaging, for a sales price, after any discounts are applied and before sales taxes are imposed, of less than \$3.00 per ~~cigar~~Cigar.

- ~~(F) **Samples prohibited.** No person shall distribute samples of any licensed product free of charge or at a nominal cost.~~

- ~~(G)~~

Section 8: RESPONSIBILITY

All licensees are responsible for the actions of their employees in regard to the ~~sale~~Sale, offer to sell, and furnishing of Licensed ~~products~~Products on the licensed premises. The ~~sale~~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 employee 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 9: COMPLIANCE CHECKS AND INSPECTIONS

All licensed premises must be open to inspection by law enforcement or other authorized county officials during regular business hours.

At least twice per year, the county will conduct ~~compliance-Compliance checks-Checks~~ with respect to the minimum age to purchase products licensed under this ordinance. In accordance with state law, the county will conduct a ~~compliance-Compliance check-Check~~ that involves the participation of a person between the ages of 15 and 17. The county will also conduct a ~~compliance-Compliance check-Check~~ that involves the participation of a person between the ages of 18 and 20. In both ~~compliance-Compliance checks-Checks~~, persons under the minimum purchase age will enter licensed premises to attempt to purchase ~~L~~icensed ~~P~~roducts. Prior written consent of a parent or guardian is required for any person under the age of 18 to participate in a ~~compliance-Compliance check-Check~~. Persons participating in ~~compliance-Compliance checks-Checks~~ will be supervised by law enforcement or other designated personnel.

Additionally, from time to time, the county will conduct inspections to determine compliance with any or all other aspects of this Ordinance.

Section 10: OTHER PROHIBITED ACTS

Unless otherwise provided, the following acts are ~~an administrative~~ violation of this ~~ordinance~~Ordinance:

(A) **Prohibited furnishing or procurement.** It is a violation of this ~~ordinance-Ordinance~~ for any person 21 years of age or older to purchase or otherwise obtain any ~~L~~icensed ~~product-Product~~ on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce person under the age of 21 to illegally purchase or attempt to purchase any ~~L~~icensed ~~product~~Product.

(B) **Use of false identification.** It is a violation of this ordinance for any person use any form of a false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.

(C) Samples prohibited. No person shall distribute samples of any Licensed Product free of charge or at a nominal cost.

~~(B)~~(D) Smoking prohibited. Smoking, including Smoking for the purpose of the sampling of Licensed Products is prohibited within the Indoor Area of any Retail Establishment licensed under this Ordinance.

Section 11: EXCEPTIONS AND DEFENSES

(A) **Religious, ~~Spiritual~~spiritual, or ~~Cultural-cultural Ceremonies-ceremonies~~ or Practicespractices.** Nothing in this ~~ordinance-Ordinance~~ prevents the provision of

~~T~~obacco or ~~T~~obacco-~~R~~elated ~~D~~evices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

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

Section 12: VIOLATIONS, PENALTIES AND ADMINISTRATIVE HEARING

(A) Violations.

- (1) **Notice.** A person violating this ~~ordinance~~ 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.
- (2) **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute ~~s~~ a separate offense.

(B) Administrative penalties.

- (1) **Licensees.** Any licensee found to have violated this ~~ordinance~~ Ordinance, or whose employee violated this ~~ordinance~~ Ordinance, will be charged an administrative fine of \$200 for a first violation; \$500 for a second offense at the same licensed premises within a 24-month period; and \$1,000 for a third or subsequent offense at the same location within a 24-month period. Upon the third violation, the license will be suspended for a period of not less than 30 consecutive days. Upon a fourth violation, the license will be revoked.
- (2) **~~Other individuals.~~** Individuals, other than persons under the age of 21 regulated by division (B)(3) of this section, who are found to be in violation of this ~~ordinance~~ Ordinance will be charged an administrative fine of \$50.
- (3) **Persons under the ~~Age~~ age of 21.** Persons under the age of 21 who use false identification to purchase or attempt to purchase ~~L~~icensed ~~products~~ Products may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the county determines to be appropriate.
- (4) **Statutory penalties.** If the administrative penalty authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.

