



Osseo City Council

AGENDA

WORK SESSION
Monday, June 25, 2018
6:00 p.m., Council Chamber

MAYOR: DUANE POPPE COUNCILMEMBERS: HAROLD E. JOHNSON, MARK SCHULZ, LARRY STELMACH, ANNE ZELENAK

1. **Call to Order**
2. **Roll Call** (quorum is 3)
3. **Approval of Agenda** (requires unanimous additions)
4. **Discussion Items**
 - A. **Council Pay Ordinance**
 - B. **Tobacco Ordinance**
5. **Adjournment**

Kennedy

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Graven

CHARTERED

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MEMORANDUM

To: Osseo Mayor and City Council
 Riley Grams, City Administrator

From: Mary Tietjen, city attorney

Re: Ordinance setting Council salaries

Date: June 19, 2018

Administrator Grams asked me to provide some information relating to setting the salary of the Mayor and the Council members. Currently, Osseo City Code Section 30.03 sets the salaries in terms of actual dollar amounts. The Council has discussed an alternative option used by the city of Dayton, which sets salaries at a rate equal to the median amount of similarly-sized cities. The Dayton ordinance language is included in the Attachment to this memo.

Because state statute governs this topic, I thought it would be helpful to provide the Council with some background on the legal issues for the upcoming work session.

The applicable statute is Minn. Stat. § 415.11, which is also included in the Attachment. The key requirements of the statute are:

1. A council “may by ordinance fix their own salaries”;
2. Councils set the salaries “in such amount as they deem reasonable”;
3. “No change in salary shall take effect until after the next succeeding municipal election”;

I underlined the words “fix” and “amount” in the quotes above because those words are important in deciding whether a council using a formula or referring to an index or some other source for setting its salary (similar to what Dayton does) is sufficiently “fixing” an “amount” under the statute. The word “fix” connotes a permanence and finality that calls into question a process for setting salaries that depends on a calculation or reference to something outside of the ordinance. Also, the word “amount” suggests that the ordinance should actually include the dollar amount of the salary.

My review of this issue revealed no definitive answer. Some cities use actual dollar amounts, similar to Osseo's current ordinance. Some cities use a salary adjustment provision, with no actual dollar amounts. I have attached examples of such language, including ordinance excerpts from the cities of Crystal and Hopkins. Crystal makes an increase based on the most current percentage increase (CPI-U) in the Compensation Limit for Local Government Employees, annually published by the Minnesota Office of Management and Budget.

Hopkins uses a slightly different, more conservative, approach by setting specific dollar figures for the salaries and then mandating an annual review of salaries based on the public employee compensation limit. Rather than automatically adjusting salaries based on the change in the compensation limit, the Hopkins council must still act by ordinance to actually "fix" the amount of the salaries based on the change in the index.

There is some minimal risk associated with the automatic adjustment approach or the "median amount" approach (Dayton), although I think it unlikely that such an approach will be challenged. If it were challenged and found by a court to not satisfy the statutory requirement to "fix" the "amount" of the salaries, the likely worst case result would be to require the City to revert to the previously approved salary amount and not allow any increase until new fixed salaries are set by ordinance that would go into effect after the next succeeding election.

If the Council wishes to use the city of Dayton "median amount" method of setting salaries, I would recommend considering the "annual review and action by ordinance" process adopted by Hopkins. In other words, the Council could adopt an ordinance describing the median amount method, and also require any actual salary adjustment (based on that method) to be approved by ordinance. In my opinion, this approach would comply with the statutory requirements.

In case the Council is interested in exploring the option used by Crystal and Hopkins, I have also attached some information from the Minnesota Department of Management and Budget relating to the Local Government Compensation Limits and CPI.

ATTACHMENT

Minnesota Statute:

415.11 SECOND TO FOURTH CLASS CITIES; GOVERNING BODY SALARIES.

Subdivision 1. Set by ordinance. Notwithstanding the provisions of any general or special law, charter, or ordinance, the governing body of any statutory or home rule charter city of the second, third or fourth class may **by ordinance fix their own salaries** as members of such governing body, and the salary of the chief elected executive officer of such city, **in such amount as they deem reasonable**.

Subd. 2. After next election. No change in salary shall take effect until after the next succeeding municipal election.

Subd. 3. Temporary reductions. Notwithstanding subdivision 2 or a charter provision to the contrary, the governing body may enact an ordinance to take effect before the next succeeding municipal election that reduces the salaries of the members of the governing body. The ordinance shall be in effect for 12 months, unless another period of time is specified in the ordinance, after which the salary of the members reverts to the salary in effect immediately before the ordinance was enacted.

