

ORDINANCE 98-11.

AN ORDINANCE REGULATING THE SALE, POSSESSION AND USE OF TOBACCO AND TOBACCO-RELATED DEVICES; MANDATING YEARLY COMPLIANCE CHECKS OF ALL LICENSEES; AND ESTABLISHING PENALTIES AND PROCEDURE FOR VIOLATIONS, ALL IN ACCORDANCE WITH MINNESOTA STATUTES CHAPTER 461 (1997).

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**TOBACCO ORDINANCE
ORDINANCE 98-11**

An ordinance relating to the sale, possession and use of tobacco and tobacco-related devices in the Town of Breitung.

The Town of Breitung Ordains:

Section 100. Purpose. The Purpose of this Ordinance is to regulate the sale of tobacco and tobacco-related devices and to restrict access to tobacco and tobacco-related devices for persons under the age of 18 years.

Section 200. Definitions and Interpretations. Except as may otherwise be provide 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. "Tobacco" shall have the same meaning as that contained in Minnesota Statutes Section 609-685, subdivision 1 (a) (1997).

Subd. 2 Tobacco-Related Devices. "Tobacco-related devices" shall have the same meaning as that contained in Minnesota Statutes Section 609.685, subdivision 1 (b) (1997).

Subd. 3 Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco-related devices in any manner where any person shall have access to the tobacco or tobacco-related devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco or tobacco-related device between the customer and the licensee or 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 dispensed tobacco or tobacco-related devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco-related device.

Subd. 5 Loosies. "Loosies" shall mean the common term used to refer to a single of individually packaged cigarette.

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

Subd. 7 Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco or tobacco-related devices are available for sale to the general public. Retail establishments shall include, but not be limited to; grocery stores, convenience store, and restaurants.

Subd. 8 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. 9 Sale. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 10 Compliance Checks. "Compliance Checks" shall mean the system the Town uses to investigate and ensure that those authorized to sell tobacco and tobacco-related devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco or tobacco-related devices for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws and regulations relating to tobacco and tobacco-related devices.

Section 300. License. No person shall sell or offer to sell any tobacco or tobacco-related device without first having obtained a license to do so from the Town.

Subd. 1 Application. An application for a license to sell tobacco or tobacco-related devices shall be made on a form provided by the Town Clerk. 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 Town deems necessary. Upon receipt of the completed application the Town Clerk shall issue a license if it is deemed the information is adequate and accurate. If it is determined an application is incomplete, the application shall be referred to the Town Board for action.

Subd. 2 Action. The Town Board may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Town Board approves the license, the Town Clerk shall issue the license to the applicant. If the Town Board denies the license, notice of denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.

Subd 3. Term. All licenses issued under this ordinance shall be valid for the calendar year of the date issued.

Subd 4. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.

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

Subd 8. Renewals. No license is renewed until the renewal application has been approved by the Town Board. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but no more than sixty days prior to the end of the calendar year for which the current license was issued. 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 Town 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 Town 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-related devices.
- C. The applicant has had a license to sell tobacco or tobacco-related devices revoked within the preceding twelve months of the date 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.

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

- A. To any person under the age of eighteen (18) years.
- B. By means of any type of vending machine.
- 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 or tobacco-related device and whereby there is not a physical exchange of the tobacco or tobacco-related device between the licensee or the licensee's employee, and the customer, except as may be otherwise provided in this ordinance.
- 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, on in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

Section 700. Self-Service Sales. It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco or tobacco-related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the

tobacco or the tobacco-related device between the licensee or his or her clerk and the customer. All tobacco 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. Licensees which prohibit individuals less than 18 years of age from entering the premises and which derive at least 90 percent of their revenue from tobacco and tobacco-related products are exempt from this subdivision. Any retailer selling tobacco or tobacco-related devices at the time this ordinance adopted shall comply with the Section within thirty (30) days following the effective date of this ordinance.

Section 800. Responsibility.

Subd. 1 Licensees. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco or tobacco-related devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder.

Subd. 2 Clerks/Employees. Notwithstanding the above, the clerk or employee specifically involved in a compliance check violation or determined to have violated the provisions of this ordinance in connection with the sale of tobacco or tobacco-related devices shall be personally liable to pay an administrative fee in addition to any fees imposed upon the employer or license holder.

Section 900. Compliance Checks and Inspections. All licensed premises shall be open to inspection by local law enforcement officers or other authorized Town official during regular business hours. From time to time, but at least once per year, the licensing authority shall conduct compliance checks by engaging, with 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 premises to attempt to purchase tobacco or tobacco-related devices. Minors used for the purpose of compliance checks shall be supervised by the local police department. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco or tobacco-related devices when such items are obtained or attempted to be obtained as part of 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 employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this Section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

Section 1000. Other Illegal Acts. Unless otherwise provided, the following shall be a violation of this ordinance.

Subd. 1 Use of False Identification. It shall be a violation on this ordinance for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of another person has been modified or tampered with to represent an age older than the actual age of the person

Section 1100. Hearing.

Subd. 1 Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a written notice 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 Hearing. If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be provided to the accused violator.

Subd. 3 Hearing Officer. The Town Board shall serve as the hearing officer.

Subd. 4 Decision. If the hearing officers determine that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 1200 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the hearing officers find that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator.

Subd. 5 Appeals. Appeals of any decision made by the hearing officers shall be taken as provided in Minnesota Statutes Section 461.12.

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

Section 1200. Penalties.

Subd. 1 Licensees. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$75 for a first violation of this ordinance; \$200 for a second offense at the same licensed premises within a twenty-four month period; and \$250 for a third offense at the same licensed premises; and \$500 for a fourth or subsequent offense at the same location within a twenty-four month period. In addition, the Licensee's license shall be suspended for not less than ten days for a third or subsequent offense at the same location within a twenty-four month period.

Subd. 2 Other Individuals. Other individuals, other than minors regulated by subdivisions 4 and 5 of this Subsection, found to be in violation of this ordinance shall be charged an administrative fine of \$50 for a first violation of this ordinance, \$75 for a second offense; and \$100 for a third or subsequent offense.

Subd. 3 Failure to Pay Fines. The failure of licensees or other individuals to pay fines due under subsections 1 and 2 within thirty (30) days of the offense shall result in withdrawal of the establishments license for a minimum of one year.

Subd. 4 Minors Using False Identification. Minors found to be in violation of Section 1100, Subd. 1 of this ordinance shall be charged an administrative fine of \$50 for a first violation of this ordinance; \$75 for a second offense; and \$100 for a third or subsequent offense.

Subd. 5 Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco or tobacco-related devices, shall be referred to the St. Louis District Court Juvenile Diversion Program created pursuant to Minnesota Statutes Section 388.24.

Section 1300. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing of tobacco or tobacco-related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

Section 1400. 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 1500. Misdemeanor Prosecution. Nothing in this ordinance shall prohibit the Town from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

Section 1600. Effective date. This ordinance shall take effect thirty (30) days after publication.

Introduced by Supervisor Mattila on September 22, 1998
and given the first reading.

Given second reading on October 27, 1998 by Chairman Tomsich.

Passed and approved by the Town Board of Breitung Township on this
27th day of October, 1998.

Published in the Tower News on October 29, 1998.

TOWN OF BREITUNG

By: Timothy S. Tomsich
Chairman

By: Margaret Lidy
Clerk

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