- (C) **Misdemeanor prosecution.** Nothing in this section prohibits the county from seeking prosecution as a misdemeanor for any alleged violation of this ~~ordinance~~ Ordinance by a person 21 years of age or older.

(D) **Administrative hearing.**

- (1) **Right of appeal.** Where a license application or renewal is denied or a licensee receives a suspension, summary suspension, or revocation notice, the applicant or licensee may appeal the action to the Health Authority by requesting an administrative hearing within ten County working days of the date of the notice. The notice of the action shall state the right to an administrative hearing.
- (2) **Administrative hearing.** If any applicant or licensee makes a written request for an administrative hearing, such hearing shall be held before the Community Health Services Administrator as defined by Minn. Stat. § 145A.02 subd. 6a, as may be amended from time to time, or his/her designee.
- (3) **Schedule.** The administrative hearing shall be held no later than 45 calendar days after the date of service of the request for a hearing was received unless the appellant requests an extension of time. If an extension is requested, the hearing shall be held no later than 90 calendar days after the date of service of the request for a hearing.
- (4) **Notice.** The Health Authority shall mail notice of the administrative hearing to the appellant at least ten calendar days prior to the hearing. Such notice shall include (1) a statement of time, place, and nature of the hearing; and (2) a reference to ~~leave~~ the particular section~~7~~ of this Ordinance or the adopted statutes or rules that have been violated.
- (5) **Witnesses and evidence.** All parties shall have full opportunity to respond to and present evidence and witnesses.
- (6) **Standard of proof.** The appellant shall have the burden of proving its position by clear and convincing evidence. All findings of fact, conclusions of law, and decisions by the Community Health Services Administrator or his/her designee shall be based on evidence presented and matters officially noticed.
- (7) **Rules of evidence.** The Rules of Evidence, as applied in the District Court, shall not apply to the hearing, but irrelevant, immaterial, and unduly repetitious evidence shall be excluded. The hearing shall be confined to matters raised in the Health Authority's written notice of suspension, summary suspension, or revocation or in the appellant's written request for a hearing.
- (8) **Record of hearing.** The hearing shall be taped or videotaped and minutes shall be kept.
- (9) **Notice of decision.** The determination of the Community Health Services Administrator or his/her designee and a copy of the minutes of the administrative hearing shall be forwarded to the appellant within ten County working days of the conclusion of the administrative hearing. The determination

will be effective on the sixth County working day following the date the notice is sent.

- (10) **Request for reconsideration of hearing decision.** The written notice must state the effective date of the adverse action. The notice must state that the appellant has the right to request a reconsideration of the hearing decision within five County working days of receipt of the notice. The reconsideration shall consist of a review of the record by the Health Authority. The review shall be conducted within five County working days of the receipt for the request for reconsideration. A written notice of determination will be forwarded to the appellant within five County working days of the reconsideration decision. The determination will become effective after three working days after the notice of decision is mailed.

Section 13. SEVERABILITY

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

Section 14: NOTICE

The County shall make reasonable efforts to send ~~It~~ tobacco retailers regulated by this ~~ordinance~~Ordinance thirty (30) days mailed notice of proposed amendments to this ~~ordinance~~Ordinance.

Section 15. EFFECTIVE DATE

This ordinance becomes effective on January 1, 2020.

Ordinance 21: RETAIL TOBACCO SALES

Adopted on August 31, 1999 by the Hennepin County Board of Commissioners.

Amended on November 1, 2016 by the Hennepin County Board of Commissioners.

Amended on ____, 2019 by the Hennepin County Board of Commissioners.

An ordinance relating to the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products in Hennepin County and to reduce the illegal sale of such items to and by minors. This ordinance is enacted pursuant to Minnesota Statutes §§ 461.12 to 461.21.

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The Hennepin County Board of Commissioners Ordains:

Section 1: PURPOSE AND SCOPE

This ordinance aims to protect youth and young adults in Hennepin County from the serious and harmful health effects associated with tobacco use. This ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products.

Section 2: APPLICABILITY AND JURISDICTION

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

Section 3: DEFINITIONS

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

CHILD-RESISTANT PACKAGING. Packaging that meets the definition set forth in Minn. Stat. § 461.20(a), as may be amended from time to time.