Dayton:

(A) *Salary established.*

(1) The City Council shall be compensated at a rate equal to the median amount of other cities with populations of 1,000 people both larger and smaller than the city's population rounded to the nearest thousand. City Council stipend amount shall be recalculated and go into effect the January following a general election. Example, if the city is at 5,300 population, then the City Council compensation shall be set at the median amount of other cities with populations from 4,000 - 6,000 people.

(2) All salaries shall be payable in two equal semi-annual installments in June and December.

(B) *Expense reimbursement.* The Mayor and each Council member shall be reimbursed at the rate established from time to time for city staff members.

Crystal:

Salary Adjustments. On or before December 1 of even numbered years beginning in 2018, the annual salaries of the mayor and other members of the city council shall be adjusted, as provided in this subdivision, with an effective date of January 1 in the following year. The salaries shall be adjusted and fixed by increasing them in the same amount as the most current percentage increase (CPI-U) in the Compensation Limit for Local Government Employees annually published by the Minnesota Office of Management and Budget, pursuant to Minnesota Statutes, section 43A.17.

Hopkins:

Salaries of Mayor and Council members. Mayor. The salary of the mayor is \$9,560 per year, payable bi-weekly.

Council Member. The salary of a council member is \$7,325 per year, payable bi-weekly.

Salary Review. On September 1 of odd numbered years beginning in 2019, the salaries in subsection 1 and 2 of this section shall be reviewed for possible adjustment with an effective date of the following January 1. The proposed salaries must equal the limit for the prior year, increased by the percentage increase contained in the Compensation Limit for Local Government Employees annually published by the Minnesota Office of Management and Budget, pursuant to Minn. Stats. § 43A.17. Any such proposed salary adjustment for the mayor and council members must be approved by ordinance of the City Council.

Minnesota Department of Management and Budget:

Local Government Compensation Limits by Year

Local Government

Effective Date	Compensation Limit (without waiver)	CPI-U Increase
01/01/2017	\$167,978	1.6%
01/01/2016	\$165,333	0.2%
01/01/2015	\$165,003	1.7%
01/01/2014	\$162,245	1.0%
01/01/2013	\$160,639	2.2%
01/01/2012	\$157,181	3.5%
01/01/2011	\$151,866	1.2%
01/01/2010	\$150,065	0.0%
01/01/2009	\$150,065	3.7%
01/01/2008	\$144,711	3.5%
01/01/2007	\$139,817	1.3%
01/01/2006	\$138,023	4.3%
08/01/2005	\$132,333	--

Minnesota State Statute [43A.17](#) limits the salary and the value of all other forms of compensation of a person employed by a political subdivision of this state, excluding school districts starting in 2005. The statute establishes that the limits are adjusted on January 1 of each year based on the Consumer Price Index increase. The new limit is equal to the limit for the prior year and increased by the percentage increase in the Consumer Price Index for all-urban consumers (CPI-U) from October of the second prior year to October of the immediately prior year. **The Bureau of Labor Statistics releases the monthly readings for the Consumer Price**

Index in the second half of the following month. The October readings are typically released after November 15th, therefore Minnesota Management and Budget will calculate and post the salary limit for the next calendar year in late November of each year. Refer to [Subdivision 9 of State Statute 43A.17](#) for complete text.

The employee's salary includes deferred compensation and payroll allocations to purchase an individual annuity contract. The value of other forms of compensation is defined as the annual cost to the political subdivision for the provision of the compensation. Other forms of compensation which **must be** included to determine an employee's total compensation for the limit are all other direct and indirect items of compensation which are not specifically excluded by the subdivision. Other forms of compensation which **must not** be included in a determination of an employee's total compensation limit are: employee benefits that are also provided for the majority of all other full-time employees of the political subdivision, vacation and sick leave allowances, health and dental insurance, disability insurance, term life insurance, and pension benefits or like benefits the cost of which is borne by the employee or which is not subject to tax as income under the Internal Revenue Code of 1986; dues paid to organizations that are of a civic, professional, educational, or governmental nature; and reimbursement for actual expenses incurred by the employee which the governing body determines to be directly related to the performance of job responsibilities, including any relocation expenses paid during the initial year of employment.



City of Osseo Work Session Meeting Item

Agenda Item:	Tobacco ordinance
Meeting Date:	June 25, 2018
Prepared by:	City Clerk LeAnn Larson
Attachments:	Current code for tobacco regulations, City Code Chapter 112 Model code for proposed new tobacco ordinance

Background:

Since the fall of 2017 City staff has sought to update the city code where needed. With the adoption of the new liquor ordinance recently, it might be time to look at Chapter 112 of the City Code – Tobacco Regulations.

