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COUNTY RECORDER

DOCUMENT COVER SHEET

Document Name: **BENTON COUNTY ORDINANCE # 406**

**BENTON COUNTY BOARD OF
COMMISSIONERS**

THE PUBLIC

Document Date: **08/17/2006**

This cover sheet is being attached to this document to provide room for recording information and is considered part of this document

BENTON COUNTY ORDINANCE NO. 406

WHEREAS, on July 18, 2006, the Benton County Board of Commissioners conducted a public hearing to consider certain amendments to Ordinance No. 298 relating to the sale and use of tobacco; and,

WHEREAS, notice of said hearing was published in the official newspaper of the county and also sent by mail to the last known address of each tobacco licensee pursuant to Minn. Stat. §461.19; and,

WHEREAS, the Benton County Board of Commissioners, by majority vote, voted to enact the proposed amendments to Ordinance No. 298;

NOW, THEREFORE, THE COUNTY BOARD OF BENTON COUNTY ORDAINS:

That Benton County Ordinance No. 298 is hereby amended to read as follows:

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

The County Board of Benton County Ordains:

Section 100. Purpose. This ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco-related devices for the purpose of enforcing existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, and tobacco-related devices, and to further the official public policy of the state of Minnesota with regard to preventing young people from starting to smoke as stated in Minn. Stat. §144.391.

Section 200. Definitions and Interpretations. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice versa. The term "shall" means mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

Subd. 1. Tobacco or Tobacco Products. "Tobacco" or "Tobacco Products" shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes, cigars, pipe tobacco, snuff, fine cut or other chewing tobacco, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco, snuff flowers, cavendish, shorts, plug and twist tobacco, dipping tobacco, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.

Subd. 2. Tobacco Related Devices. "Tobacco Related Devices" shall mean any tobacco product, as well as a pipe, rolling papers, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.

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

Subd. 4. Vending Machine. "Vending Machine" shall mean any mechanical, electric, or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco-related devices upon the insertion of money, tokens, or other forms of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device.

Subd. 5. Individually Packaged. "Individually Packaged" shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

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

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

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

Subd. 9. Moveable Place of Business. "Moveable Place of Business" shall refer to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

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

Subd. 11. Compliance Check. "Compliance Check" shall mean the system the county uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco-related devices are following and complying with the requirements of state law through this ordinance. Compliance checks may involve the use of minors as authorized by state law through this ordinance.

Section 300. License. No person shall sell or offer to sell any tobacco, tobacco products or tobacco-related devices without first having obtained a license to do so from the county, unless located within a town or a home rule charter or statutory city that has retained

licensing authority under Minnesota Statutes 461.12, Subd. 1.

Subd. 1. Application. An application for a license to sell tobacco, tobacco products, or tobacco-related devices, shall be made on a form provided by the county. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought and any additional information the county deems necessary. Upon receipt of a completed application, the County Auditor/Treasurer shall forward the application to the County board for action at its next regularly scheduled board meeting. If the County Auditor/Treasurer shall determine that an application is incomplete, he or she shall return the application with notice of the information necessary to make the application complete. An application shall not be forwarded to the County Board until it is complete.

Subd. 2. Action. The County Board may either approve or deny the license or it may delay action for such reasonable period of time as is necessary to complete any investigation of the application or applicant it deems necessary. If the County Board shall approve the license, the Auditor/Treasurer shall notify the applicant and collect the appropriate fee. The Auditor/Treasurer will then issue the license to the applicant. If the County Board denies the license, notice of the denial shall be given to the applicant and notice of the applicant's right to appeal the decision. If the denial is the result of information gathered by the sheriff's department or the county attorney, that department shall issue a statement of what was found and if/how it could be corrected in order to apply for a license again at a later date. The statement shall be sent to the applicant, along with the notice of denial. If a license is mistakenly issued to an applicant or license holder, or renewed, it shall be revoked by the Auditor/Treasurer upon discovery that the person, applicant, or license holder was ineligible for license under this section.

Subd. 3. Term. Generally, licenses issued under this ordinance shall be valid for one calendar year from the date of issue beginning January 1st. Licenses may be issued and granted under this ordinance for a fractional year thereof upon their expiration under another licensing authority, or in the case of a new license application. A license issued for a period of less than one calendar year will expire on December 31st of that year.

Subd. 4. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in this ordinance.

Subd 5. Transfers. All licenses under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the County Board.

Subd. 6. Moveable Place of Business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this ordinance.

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

Subd. 8. Renewals. The renewal of a license issued under this section shall be processed in the same manner as the original application. The request for a renewal shall be made at least thirty (30) days, but no more than sixty (60) days before the expiration of the current license. The issuance of a license issued under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

Section 400. Fees. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be established by resolution of the County Board.

Section 500. Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license under this ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the county must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this Section.

- A. The applicant is under the age of 18 years.
- B. 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 tobacco or tobacco products, or tobacco related devices.
- C. The applicant has had a license to sell tobacco, tobacco products, or tobacco related devices revoked within the preceding twelve (12) months of the date of application.
- D. The applicant fails to provide any information required on the application, or provides false or misleading information.
- E. The applicant is prohibited by Federal, State or other local law, ordinance or other regulation from holding such a license.
- F. Delinquent property tax remains unpaid on the place of business.

