

OVERVIEW OF TOBACCO RETAIL LICENSING LEGAL REQUIREMENTS AND OPTIONAL PUBLIC HEALTH POLICIES IN MINNESOTA



PUBLIC HEALTH
LAW CENTER
at Mitchell Hamline School of Law

3/27/2024

2

YOUR MODERATOR AND PRESENTERS

MARISA KATZ, J.D.



RACHEL CHAMBERS, J.D.



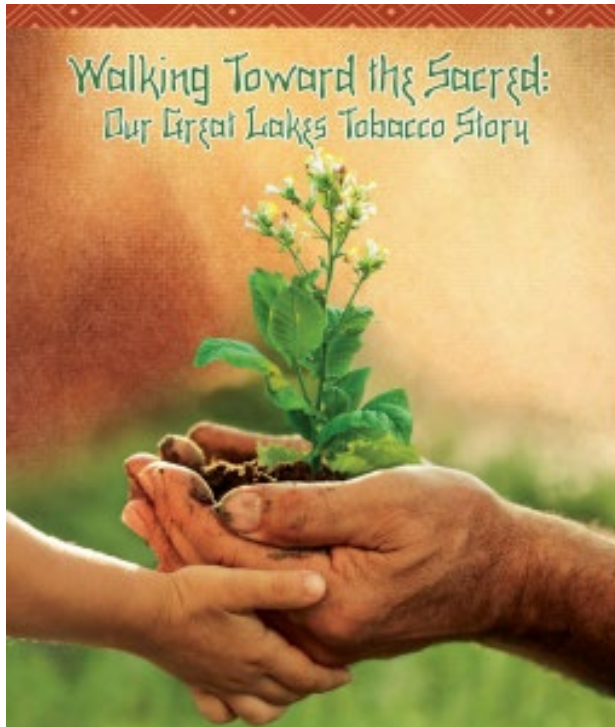
RACHEL CALLANAN, J.D.



THE PUBLIC HEALTH LAW CENTER



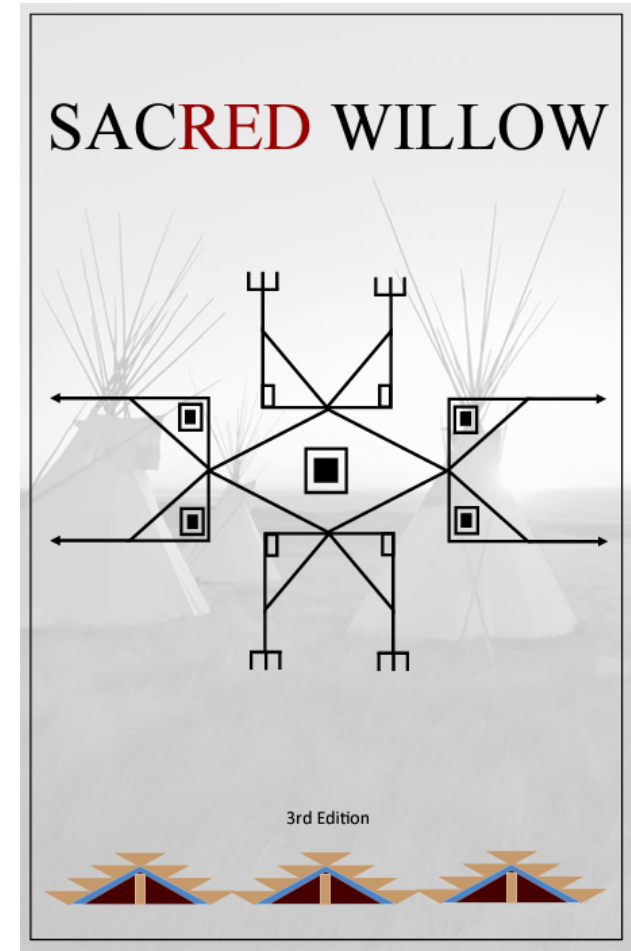
COMMERCIAL TOBACCO IS NOT TRADITIONAL TOBACCO



[Resource: Walking Toward the Sacred](#)









Top: Red Willow, Sacred Willow Publication.
Bottom: *Nicotiana rustica*, Solanaceae, Mapacho, flower.
Botanical Garden KIT, Karlsruhe, Germany. Wikimedia Commons.



[Resource: Sacred Willow](#)

LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development, Implementation, Defense
-  Publications
-  Trainings
-  Direct Representation
-  Lobby

EQUALITY:

Everyone gets the same – regardless if it's needed or right for them.



EQUITY:

Everyone gets what they need – understanding the barriers, circumstances, and conditions.