Attached are two documents: the current city code AND the LMC model code for tobacco possession, sale, and use. The model code is provided as an example of changing times and regulations. City Attorney Mary Tietjen was very helpful in meshing our former liquor ordinance with new statutes and the LMC model ordinance to create a new, up-to-date liquor ordinance.

This outlines only a few things that could be changed in our current code:

- 1) There are many more definitions in the model code.
- 2) Does the Council want to consider mirroring the term of liquor licenses? July 1 to June 30
- 3) Does the Council want to consider pro-rating the initial fee like the liquor ordinance?
- 4) What about model code Section 3. License, (K) Proximity to youth-oriented facilities? Or (L) Proximity to other tobacco retailers?
- 5) Do the hearings and administrative penalties in our current code match requirements in state statutes?
- 6) What are statutory requirements that are not in our current code?
- 7) Does the Council want to consider updating the ordinance to include electronic cigarettes and other electronic/vapor and nicotine delivery devices?
- 8) Does the Council want to consider prohibiting tobacco sampling and smoking “lounges”?

Recommendation/Action Requested:

Staff recommends the City Council discuss and direct staff on how to proceed.

[Print](#)

Osseo, MN Code of Ordinances

*Current
Code*

CHAPTER 112: TOBACCO REGULATIONS

Section

- 112.01 Purpose
- 112.02 Definitions and interpretations
- 112.03 License
- 112.04 Fees
- 112.05 Grounds for license denial
- 112.06 Prohibited sales
- 112.07 Vending machines restricted
- 112.08 Self-service sales prohibited
- 112.09 Licensee responsibility
- 112.10 Compliance checks and inspections
- 112.11 Other illegal acts; minors
- 112.12 Violations; procedures
- 112.13 Exceptions; defenses

- 112.99 Penalty

Cross-reference:

License background checks, see §§ 36.15 et seq.

§ 112.01 PURPOSE.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco-related devices, and these sales, possession, and use are violations of both state and federal laws; and because studies have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this

chapter shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco-related devices for the purpose of enforcing and furthering 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 in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.

(1997 Code, § 27.01)

§ 112.02 DEFINITIONS AND INTERPRETATIONS.

(A) Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions.

(B) 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” is mandatory and the term “may” is permissive.

(C) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY. The City of Osseo, or its officers, agents, and employees.

COMPLIANCE CHECKS. The system the city 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 this chapter. **COMPLIANCE CHECKS** shall involve the use of minors as authorized by this chapter. **COMPLIANCE CHECKS** shall also mean the use of minors who attempt to purchase tobacco, tobacco products, 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, tobacco products, and tobacco-related devices.

INDIVIDUALLY PACKAGED. 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 division shall not be considered **INDIVIDUALLY PACKAGED**.

LOOSIES. The common term used to refer to a single or individually packaged cigarette.

MINOR. Any natural person who has not yet reached the age of 18 years.

MOVEABLE PLACE OF BUSINESS. Any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address storefront or other permanent type of structure authorized for sales transactions.

RETAIL ESTABLISHMENT. 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, and restaurants.

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

SELF-SERVICE MERCHANDISING. 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 actual physical exchange of the tobacco, tobacco products, or tobacco-related device between the customer and the licensee or employee. **SELF-SERVICE MERCHANDISING** shall not include vending machines.

TOBACCO or TOBACCO PRODUCTS. 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 flour; 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 a manner so as to be suitable for chewing, sniffing, or smoking.

TOBACCO-RELATED DEVICES. Any tobacco products as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

VENDING MACHINE. 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 form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco-related device.

(1997 Code, § 27.02)

§ 112.03 LICENSE.

No person or retail establishment shall sell or offer to sell any tobacco, tobacco product, or tobacco-related device without first having obtained a license to do so from the city.

(A) *Application.* An application for a license to sell tobacco, tobacco products, or tobacco-related devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the retail establishment for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the Administrator-Clerk-Treasurer shall forward the application to the Council for action at its next regularly scheduled meeting. If the Administrator-Clerk-Treasurer shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(B) *Action.* The Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the Administrator-Clerk-Treasurer shall issue the license to the applicant. If the Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.

(C) *Term.* All licenses issued under this chapter shall be valid for one calendar year from the date of issue, except the initial license shall be valid only for the balance of the calendar year in which it is issued.

(D) *Revocation or suspension.* Any license issued under this chapter may be revoked or suspended as provided in §§ 112.12 and 112.99 of this code.

(E) *Transfers.* All licenses issued under this chapter shall be valid only on the premises of the retail establishment for which the license was issued and only for the person or retail establishment to whom the license was issued.

