

ORDINANCE NO. 2021-5

AN ORDINANCE AMENDING CHAPTER 14 OF THE CITY CODE RELATED TO TOBACCO RETAIL LICENSES AND THE SALE OF FLAVORED TOBACCO PRODUCTS

The City Council for the City of Bloomington, Minnesota, ordains:

Section 1. That Chapter 14 of the City Code is hereby amended by deleting those words within brackets and ~~[stricken through]~~ and adding those words that are underlined, to read as follows:

CHAPTER 14: LICENSES AND PERMITS

DIVISION W: SALE OF TOBACCO-RELATED PRODUCTS

§ 14.435 PURPOSE.

The City Council finds that substantial scientific evidence exists that the use of tobacco-related products causes cancer, heart disease and various other medical disorders. Tobacco use continues to be an urgent public health threat, as evidenced by the fact that 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the leading cause of preventable death. Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths. The World Health Organization estimates that tobacco accounts for the greatest cause of death worldwide accounting for more than 8 million deaths per year. It is the further finding of the City Council that the ~~[present]~~ legislative scheme of prohibiting sales of tobacco-related products to persons under the age of 18 has proven ineffective in preventing such persons from using tobacco-related products. The City Council recognizes that the sale of commercial tobacco-related products to persons under the age of 21 violates both state and federal law. The City Council has concluded that youth and young adults have ready access to self-service merchandising, including vending machines, which sell tobacco-related products and that the prohibition of the sale or dispensing of tobacco-related products through vending machines and the regulation of sales through self-service merchandising will thereby promote the health, safety and welfare of the residents of the city, particularly those residents under 21 years of age.

The City Council also finds that marketing and public health research shows how flavors such as fruit, candy and sweet tasting products hold an intense appeal to minors. In addition, research shows that youth and young adults have higher rates of menthol tobacco use, and that initiation with menthol cigarettes is related to greater nicotine dependence.

The City Council finds that the location and density of commercial tobacco-related product retailers influences tobacco-related product use among residents living in those communities.

Research shows that youth who live or attend school in neighborhoods with the highest density of tobacco outlets or retail tobacco advertising have higher smoking rates compared to youth who live or attend school in neighborhoods with fewer or no tobacco outlets. The City Council recognizes, as expressed in Resolution 2021-6, that there are significant and substantial racial disparities in the overall health of Bloomington residents. Compounding existing health disparities, tobacco retailers are often concentrated in communities at higher risk for adverse health outcomes. Further, the City Council finds that tobacco manufacturer spending on advertising, marketing and price is directed at youth and young adults. The majority of smokers start young, youth get tobacco from older peers, and exposure to nicotine is particularly dangerous to the adolescent brain. Therefore, the purpose of this ordinance is to reduce the appeal to youth and young adults and reduce the likelihood that youth and young adults will become users of tobacco-related products later in life, thereby promoting health, safety and welfare.

§ 14.436 DEFINITIONS.

The following words and terms when used in this Division W shall have the following meanings unless the context clearly indicates otherwise.

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 form 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** also 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 United States 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 tobacco-related 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.

NICOTINE OR LOBELIA DELIVERY PRODUCT. Any product containing or delivering nicotine or lobelia, whether natural or synthetic, intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined by this section. NICOTINE OR LOBELIA DELIVERY PRODUCT excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation product or for medical purposes, and is being marketed and sold solely for such an approved purpose.

TOBACCO-RELATED DEVICE. [~~Cigarette~~] Rolling papers, wraps, or pipes for smoking, or any other device intentionally designed or intended to be used with tobacco. TOBACCO-RELATED DEVICE includes components of tobacco-related devices which may be marketed or sold separately. TOBACCO-RELATED DEVICES may or may not contain tobacco.

TOBACCO-RELATED PRODUCT. Any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, as those terms are defined in this section.

Section 2. That Chapter 14 of the City Code is hereby amended by deleting those words within brackets and [~~stricken through~~] and adding those words that are underlined, to read as follows:

CHAPTER 14: LICENSES AND PERMITS

DIVISION W: SALE OF TOBACCO-RELATED PRODUCTS

§ 14.437 LICENSE~~[REQUIRED]~~.

- (a) License required. No person shall keep for retail sale, sell at retail or otherwise dispose of any tobacco-related product at any place in the city without first obtaining a license therefore and paying a license fee.
- (b) Every license shall be conspicuously posted at the place for which the license is issued and shall be exhibited to any person upon request
- (c) No person shall be issued an original or renewal license to sell tobacco-related products unless that person has implemented a program for instructing all employees in the legal requirements pertaining to the sale of tobacco-related products, including, but not limited to, reviewing the law on the sale of tobacco-related products, providing information on the health risks of using tobacco-related products, and requiring employees to request identification from every customer who appears to be under 30 years of age. No license shall be issued to an establishment unless the employer signs a city form stating that the employer has provided training to all employees on the sale of tobacco-related products,

and such training includes information that the sale of tobacco-related products to a person under 21 years of age is illegal, what proof of age is legally acceptable, and that a sale to a person under 21 years of age can subject the employer and the employee to criminal and/or civil liability.