Section 600. Prohibited Sale. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product, or tobacco-related device:

- A. To any person under the age of eighteen (18) years.
- B. By means of any type of vending machine, except as may otherwise be provided in this ordinance.
- C. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco products, or tobacco-related device and whereby there is not a physical exchange of the tobacco, tobacco product or tobacco-related device between the licensee or the licensee's employee or customer.
- D. By means of loosies as defined in Section 200 of this ordinance.
- E. 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.
- F. By any other means, to any other person, or in any other manner or form prohibited by Federal, State, or other local law, ordinance provision or other regulation.

Section 700. Vending Machines. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products or tobacco-related devices by the means of a vending machine.

Section 800. Self-Service Sales.

- A. No licensee shall offer for sale single packages of any tobacco products in open displays which are accessible to the public without the intervention of a store employee.
- B. No licensee shall offer for sale cartons and other multipack units through open displays accessible to the public. All tobacco, tobacco products, and tobacco-related devices shall either be stored behind a counter or other 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 tobacco, tobacco products or tobacco-related devices at the time this ordinance is adopted shall comply with this section within ninety (90) days.

- C. The self-service restrictions described in this section shall not apply to retail establishments which derive at least 90% of their revenue from tobacco and tobacco-related products.

Section 900. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, or tobacco-related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the county from also subjecting the employee of a licensee to whatever penalties are appropriate under this ordinance, State or Federal law, or other applicable law or regulations.

Section 1000. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the Benton County Sheriff's Office during regular business hours. From time to time, but at least once per year, the sheriff's office shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of fifteen (15) years, but less than eighteen (18) years, to enter the licensed premise to attempt to purchase tobacco, tobacco products or tobacco-related devices. Minors used for the purpose of compliance checks shall be trained and supervised by designated county personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products, or tobacco-related devices when such items are obtained or attempted to be obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employees and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

Section 1001. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance.

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

Subd. 2. Illegal Location. It shall be a violation of this ordinance for a licensee to

sell or provide any tobacco, tobacco products, or tobacco-related devices within 350 feet of schools.

Subd. 3. Illegal Possession. It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product, or tobacco-related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 4. Illegal Use. It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product or tobacco-related device.

Subd. 5. Illegal Procurement. It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco-related device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase to otherwise obtain for use any tobacco, tobacco product or tobacco-related device. This subdivision shall not apply to minors lawfully involved in a compliance check.

Subd. 6. Use of False Identification. It shall be a violation of this ordinance for any for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Section 1200. Violations.

Subd. 1. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

Subd. 2. Hearings. If a person or licensee accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. The accused person or licensee must pay the administrative penalty, or request a hearing, in writing, within 30 days of the date the citation was issued. A written request for a hearing shall be made to the Benton County Administrator.

Subd. 3. Hearing Committee. The County Board shall appoint a hearing committee or hearing officer, who shall have the authority to review all facts

relevant to the alleged violation and the penalty imposed, and sustain or reverse the decision of the County Board or other county official regarding the guilt of the accused, and/or sustain, reverse or modify the penalty imposed by the County Board or county official.

Subd. 4. Decision. The hearing committee or hearing officer's decision, along with the officer's or committee's reasons for finding a violation and the penalty to be imposed under Section 1300 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the accused violator.

Subd. 5. Appeals. Appeals of any decision made by the hearing committee shall be filed in the Seventh Judicial District Court for Benton County.

Subd. 6. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Section 1300. Penalties.

Subd. 1. Licensees or Agents. Any licensee found to have violated this ordinance, or whose employees shall have violated this ordinance, shall be charged an administrative fine of \$250 for a first violation of this ordinance; \$500 for a second violation at the same licensed premises within a twenty-four (24) month period and \$1000 for a third or subsequent violation at the same location within a twenty-four (24) month period. In addition, for the third or subsequent violation within a 24-month period, the license shall be suspended for not less than twenty-one (21) days.

Subd. 2. Other Individuals. Other individuals, other than minors regulated by Subd. 3 of this subsection, found to be in violation of this ordinance, shall be charged an administrative fee of \$50.

Subd. 3. Prosecution. Nothing in this Section shall prohibit criminal prosecution as a misdemeanor for any alleged violation of this ordinance. Criminal prosecution shall not preclude an administrative penalty also being imposed.

Subd. 4. Failure to Pay Fine. Failure to pay a fine within the time ordered by the County Board of Commissioners shall be grounds for termination or suspension of a license to sell tobacco.

Section 1400 License Suspension and Revocation. Any license issued pursuant to this ordinance may be suspended or revoked as provided in Minnesota State Law. A license may be suspended or revoked for cause including, but not limited to, the following

reasons:

The licensee knowingly allowed or permitted illegal acts unrelated to the sale of tobacco on the licensed premises, including violations of any local ordinance or State or Federal law.

The licensee, or persons under his direction or control, violated the terms of this ordinance.

The licensee had knowledge of illegal acts taking place on the licensee's premises, but failed to cooperate or refused to cooperate fully with investigating law enforcement authorities.

The licensee meets one or more of the criteria for license denial listed in Section 500.

Section 1500. Severability and Savings Clause. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this ordinance.

Section 1600. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, or tobacco-related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

Section 1700. Effective Date. This ordinance shall take effect upon passage and publication.

Dated this 15th day of August, 2006.

Deane Grandy
Chair, Benton County Board of
Commissioners

Dated this 16th day of August, 2006.

Montgomery Heady
County Administrator