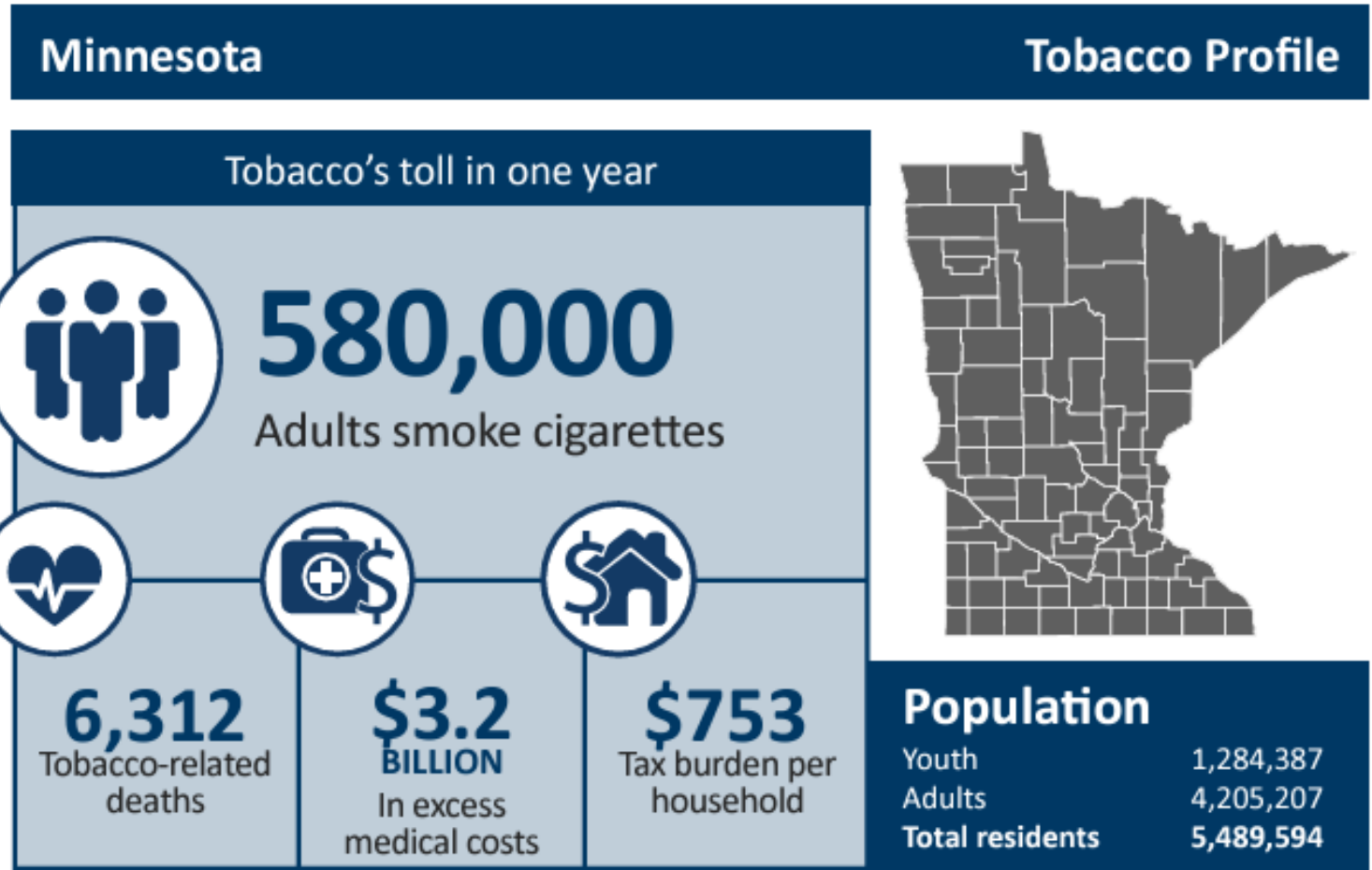


Copyright 2022 Robert Wood Johnson Foundation

AGENDA

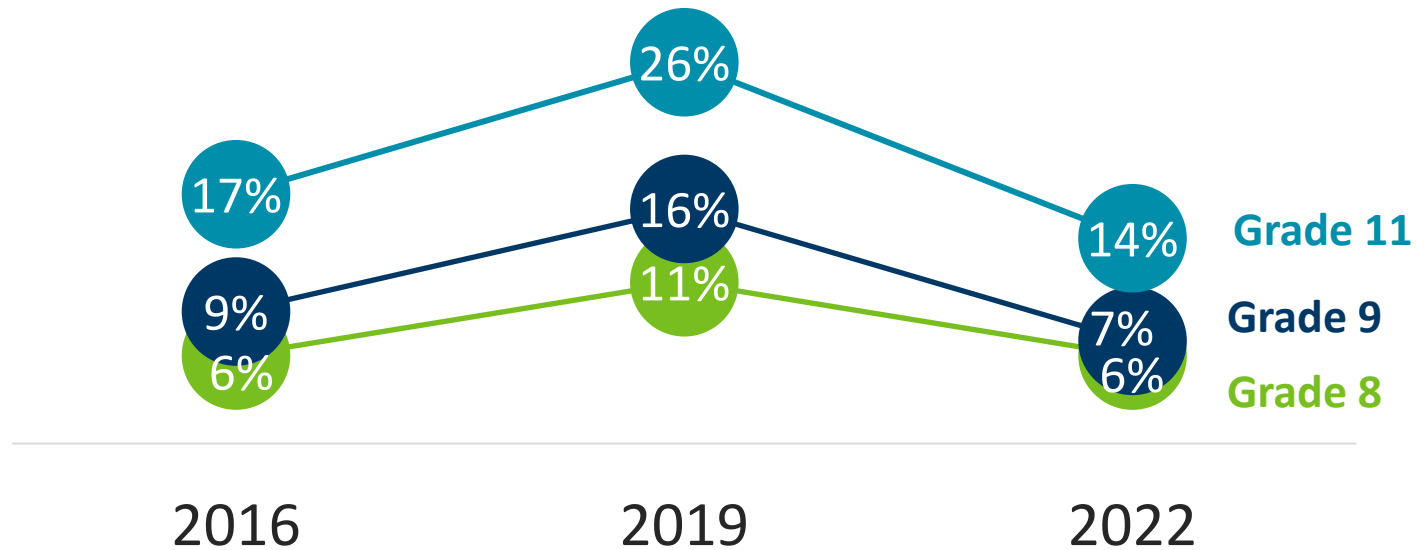
- Overview of youth commercial tobacco use and targeting by the industry
- FDA Authority for Regulation
- MN Authority for Tobacco Retail Licensing
- Overview of Minnesota's commercial tobacco laws
- PHLC Tobacco Retail License Model Policy Overview
- Additional commercial tobacco control opportunities for local communities