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

COMPLIANCE CHECKS. The system the county uses to investigate and ensure that those authorized to sell Licensed Products are following and complying with the requirements of this ordinance. 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 federal, state or local laws and regulations relating to Licensed Products.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic Delivery Device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. Electronic Delivery

Device includes any component part of a product, whether or not marketed or sold separately. Electronic Delivery Device does not include any product that has been approved or certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

FLAVORED PRODUCT. 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.

HEALTH AUTHORITY. The Community Health Services Administrator as defined by Minn. Stat. § 145A.02 subd. 6a, as may be amended from time to time, and other employees, agents, or contractors as the Hennepin County Board may designate.

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent. A standard window screen (0.011 gauge with an 18 by 16 mesh count) is not considered a wall.

LICENSED PRODUCTS. The term that collectively refers to any Tobacco, Tobacco-Related Device, Electronic Delivery Device, or Nicotine or Lobelia Delivery Product.

LOOSIES. The common term used to refer to single or individually packaged Cigars or cigarettes, or any other Licensed Product that has been removed from its intended retail packaging and offered for Sale. Loosies does not include individual Cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least \$3.00 per Cigar.

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for Sales transactions.

NICOTINE OR LOBELIA DELIVERY PRODUCT. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a Tobacco or an Electronic Delivery Device as defined in this section. Nicotine Or Lobelia Delivery Product does not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

RETAIL ESTABLISHMENT. Any place of business where Licensed Products are available for Sale to the general public. The phrase includes but is not limited to grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants.

SALE. Any transfer of goods for money, trade, barter or other consideration.

SELF-SERVICE DISPLAY. The open display of Licensed Products 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.

SMOKING. Inhaling, exhaling, burning, or carrying any lighted or heated Cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated Electronic Delivery Device.

TOBACCO. 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 product that has been approved by the U.S. 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.

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

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device that dispenses Licensed Products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the Licensed Product.

Section 4: LICENSE

(A) **License required.** No person shall sell or offer to sell any Licensed Product without first having obtained a license to do so from the county.

(B) **Application.** An application for a license to sell Licensed Products must be made on a form provided by the county. The application must 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 Health Authority will timely review the application. If an application is incomplete, it will be

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

- (C) **Action.** The Health Authority shall review the application for conformance with this Ordinance and all applicable law. The Health Authority may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the Health Authority approves the application, the county will issue the license to the applicant. If the Health Authority denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
- (D) **Appeal of license denial.** An applicant may appeal a denial following the procedure set forth in Section 12.
- (E) **Term.** All licenses issued are valid for one calendar year from the date of issue.
- (F) **Revocation or suspension.** Any license issued may be suspended or revoked following the procedure set forth in Section 12.
- (G) **Transfers.** All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- (H) **Moveable Place of Business.** No license will be issued to a Moveable Place of Business. Only fixed location businesses are eligible to be licensed.
- (I) **Display.** All licenses must be posted and displayed at all times in plain view of the general public on the licensed premises.
- (J) **Renewals.** The renewal of a license issued under this Ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days but no more than 60 days before the expiration of the current license.
- (K) **Issuance as privilege and not a right.** The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.
- (L) **Minimum clerk age.** Individuals employed by a licensed Retail Establishment under this Ordinance must be at least 18 years of age to sell Licensed Products.
- (M) **Instructional program.** Licensees must ensure that all sales clerks complete a training program on the legal requirements related to the Sale of Licensed Products and the possible consequences of license violations. Any training program must be pre-approved by the county. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the county at the time of renewal, or whenever requested to do so during the license term.

Section 5: FEES

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

Section 6. BASIS FOR DENIAL OF LICENSE

- (A) Grounds for denying the issuance or renewal of a license include but are not limited to the following:
 - (1) The applicant is under 21 years of age.
 - (2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to Licensed Products.
 - (3) The applicant has had a license to sell Licensed Products suspended or revoked within the preceding 12 months of the date of application.
 - (4) The applicant fails to provide any of the information required on the licensing application, or provides false or misleading information.
 - (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.
- (B) Except as may otherwise be provided by law, the existence of any particular ground for denial does not compel the county to deny the license.
- (C) If a license is mistakenly issued or renewed to a person, it will be revoked upon the discovery that the person was ineligible for the license under this ordinance. The county will provide the license holder with notice of the revocation, along with information on the right to appeal.