- (d) No license shall be issued to a person under 21 years of age.
- (e) 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.
- (f) Sunset on Tobacco Retail. The issuing authority will not issue any new licenses for the sale of tobacco-related products. Licenses may be renewed subject to the provisions of this chapter, provided that:
 - (1) A license held by an individual person is only eligible for renewal by the same person who currently holds the license, or by that person's spouse or child, as that term is defined in the Uniform Probate Code, Minnesota Statutes Chapter 524; and
 - (2) A license held by an LLC, Partnership, or Corporation, is only eligible for renewal if at least 50% of the owners, shareholders, or partners in place on June 30, 2022, still remain as owners, shareholders, or partners, as applicable.

Section 3. That Chapter 14 of the City Code is hereby amended by deleting those words within brackets and [~~stricken through~~] and adding those words that are underlined, to read as follows:

CHAPTER 14: LICENSES AND PERMITS

DIVISION W: SALE OF TOBACCO-RELATED PRODUCTS

§ 14.439 PROHIBITED ACTS.

- (a) No person shall sell or offer for sale any tobacco-related product to any person under the age of 21 years. No person shall sell, offer for sale or dispense any tobacco-related product through the use of vending machines. No person shall sell, offer for sale or dispense tobacco-related products in open displays which are accessible to the public without the intervention of a store employee. This restriction shall not apply to a license holder who derives at least 90% of their revenue from tobacco-related products, prohibits anyone under 21 years of age from entering the establishment at all times, and who conspicuously displays a notice prohibiting persons under 21 years of age from entering the establishment.
- (b) Flavored products. No person shall sell or offer for sale any flavored product. [~~Reserved.~~]

- (c) It shall be a violation of this chapter for any person to sell, offer to sell or distribute cigars in a package containing five or fewer cigars. However, this restriction shall not apply where the package has a retail sales price of at least \$2.60 per cigar contained therein, after any price promotions or discounts are taken into account and before the imposition of sales tax, but after the imposition of excise tax. Packages containing more than five cigars shall be priced the same as, or more than, the minimum price established herein for a package containing five cigars.
 - (1) This subsection (c) shall not apply to premium cigars as defined in M.S. § 297F.01, subd. 13a, as it may be amended from time to time, and to tobacco product shops only accessible to persons 21 years of age or older.
 - (2) The minimum pricing established in this section shall be adjusted periodically for inflation at least every three years.
- (d) *Effective date.* The effective date of the self-service merchandising requirement of this section is effective upon passage.
- (e) *Age verification.* Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 year 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.
- (f) *Liquid packaging.* No person shall sell or offer for sale 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. Upon request, a licensee must produce a copy of the certificate of compliance or full laboratory testing report for the packaging used.
- (g) No person shall sell or offer for sale any tobacco-related product 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 4. That Chapter 14 of the City Code is hereby amended by deleting those words within brackets and [~~stricken through~~] and adding those words that are underlined, to read as follows:

CHAPTER 14: LICENSES AND PERMITS

DIVISION W: SALE OF TOBACCO-RELATED PRODUCTS

§ 14.441 SANCTIONS FOR LICENSE VIOLATIONS.

A licensee shall pay to the city a civil penalty of \$~~[250]~~ 300 for an initial violation of a provision of this Division W or state laws governing the sale of tobacco-related products by the licensee or employee of the licensee and \$~~6~~500 for a second violation at the same location within five years of the initial violation. The imposition of a civil penalty shall be preceded by written notice to the licensee and an opportunity for an administrative hearing before the City Manager or the City Manager’s designated representative. The notice shall give at least eight days’ notice of the time and place of the hearing and shall state the nature of the charges against the licensee. The decision of the City Manager or the City Manager’s designee may be appealed by the licensee to the City Council within ten days after receiving written notice of the decision.

The City Council shall suspend the licensee’s authority to sell tobacco-related products for a minimum of seven days and impose a civil penalty of \$ ~~[600]~~1,000 for a third violation at the same location within five years of the initial violation.

The City Council may revoke a license, suspend a license for up to 60 days, impose a civil penalty of up to \$~~[2,000]~~ 1,000 for each additional violation of this Division W or state laws governing the sale of tobacco-related products or impose any combination of these sanctions. A revocation, suspension or civil penalty for a third or subsequent violation shall be preceded by written notice to the licensee, served personally or by mail, of the alleged violation and an opportunity for a hearing before the City Council. The notice shall give at least eight days’ notice of the time and place of the hearing and shall state the nature of the charges against the licensee. A decision that a violation has occurred shall be in writing.

§ 14.442.01 EXCEPTION AND AFFIRMATIVE DEFENSE.

- (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 charge under § 14.439 of this code if the seller proves by a preponderance of the evidence that the seller reasonably and in good faith relied on proof of age as described in M.S. § 340A.503, subd. 6, as it may be amended from time to time, in making the sale.

§ 14.442.02 SEVERABILITY.

If any provision of this Division W is for any reason held to be invalid, such decision shall not affect the validity of the remaining provisions of this Division W.

Section 5. Sections 1, 3, and 4 of this Ordinance shall be effective January 1, 2022.

Section 6. Section 2 of this Ordinance shall be effective June 30, 2022.

Passed and adopted this 26th day of April, 2021.

ATTEST:

/s/ Denise M. Christenson
Secretary to the Council

/s/ Tim Busse
Mayor

APPROVED:

/s/ Melissa Manderschied
City Attorney