HEALTH HARMS: COMMERCIAL TOBACCO



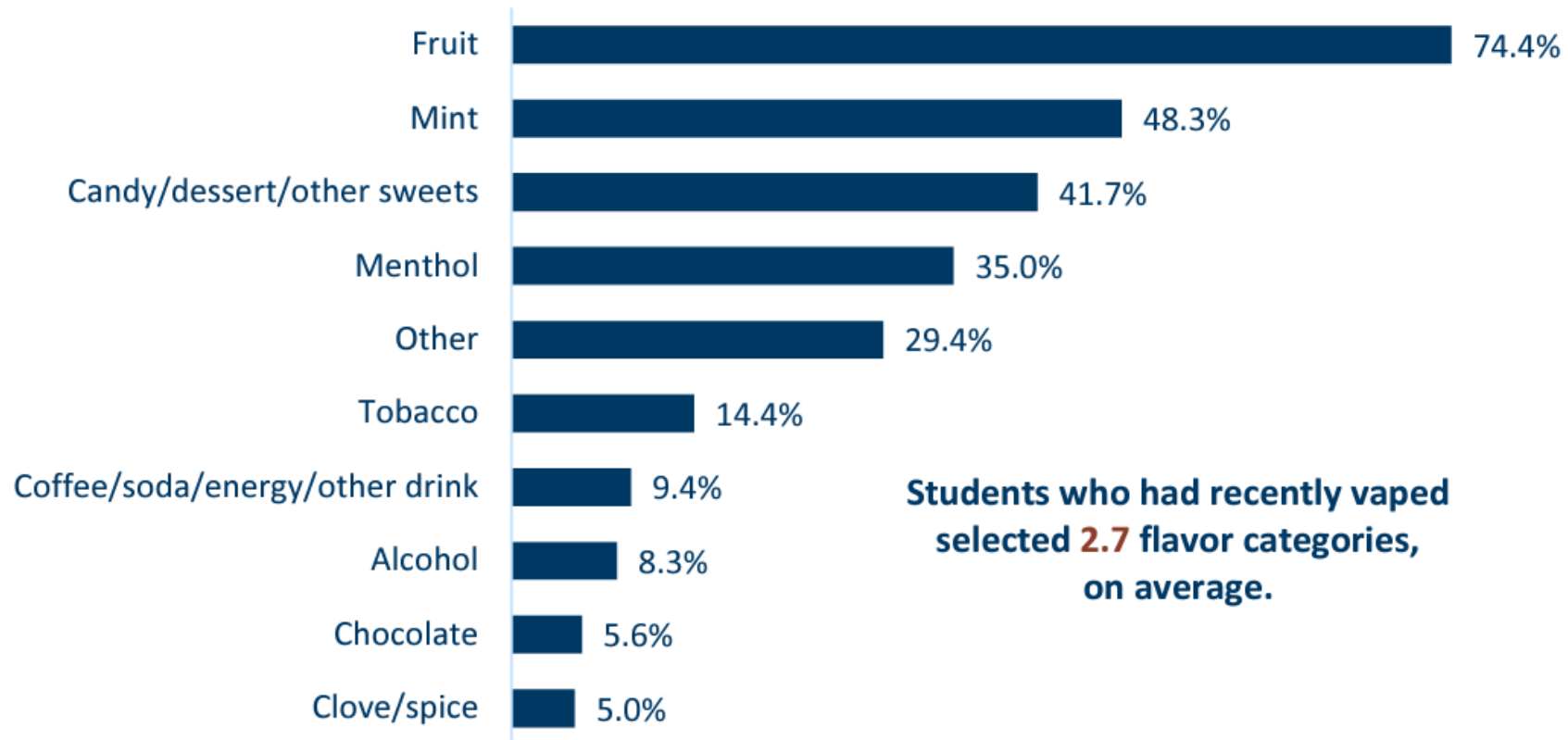
YOUTH VAPING IN MINNESOTA

MINNESOTA STUDENT SURVEY DATA



Credit: Minnesota Department of Health

PERCENTAGE OF MN TEENS WHO REPORTED USING E-CIG FLAVORS IN PAST 30 DAYS



Source: 2020 Minnesota Youth Tobacco Survey; denominator: students who reported having used e-cigarettes in the past 30 days (grades 6-12)

FLAVORED PRODUCTS



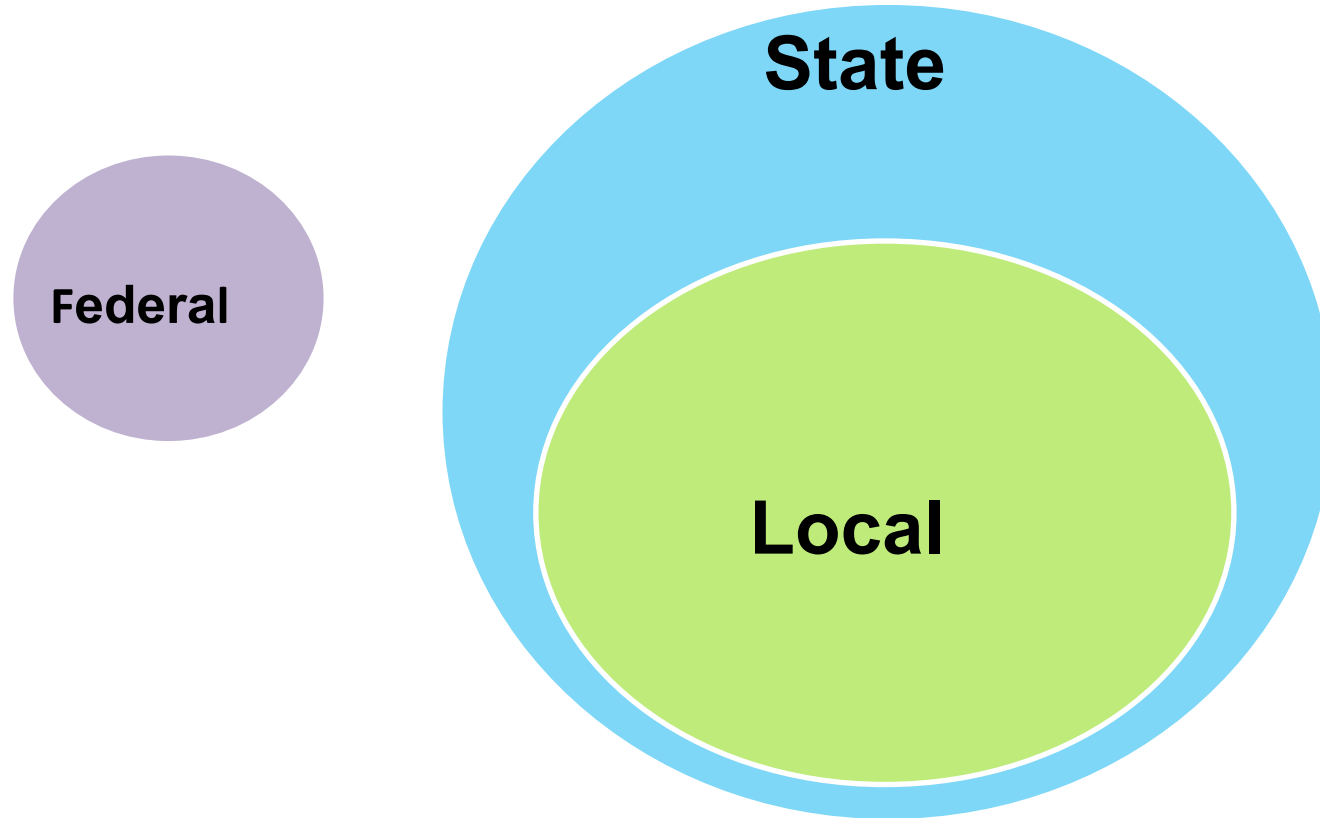
Photo Credit: Association for Nonsmokers - Minnesota