Section 7: PROHIBITED SALES

- (A) **In general.** No person shall sell or offer to sell any Licensed Product:
 - (1) By means of any type of Vending Machine.
 - (2) By means of Loosies as defined.
 - (3) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the Sale of lawfully manufactured cigarettes or other products subject to this Ordinance.

- (4) By 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) **Legal age.** No person shall sell any Licensed Product to any person under the age of 21.
 - (1) **Age verification.** Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 - (2) **Signage.** Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where Licensed Products are offered for Sale. The required signage must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (C) **Self-Service Sales.** No person shall allow the Sale of Licensed Products by any Self-Service Displays where the customer may have access to those items without having to request the item from the licensee or the licensee's employee and where there is not a physical exchange of the Licensed Product from the licensee or the licensee's employee to the customer. All Licensed Products must be stored behind the sales counter, in another area not freely accessible to customers, or in a case or other storage unit not left open and 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.
- (D) **Flavored Products.** No person shall sell or offer for Sale any Flavored Products. This prohibition does not apply to Retail Establishments that:
 - (1) Prohibit persons under 21 from entering at all times;
 - (2) Derive at least 90 percent of their gross revenues from the Sale of Licensed Products; and
 - (3) Meet all of the following building or structural criteria:
 - (a) Shares no wall with and has no part of their structure adjoined to any other business or retailer unless the wall is permanent, completely opaque, and without doors, windows, and pass-throughs to the other business or retailer;
 - (b) Shares no walls with and has no part of their structure directly adjoined to another licensed Tobacco retailer; and
 - (c) Is accessible by the public only by an exterior door.

Any Retail Establishment that sells Flavored Products must provide financial records documenting its annual Sales, upon request by the county.

- (E) **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 Packaging. 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.
- (F) **Cigars.** No person shall sell or offer to sell any Cigar, sold individually or as a multi-unit package, and regardless of whether it is within its intended retail packaging, for a sales price, after any discounts are applied and before sales taxes are imposed, of less than \$3.00 per Cigar.

Section 8: RESPONSIBILITY

All licensees are 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 employee 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 9: COMPLIANCE CHECKS AND INSPECTIONS

All licensed premises must be open to inspection by law enforcement or other authorized county officials during regular business hours.

At least twice per year, the county will conduct Compliance Checks with respect to the minimum age to purchase products licensed under this ordinance. In accordance with state law, the county will conduct a Compliance Check that involves the participation of a person between the ages of 15 and 17. The county will also conduct a Compliance Check that involves the participation of a person between the ages of 18 and 20. In both Compliance Checks, persons under the minimum purchase age will enter licensed premises to attempt to purchase Licensed Products. Prior written consent of a parent or guardian is required for any person under the age of 18 to participate in a Compliance Check. Persons participating in Compliance Checks will be supervised by law enforcement or other designated personnel.

Additionally, from time to time, the county will conduct inspections to determine compliance with any or all other aspects of this Ordinance.

Section 10: OTHER PROHIBITED ACTS

Unless otherwise provided, the following acts are a violation of this Ordinance:

- (A) **Prohibited furnishing or procurement.** It is 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 is also a violation for any person 21 years of age and older to coerce or attempt to coerce person under the age of 21 to illegally purchase or attempt to purchase any Licensed Product.
- (B) **Use of false identification.** It is a violation of this ordinance for any person use any form of a false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.
- (C) **Samples prohibited.** No person shall distribute samples of any Licensed Product free of charge or at a nominal cost.
- (D) **Smoking prohibited.** Smoking, including Smoking for the purpose of the sampling of Licensed Products is prohibited within the Indoor Area of any Retail Establishment licensed under this Ordinance.

Section 11: EXCEPTIONS AND DEFENSES

- (A) **Religious, spiritual, or cultural ceremonies or practices.** Nothing in this Ordinance prevents the provision of Tobacco or Tobacco-Related Devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- (B) **Reasonable reliance.** It is an affirmative defense to a violation of this Ordinance for a person to have reasonably relied on proof of age as described by state law.