(F) *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 chapter.

(G) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

(H) *Renewals.* 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 30 days but no more than 60 days before the expiration of the current license.

(1997 Code, § 27.03) Penalty, see § 112.99

§ 112.04 FEES.

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be established by Council resolution.

(1997 Code, § 27.04)

§ 112.05 GROUNDS FOR LICENSE DENIAL.

(A) The following shall be grounds for denying the issuance or renewal of a license under this chapter; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license:

(1) The applicant is under the age of 18 years;

(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 tobacco or tobacco products or tobacco-related devices;

(3) The applicant has had a license to sell tobacco, tobacco products, or tobacco-related devices revoked within the preceding 12 months of the date of application;

(4) The applicant fails to provide any information required on the application, or provides false or misleading information; or

(5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding this type of license.

(B) 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.

(1997 Code, § 27.05)

§ 112.06 PROHIBITED SALES.

It shall be a violation of this chapter 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 18 years;

(B) By means of any type of vending machine, except as may otherwise be provided in this chapter;

(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 retail establishment in order to receive the tobacco, tobacco product, 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 and the customer;

(D) By means of loosies;

(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; or

(F) By any other means, to any other person, or in any other manner or form prohibited by federal, state, other local law, ordinance provision, or other regulation.

(1997 Code, § 27.06) Penalty, see § 112.99

§ 112.07 VENDING MACHINES RESTRICTED.

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco, tobacco products, or tobacco-related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed premises. Further, sales by means of a tobacco vending machine are allowed only under these conditions: the machine is used to control inventory and the machine is located in an area only accessible to the employees of the retail establishment and the employee actually makes the purchase from the machine for a legal-aged customer.

(1997 Code, § 27.07) Penalty, see § 112.99

§ 112.08 SELF-SERVICE SALES PROHIBITED.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, or tobacco-related devices by any means whereby the customer may have access to these 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, tobacco product, or the tobacco-related device between the licensee or the licensee's employee and the customer. 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 retail establishment selling tobacco, tobacco products, or tobacco-

related devices at the time this chapter is adopted shall comply with this section within 30 days following the effective date of this chapter.

(1997 Code, § 27.08) Penalty, see § 112.99

§ 112.09 LICENSEE RESPONSIBILITY.

All licensees under this chapter 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 this type of item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

(1997 Code, § 27.09) Penalty, see § 112.99

§ 112.10 COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the City Police Department or other authorized official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years, to enter the licensed premises to attempt to purchase tobacco, tobacco products, or tobacco-related devices. Minors used for the purpose of compliance checks shall be supervised by a designated law enforcement officer or other designated 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 these 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 employee and shall produce 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.

(1997 Code, § 27.10) Penalty, see § 112.99

§ 112.11 OTHER ILLEGAL ACTS; MINORS.

Unless otherwise provided, the following acts shall be a violation of this chapter.

(A) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco-related device to any minor.

(B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, or tobacco-related device. This division shall not apply to minors while lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco-related device.

(D) *Illegal procurement.* It shall be a violation of this chapter 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 chapter for any person to purchase or otherwise obtain these 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 or otherwise obtain or use any tobacco, tobacco product, or tobacco-related device. This division shall not apply to minors while lawfully involved in a compliance check.

(E) *Use of false identification.* It shall be a violation of this chapter 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.

(F) *Tobacco and tobacco-related devices on school grounds.* It shall be a violation of this chapter for any person to have in his or her possession any tobacco, tobacco product, or tobacco-related devices while on the grounds of any school. However, it is not a violation of this section for a person more than 18 years of age to have contained in his or her vehicle tobacco, tobacco products, or tobacco-related devices not otherwise prohibited while lawfully on school grounds.

(1997 Code, § 27.11) Penalty, see § 112.99

§ 112.12 VIOLATIONS; PROCEDURES.

(A) *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. The citation shall further state the penalty imposed if the alleged violator does not request a hearing.

(B) *Hearings.* If a person accused of violating this chapter so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

(C) *Hearing officer.* The Council shall serve as the hearing officer.

(D) *Decision.* If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under § 112.99 of this code, shall be recorded in writing, a copy of which shall be provided to the violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the acquitted accused.

(E) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court of the jurisdiction of the city.

(1997 Code, § 27.12) Penalty, see § 112.99

§ 112.13 EXCEPTIONS; DEFENSES.

(A) Nothing in this chapter 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.

(B) It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as provided by M.S. § 340A.503(6), as it may be amended from time to time.

(1997 Code, § 27.14)

§ 112.99 PENALTY.