FDA AUTHORITY AND RESPONSIBILITY TO REGULATE COMMERCIAL TOBACCO PRODUCTS



COMMERCIAL TOBACCO CONTROL BEFORE 2009



21 USC 387P PRESERVATION OF STATE & LOCAL AUTHORITY

(1) Preservation

Except as provided in paragraph (2)(A), nothing in this subchapter, or rules promulgated under this subchapter, shall be construed to limit the authority of a Federal agency (including the Armed Forces), a State or political subdivision of a State, or the government of an Indian tribe to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established under this subchapter, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measure relating to fire safety standards for tobacco products. No provision of this subchapter shall limit or otherwise affect any State, tribal, or local taxation of tobacco products.

<https://www.law.cornell.edu/uscode/text/21/387p>

21 USC 387P PRESERVATION OF STATE & LOCAL AUTHORITY

(2) Preemption of certain State and local requirements

(A) In general

No State or political subdivision of a State may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to, any requirement under the provisions of this subchapter relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products.

(B) Exception

Subparagraph (A) does not apply to requirements relating to the sale distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards for tobacco products. Information disclosed to a State under subparagraph (A) that is exempt from disclosure under section 552(b)(4) of title 5 shall be treated as a trade secret and confidential information by the State.

TOBACCO RETAIL LICENSING AND RELATED LAWS IN MINNESOTA

- Federal laws
- State laws
- Tobacco settlement requirements
- Other related regulations

[Tracking Commercial Tobacco
Laws: A Minnesota Digest \(2024\)](#)



MINN. STAT. CHAPTER 461

Office of the Revisor of Statutes

Retrieve by number Statutes GO Statutes Laws Rules Court Rules Constitution Revisor's Office Search Law by K

[2023 Minnesota Statutes](#) > [LOCAL GOVERNMENT POLICE POWERS](#) > Chapter 461

2023 Minnesota Statutes

CHAPTER 461. REGULATING SALES OF TOBACCO; TOBACCO-RELATED AND ELECTRONIC DELIVERY DEVICES; AND NICOTINE AND LOBELIA PRODUCTS

Section	Headnote
461.12	MUNICIPAL LICENSE OF TOBACCO, TOBACCO-RELATED DEVICES, AND SIMILAR PRODUCTS.
461.13	CIGARETTE LICENSE FEES, APPORTIONMENT.
461.14	[Repealed, 1982 c 572 s 3]
461.15	BLIND PERSONS NOT TO PAY CIGARETTE LICENSES.
461.17	MANUFACTURERS TO REPORT ON CERTAIN SUBSTANCES.
461.18	BAN ON SELF-SERVICE SALES; EXCEPTIONS.
461.19	EFFECT ON LOCAL ORDINANCE; NOTICE.
461.20	SALE OF ELECTRONIC DELIVERY DEVICE; PACKAGING.
461.21	KIOSK SALES PROHIBITED.
461.22	AGE VERIFICATION AND SIGNAGE REQUIRED.

MINNESOTA LAW REQUIRES LOCAL LICENSURE

461.12 MUNICIPAL LICENSE OF TOBACCO, TOBACCO-RELATED DEVICES, AND SIMILAR PRODUCTS.

Subdivision 1. **Authorization.** A town board or the governing body of a home rule charter or statutory city may license and regulate the retail sale of tobacco, tobacco-related devices, and electronic delivery devices as defined in section 609.685, subdivision 1, and nicotine and lobelia delivery products as described in section 609.6855, and establish a license fee for sales to recover the estimated cost of enforcing this chapter. The county board shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products in unorganized territory of the county except on the State Fairgrounds and in a town or a home rule charter or statutory city if the town or city does not license and regulate retail sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products. The State Agricultural Society shall license and regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products on the State Fairgrounds. Retail establishments licensed by a town or city to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products are not required to obtain a second license for the same location under the licensing ordinance of the county.

LOCAL AUTHORITY TO GO BEYOND STATE LAW

- **State Law**
 - Cities and counties may enact more restrictive laws

461. 19 EFFECT ON LOCAL ORDINANCE; NOTICE.

Sections [461.12](#) to [461.18](#) do not preempt a local ordinance that provides for a **more restrictive** regulation of sales of tobacco, tobacco-related devices, electronic delivery devices, and nicotine and lobelia products. A governing body shall give notice of its intention to consider adoption or substantial amendment of any local ordinance required under section [461.12](#) or permitted under this section. The governing body shall take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license under section [461.12](#). The notice shall state the time, place, and date of the meeting and the subject matter of the proposed ordinance.

NOTABLE MINNESOTA STATE LAW TRL REQUIREMENTS

- Procedural requirements for local ordinances (Minn. Stat. § [461.19](#))
- Comprehensive definition of products covered—including synthetic nicotine products (Minn. Stat. §§ [609.685](#) & [609.6855](#))
- Child-resistant packaging for liquid used in electronic delivery devices (Minn. Stat. § [461.20](#))
- Prohibit sales from moveable place of business (Minn. Stat. § [461.21](#))
- Prohibit self-service display – exception allowed for tobacco shops (Minn. Stat. § [461.18](#) subd. 1)
- Prohibit vending machines – exception for 21+ establishments (Minn. Stat. § [461.18](#) subd. 2)
- Minimum legal sales age of 21 and related provisions ([Minn. Stat. § 461.22](#))
- Minimum retailer penalties: minimum fines; license suspension; lookback period of 36 months (Minn. Stat. § [461.12](#) subd. 2)
- False ID—requires non-monetary, civil alternative penalties (Minn. Stat. § [609.685](#) subd. 2)

WHAT COMMERCIAL TOBACCO PRODUCTS ARE COVERED?