Section 12: VIOLATIONS, PENALTIES AND ADMINISTRATIVE HEARING

(A) **Violations.**

- (1) **Notice.** A person violating this Ordinance may be issued, either personally or by mail, a citation from the county that sets forth the alleged violation and that informs the alleged violator of 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.
- (2) **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(B) **Administrative penalties.**

- (1) **Licensees.** Any licensee found to have violated this Ordinance, or whose employee violated this Ordinance, will be charged an administrative fine of \$200 for a first violation; \$500 for a second offense at the same licensed premises within a 24-month period; and \$1,000 for a third or subsequent offense at the same location within a 24-month period. Upon the third violation, the license

will be suspended for a period of not less than 30 consecutive days. Upon a fourth violation, the license will be revoked.

(2) **Other individuals.** Individuals, other than persons under the age of 21 regulated by division (B)(3) of this section, who are found to be in violation of this Ordinance will be charged an administrative fine of \$50.

(3) **Persons under the age of 21.** Persons under the age of 21 who use false identification to purchase or attempt to purchase Licensed Products may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the county determines to be appropriate.

(4) **Statutory penalties.** If the administrative penalty authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.

(C) **Misdemeanor prosecution.** Nothing in this section prohibits the county from seeking prosecution as a misdemeanor for any alleged violation of this Ordinance by a person 21 years of age or older.

(D) **Administrative hearing.**

(1) **Right of appeal.** Where a license application or renewal is denied or a licensee receives a suspension, summary suspension, or revocation notice, the applicant or licensee may appeal the action to the Health Authority by requesting an administrative hearing within ten County working days of the date of the notice. The notice of the action shall state the right to an administrative hearing.

(2) **Administrative hearing.** If any applicant or licensee makes a written request for an administrative hearing, such hearing shall be held before the Community Health Services Administrator as defined by Minn. Stat. § 145A.02 subd. 6a, as may be amended from time to time, or his/her designee.

(3) **Schedule.** The administrative hearing shall be held no later than 45 calendar days after the date of service of the request for a hearing was received unless the appellant requests an extension of time. If an extension is requested, the hearing shall be held no later than 90 calendar days after the date of service of the request for a hearing.

(4) **Notice.** The Health Authority shall mail notice of the administrative hearing to the appellant at least ten calendar days prior to the hearing. Such notice shall include (1) a statement of time, place, and nature of the hearing; and (2) a reference to the particular section of this Ordinance or the adopted statutes or rules that have been violated.

(5) **Witnesses and evidence.** All parties shall have full opportunity to respond to and present evidence and witnesses.

- (6) **Standard of proof.** The appellant shall have the burden of proving its position by clear and convincing evidence. All findings of fact, conclusions of law, and decisions by the Community Health Services Administrator or his/her designee shall be based on evidence presented and matters officially noticed.
- (7) **Rules of evidence.** The Rules of Evidence, as applied in the District Court, shall not apply to the hearing, but irrelevant, immaterial, and unduly repetitious evidence shall be excluded. The hearing shall be confined to matters raised in the Health Authority's written notice of suspension, summary suspension, or revocation or in the appellant's written request for a hearing.
- (8) **Record of hearing.** The hearing shall be taped or videotaped and minutes shall be kept.
- (9) **Notice of decision.** The determination of the Community Health Services Administrator or his/her designee and a copy of the minutes of the administrative hearing shall be forwarded to the appellant within ten County working days of the conclusion of the administrative hearing. The determination will be effective on the sixth County working day following the date the notice is sent.
- (10) **Request for reconsideration of hearing decision.** The written notice must state the effective date of the adverse action. The notice must state that the appellant has the right to request a reconsideration of the hearing decision within five County working days of receipt of the notice. The reconsideration shall consist of a review of the record by the Health Authority. The review shall be conducted within five County working days of the receipt for the request for reconsideration. A written notice of determination will be forwarded to the appellant within five County working days of the reconsideration decision. The determination will become effective after three working days after the notice of decision is mailed.

Section 13. SEVERABILITY

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

Section 14: NOTICE

The County shall make reasonable efforts to send Tobacco retailers regulated by this Ordinance thirty (30) days mailed notice of proposed amendments to this Ordinance.

Section 15. EFFECTIVE DATE

This ordinance becomes effective on January 1, 2020.