- Tobacco
- Tobacco-related devices
- Electronic delivery devices
 - **Natural or synthetic nicotine**
 - **Non-nicotine substances**
- Nicotine or lobelia delivery products
 - **Natural or synthetic**



MINIMUM LEGAL SALES AGE AND RELATED PROVISIONS

- Minimum Legal Sales Age (MLSA) – retailer cannot sell licensed products to any person under age 21 ([Minn. Stat. § 461.22](#))
- Compliance checks:
 - Minimum one per year
 - Person used to check compliance must be at least 17 and under 21 ([Minn. Stat. § 461.12 Subd. 5](#))



MINIMUM LEGAL SALES AGE SIGNAGE REQUIREMENT

Signs must be:

- Plain view of the public
- Conspicuous

Must state:

- Sale of licensed products to anyone under 21 is prohibited and subject to penalties
- Must check photo ID of persons under 30

NO SALE



The Sale of all Tobacco Products,
Including Electronic Delivery
Devices, to Persons Under **21**
Is Prohibited and subject to penalty.

IDs will be checked by vendor.

MINNESOTA STATUTES 144.4167, 609.685, 609.6855, 461.22

Minn. Stat. § [461.22 subd. 1](#)

MINIMUM LEGAL SALES AGE AGE VERIFICATION REQUIREMENT

Retailers must check government-issued photo ID of anyone under 30

NOT a defense → that the person looked 30 or over

Subd. 2. **Age verification.** At each location where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products are sold, the licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age. Verification is not required if the purchaser or person attempting to make the purchase is 30 years of age or older. It shall not constitute a defense to a violation of this subdivision that the person appeared to be 30 years of age or older.

STATE MINIMUM CIVIL PENALTIES FOR LICENSEES & PERMISSIVE PENALTIES FOR CLERKS

Licensees:

- 1st violation – \$300
- 2nd violation within **36 months** of 1st – \$600
- 3rd or subsequent violations **within 36 months** of 1st – \$1,000
 - Suspension of license for at least 7 days
 - Possible revocation of license
- Sale of certain cannabis/hemp-THC products or certain violations under Ch. 342
 - Mandatory 7-day suspension and possible revocation

Clerks and other individuals for underage sales/furnishing:

- **MAY** be fined – no longer required – no change to amount (up to \$50)

OTHER NOTABLE STATE LAW REFORMS SINCE 2020

- **State law eliminated:**
 - Purchase/Use/Possession (PUP) civil and criminal penalties for underage persons
 - Use of false ID criminal penalties
 - Suspension of underage person's driver's license
- **Criminal penalties reformed**
 - Any person 21 or over who **sells or furnishes** licensed products to persons under 21:
 - First violation: petty misdemeanor
 - Two or more violations within 5 years: misdemeanor (Minn. Stat. § 609.685 subd. 1a)
 - A civil, non-monetary penalty for **use of a fake ID**, e.g., community service (Minn. Stat. § 461.12 subd. 4)

MINNESOTA MODEL TOBACCO RETAIL: LICENSING ORDINANCES

MINNESOTA COUNTY TOBACCO RETAIL LICENSING

Model Ordinance



Through licensing and related regulations, Minnesota counties have the opportunity to address the sale of commercial* tobacco and related devices and products in the retail environment.

This model ordinance includes all the minimum retail tobacco sales restrictions required by Minnesota state and federal law. It also includes several additional provisions a county may choose to adopt to further advance public health. A county planning to adopt this model ordinance, in whole or in part, should first review it with a county attorney to determine suitability for



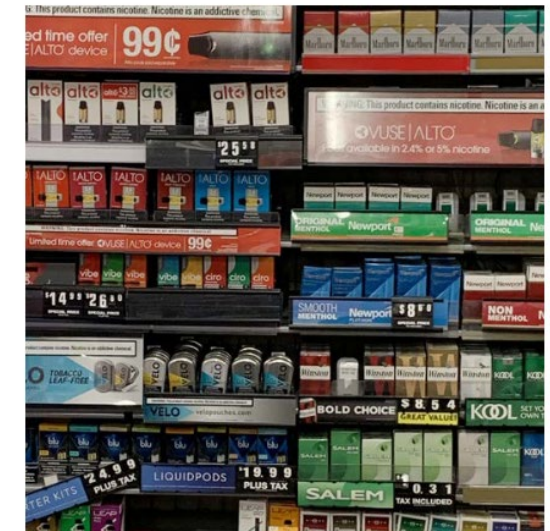
[County Model Ordinance](#)

MINNESOTA CITY TOBACCO RETAIL LICENSING ORDINANCE



Through licensing and related regulations, Minnesota cities have the opportunity to address the sale of commercial* tobacco and related devices and products in the retail environment.

This model ordinance includes all the minimum retail tobacco sales restrictions required by Minnesota state and federal law. It also includes several additional provisions a city may choose to adopt to further advance public health. A city planning to adopt this model ordinance, in whole or in part, should first review it with



[City Model Ordinance](#)

PUBLIC HEALTH LAW CENTER MODEL TRL POLICIES

- Developed over 20 years of consultation with Minnesota Department of Health
- Used by stakeholders like the League of Minnesota Cities (LMC Handbook Ch. 10. pg. 28)

J. Tobacco and related products

Cities may license and regulate all retailers that sell tobacco products, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products. If a city does not adopt its own tobacco licensing ordinance, then the county must do so.

1. Tobacco

State law specifically defines and lists out products that constitute “tobacco”, tobacco related products, electronic delivery devices and nicotine and lobelia delivery products. Consult the statutory resources cited on the left when determining regulation of specific products.

The definition of tobacco excludes any tobacco product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and marketed and sold solely for such an approved purpose.

Minn. Stat. § 461.12, subd. 1. Public Health Law Center at Mitchell Hamline School of Law Model Ordinance.

Minn. Stat. § 297F.01, subd. 19.
Minn. Stat. § 461.12, subd. 1-2, 4-5.
Minn. Stat. § 461.18, subd. 1.
Minn. Stat. § 609.685, subd. 1.

See also, Public Health Law Center at Mitchell Hamline School of Law, *Minnesota’s Tobacco Modernization and Compliance Act of 2010 - Information Sheet.*

League of Minnesota Cities Handbook for Minnesota Cities
City Licensing

11/2/2023
Chapter 10 | Page 28



Benton County’s Comprehensive Tobacco Ordinance Paves the Way for Others

By Benton County and their partners at the Association for Nonsmokers-Minnesota (ANSR)



(From left to right) ANSR’s Katie Engman, Benton County Public Health’s Jaclyn Litfin, Jenny Lezer, and Mariah Klein, Benton County Commissioner Steve Heinen, and Americorps student Palash Bhanot at the NACCHO 360 Annual Conference in Denver.

PUBLIC HEALTH LAW CENTER MODEL TRL POLICIES

- Informed by years of analysis and work with local Minnesota communities and Minnesota Department of Health
- Grounded in our work across the nation
- Grounded in our analysis of state legislation and state statute with stakeholders who work with the Minnesota legislature
- Our model policies are updated regularly based on our learnings in the field, changes in the law, and evidence-based public health policies



MODEL POLICIES: MINNESOTA TOBACCO RETAIL LICENSING

- Comprehensive Framework
 - Findings/Purpose
 - Definitions
 - Licensing provisions
 - Violations and penalties
 - Severability
- Focus on minimizing the risk of litigation
- Oriented to promote public health policies and advance equity

Section 1. Findings of Fact and Purpose.

Section 2. Applicability and Jurisdiction.

Section 3. Definitions.

Section 4. License.

Section 5. Fees.

Section 6. Basis for Denial of License.

Section 7. Prohibited Sales.

Section 8. Responsibility.

Section 9. Compliance Checks and Inspections.

Section 10. Exceptions and Defenses.

Section 11. Violations and Penalties.

Section 12. Severability.

Section 13. Effective Date.

MODEL INCLUDES LANGUAGE TO COMPLY WITH STATE AND FEDERAL LAWS

- Applicability and jurisdiction
- Definition of child-resistant packaging for e-liquids and related provision
- Prohibit sales from a moveable place of business or kiosk
- Compliance checks—defined and at least one required per year
- Minimum legal sales age 21
 - Age verification
 - Signage
- Alternative penalty for use of false ID
- Defense of reasonable reliance on proof of age as described in state law

STATE/FEDERAL LAW, BUT STRONGER PUBLIC HEALTH FOCUSED LANGUAGE

- Prohibit all smoking at retail establishments
- Prohibit all sampling at retail establishments
- Prohibit all vending sales
- Prohibit sales of “loosies” that is defined to include all licensed products

STATE/FEDERAL LAW, BUT STRONGER PUBLIC HEALTH FOCUSED LANGUAGE

- Require multiple compliance checks
- Prohibit furnishing or procurement
 - Administrative penalty for persons over age 21 who violate
- Stronger penalties for licensees
 - higher fines, longer look-back period, longer suspension, and license revocation
- Permissive fine up to \$50 for employees and individuals for any violation of the ordinance OR option to attend instructional program

ADDITIONAL PUBLIC HEALTH BEST PRACTICES

- Require instructional program for licensees and their employees
- Minimum clerk age
- Minimum legal age of 21 to hold a license



ADDITIONAL PUBLIC HEALTH BEST PRACTICES: DELIVERY SALES

Prohibit Delivery Sales
(no online sales/third
party delivery/mobile
sales)



[PHLC Resource: Online and Other Delivery Sales of Commercial Tobacco Products](#)

ADDITIONAL PUBLIC HEALTH BEST PRACTICES: PROHIBIT SALE OF FLAVORED TOBACCO PRODUCTS



ADDITIONAL PUBLIC HEALTH BEST PRACTICES

Restrict Loosies
(single sale of all
licensed products
except premium cigars)



ADDITIONAL PUBLIC HEALTH BEST PRACTICES

- Price Increase
- Prohibit pricing discounts and coupon redemption



ADDITIONAL PUBLIC HEALTH BEST PRACTICES: NO SAMPLING OR SMOKING

Prohibit sampling
and smoking
within stores



[PHLC Resource: Policy Options to Address Commercial Tobacco Product Samples and Sampling](#)

ADDITIONAL PUBLIC HEALTH BEST PRACTICES: PROHIBIT SALE OF IMITATION TOBACCO PRODUCTS



ADDITIONAL PUBLIC HEALTH BEST PRACTICES: MINIMUMS

- Minimum Package Sizes



- Minimum Prices



[PHLC Resource: Setting a Minimum Price and Package Size for Cigars](#)

ADDITIONAL PUBLIC HEALTH BEST PRACTICES: PHARMACY RESTRICTIONS

- Commercial Tobacco-free Pharmacies

JRCH

The New York Times

BUSINESS DAY

CVS Stores Stop Selling All Tobacco Products

By RACHEL ABRAMS SEPT. 3, 2014



Antismoking signs are posted where cigarettes once were displayed at a CVS in Manhattan that no longer sells tobacco products. Andrew Renneisen/The New York Times



ADDITIONAL PUBLIC HEALTH BEST PRACTICES: PROXIMITY RESTRICTIONS AND CAPPING



- Limit the number of licenses issued for retailers (capping)
- Limit Proximity to Other Retailers
- Limit Proximity to Youth-Oriented Facilities
- Limit Proximity to Residential Zones

[PHLC Resource: Regulating the Location, Density, and Type of Tobacco Retailers](#)

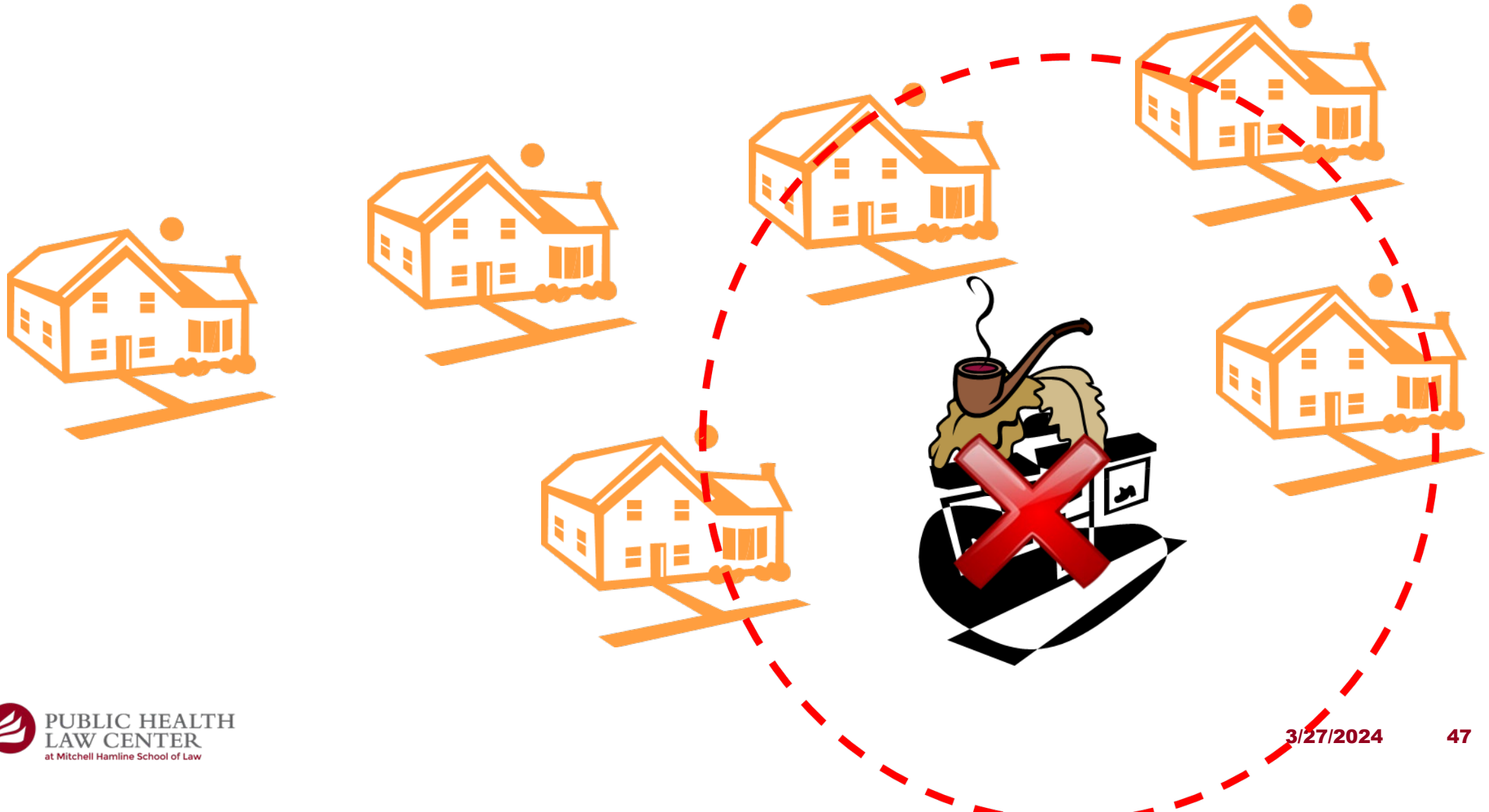
PROXIMITY TO OTHER RETAILERS



PROXIMITY TO YOUTH-ORIENTED FACILITIES



PROXIMITY TO RESIDENTIAL ZONES



ADDITIONAL PUBLIC HEALTH BEST PRACTICES: APPROPRIATE FEES

- Covers Cost of Licensing Ordinance
 - Administration
 - Implementation
 - Retailer Education
 - Community Education
 - Enforcement
 - Compliance Checks
 - Litigation



[PHLC Resource: Tobacco Retail Licensing Calculator](#)

[PHLC Resource: Retail License Fees](#)

ADDITIONAL PUBLIC HEALTH BEST PRACTICES: ANNUAL RENEWAL

Renewal

- Renewal Application
- Timeliness Requirement
- Annual Fee (Paid in Full)



ADDITIONAL PUBLIC HEALTH BEST PRACTICES: DUE PROCESS

- Act Prohibited
- Proper Notice
- Notice Process Described
- Appeals Available



ADDITIONAL PUBLIC HEALTH BEST PRACTICES

EQUITY IN ACTION: AVOIDING PUP

Purchase, Use, Possession

- Can result in discriminatory enforcement
- Fines can be more difficult to afford
- Citations can lead to other consequences

Penalties Inequitable

- Minors
 - Black and Hispanic youth report receiving more citations despite an equal accounting for smoking frequency compared to other groups

ADDITIONAL PUBLIC HEALTH BEST PRACTICES

SACRED USE

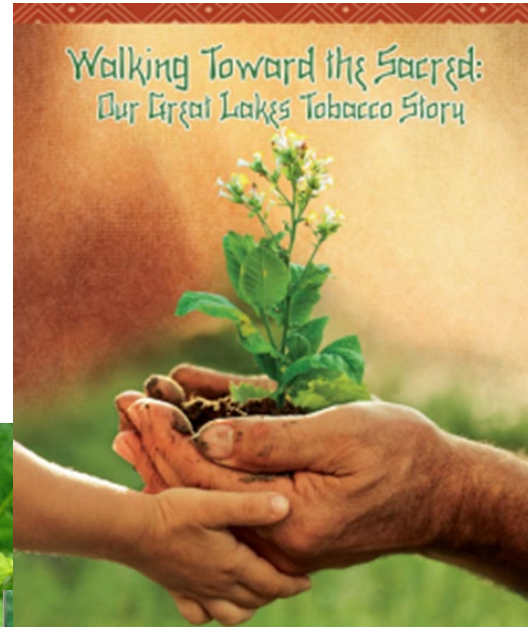
Allow exception for provision of tobacco or tobacco-related devices to underage persons as part of a religious, spiritual, or cultural ceremony or practice.

[Resource: Walking Toward the Sacred](#)

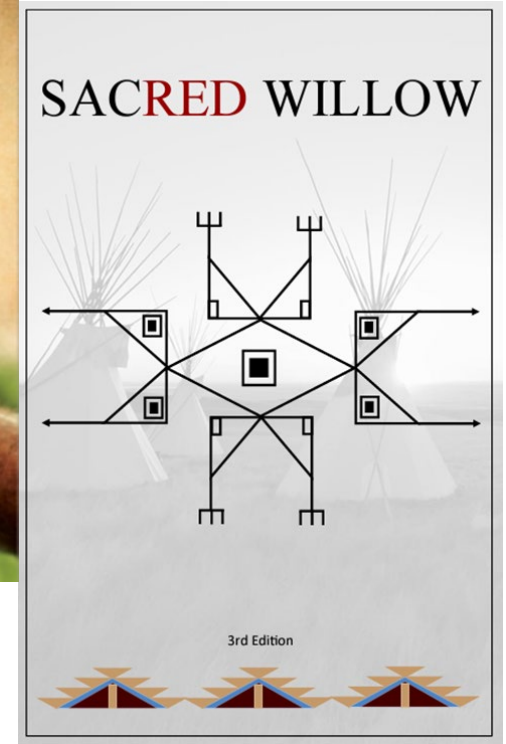
[Resource: Sacred Willow](#)



Left: *Nicotiana rustica*, Solanaceae, Mapacho, flower. Botanical Garden KIT, Karlsruhe, Germany. Wikimedia Commons.



Right: Red Willow, Sacred Willow Publication.



RESOURCES:

MINNESOTA COUNTY TOBACCO RETAIL LICENSING

Model Ordinance

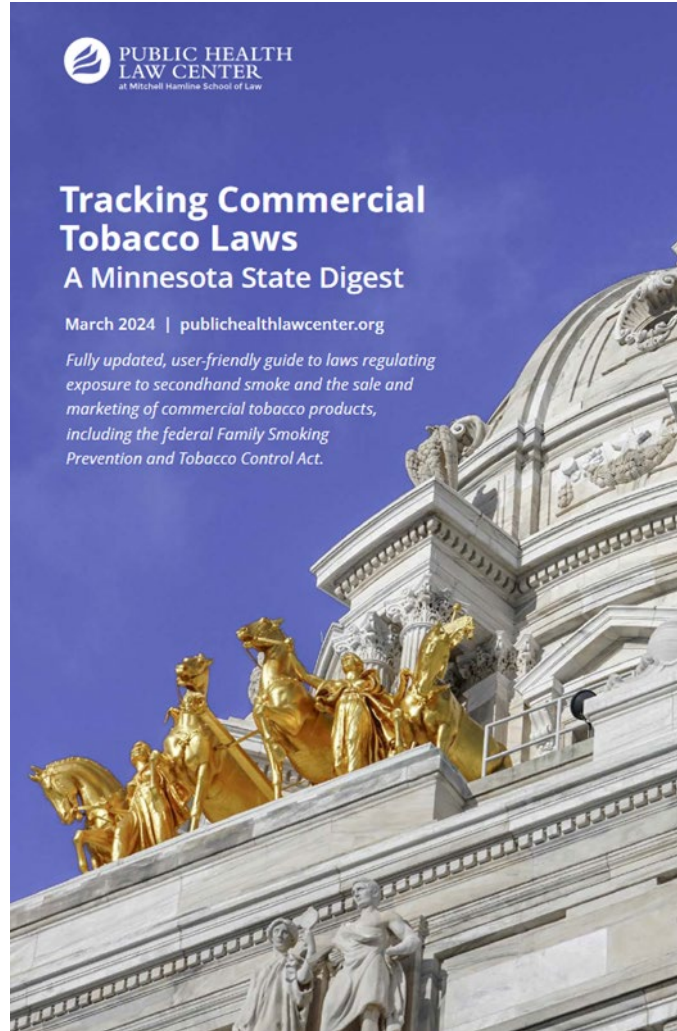


Through licensing and related regulations, Minnesota counties have the opportunity to address the sale of commercial* tobacco and related devices and products in the retail environment.

This model ordinance includes all the minimum retail tobacco sales restrictions required by Minnesota state and federal law. It also includes several additional provisions a county may choose to adopt to further advance public health. A county planning to adopt this model ordinance, in whole or in part, should first review it with a county attorney to determine suitability for



[County Model Ordinance](#)



Tracking Commercial Tobacco Laws A Minnesota State Digest

March 2024 | publichealthlawcenter.org

Fully updated, user-friendly guide to laws regulating exposure to secondhand smoke and the sale and marketing of commercial tobacco products, including the federal Family Smoking Prevention and Tobacco Control Act.

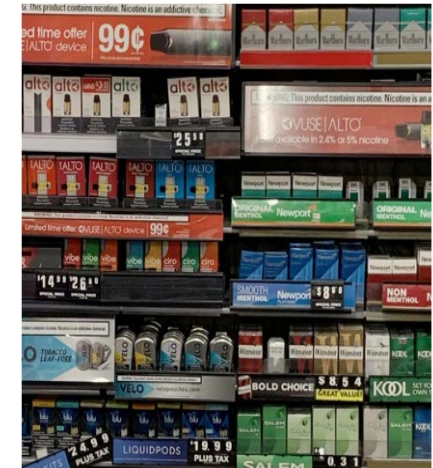
[Tracking Commercial Tobacco Laws: A Minnesota Digest](#)

MINNESOTA CITY TOBACCO RETAIL LICENSING ORDINANCE



Through licensing and related regulations, Minnesota cities have the opportunity to address the sale of commercial* tobacco and related devices and products in the retail environment.

This model ordinance includes all the minimum retail tobacco sales restrictions required by Minnesota state and federal law. It also includes several additional provisions a city may choose to adopt to further advance public health. A city planning to adopt this model ordinance



[City Model Ordinance](#)

RESOURCES:

Minnesota Tobacco Point-Of-Sale Policy Toolkit

- [Coupons and Other Price Discounting Policy Options](#)
- [Youth Purchase, Use, or Possession Penalties \(PUP\)](#)
- [Regulating the Location, Density and Type of Tobacco Retailers](#)
- [Commercial Retail Tobacco Licensing Ordinances: Procedural Requirements](#)
- [Setting a Minimum Price and Package Size for Cigars](#)
- [Compliance and Local Enforcement Programs](#)
- [Establishing a Minimum Clerk Age](#)
- [Retail License Fees](#)
- [Violations and Penalties](#)
- [Policy Options to Address Commercial Tobacco Product Samples and Sampling](#)
- [Online and Other Delivery Sales of Commercial Tobacco Products](#)

UPCOMING MN COMMERCIAL TOBACCO REGULATION CLE/WEBINARS

Legal Landscape of Flavored Tobacco Products

- April 24, 2024 - 12:00pm CT
- [Webinar Registration](#)

Practical Approaches and Best Practices for Tobacco Retail Licensing Enforcement

- May 23, 2024 - 12:00pm CT
- [Webinar Registration](#)

(Note: CLE credit has been granted by the MN Bd. of CLE for all three webinars in this series.)

CONTACT US



651.290.7506



publichealthlawcenter@mitchellhamline.edu



www.publichealthlawcenter.org



[@phealthlawctr](https://twitter.com/phealthlawctr)



facebook.com/publichealthlawcenter



[@publichealthlawcenter](https://instagram.com/publichealthlawcenter)

*Sign up for
our newsletter!*

QUESTIONS & DISCUSSION