(A) *Continued violations.* 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 chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine for a first violation of this chapter, a second violation at the same licensed premises within a 24-month period, or a third or subsequent violation at the same location within a 24-month period. In addition, after the third violation, the license shall be suspended for not less than seven days. All administrative fines will be set by Council resolution.

(2) *Other individuals.* Other individuals, other than minors regulated by division (B)(3) of this section, found to be in violation of this chapter shall be charged an administrative fine. Those who provide but do not sell tobacco to minors shall be charged an administrative fine. All administrative fines will be set by Council resolution.

(3) *Minors.* Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco-related devices, shall be charged an administrative fine and referred to the school for dependency counseling, or the minor may be assigned community service that must be completed in a specified amount of time, if an administrative fine is not imposed. All administrative fines will be set by Council resolution.

(C) *Misdemeanor prosecution.* Any violation of this chapter shall be a misdemeanor, and nothing in this chapter shall prohibit the city from seeking prosecution of the violation as a misdemeanor rather than proceeding with the administrative remedies stated above.

(1997 Code, § 27.13) Penalty, see § 10.99

ORDINANCE NO. _____

AN ORDINANCE REGULATING THE POSSESSION, SALE AND CONSUMPTION OF TOBACCO AND TOBACCO RELATED DEVICES AND PRODUCTS WITHIN THE CITY OF _____ MINNESOTA.



This ordinance will affect existing license holders. Therefore, a copy of the proposed ordinance should be mailed to each license holder to inform them of its contents and provide them an opportunity to make their views known.

The City Council of _____, Minnesota ordains:

SECTION 1. PURPOSE AND INTENT.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices, and the sales, possession, and use are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance intends to regulate the sale, possession and use of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as amended from time to time.

SECTION 2. DEFINITIONS.

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

CIGARS. Any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in M.S. § 297F.01, subd. 3 as amended from time to time.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery 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, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery devices.

ELECTRONIC DELIVERY DEVICE AND ELECTRONIC CIGARETTE. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. 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 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.

HOOKAH.

“Hookah” shall mean a pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled for the use of tobacco or tobacco related products.

INDIVIDUALLY PACKAGED. 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 definition shall not be considered individually packaged.

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.

LOOSIES. The common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term “loosies” does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.

MINOR. Any natural person who has not yet reached the age of 18 years.

MOVEABLE PLACE OF BUSINESS. Any form of business operated out of a truck, van, automobile, kiosk, trailer 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 DEVICES. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use

cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

PUBLIC PLACE. Any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail and other commercial establishments; educational facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental apartment buildings.

RETAIL ESTABLISHMENT. Any place of business where tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants, and drug stores.

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

SAMPLING. The lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic cigarettes in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before a purchase

SELF-SERVICE MERCHANDISING. Open displays of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

SMOKING. Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product or exhaling vapor from any electronic delivery device, such as vaping. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, hookah or any other lighted or heated tobacco or plant product intended for inhalation.

SMOKING LOUNGE. A tobacco products shop which allows customers to be seated.

TOBACCO or TOBACCO RELATED PRODUCTS. Tobacco and tobacco products includes cigarettes and 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, including by vaping, or any component, part, or accessory of a tobacco product; cigars; pipe tobacco, 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; dipping tobaccos; and other kinds and forms of tobacco. Tobacco excludes any tobacco

product that has been 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 is being marketed and sold solely for such an approved purpose.

TOBACCO PRODUCTS SHOP: A retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of tobacco, tobacco related products, tobacco related devices and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

TOBACCO-RELATED DEVICES. Tobacco-related devices include any tobacco product as well as a pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking or vaping of tobacco or tobacco products.

VAPOR LOUNGE. A vapor products shop which allows customers to be seated.

VAPOR PRODUCTS SHOP: A retail establishment with an entrance door opening directly to the outside that derives more than ninety percent (90%) of its gross revenue from the sale of electronic delivery devices, electronic cigarettes and related products and in which the sale of other products is merely incidental. "Vapor products shop" does not include a vapor products department or section of any individual business establishment with any type of food, liquor, or restaurant license.

VENDING MACHINE. 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 form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product or tobacco-related device.

SECTION 3. LICENSE.

(A) *License required.* No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, electronic cigarettes, electronic delivery devices or nicotine or lobelia delivery device without first having obtained a license to do so from the city. All licenses issued under this section 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.

(B) *Application.* An application for a license to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices shall be made on a form provided by the city. 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 city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If

the City Clerk determines an application incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.* The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

(D) *Term.* All licenses issued under this section shall be valid for one calendar year from the date of issue.

(E) *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in Section 13.

(F) *Transfers.* All licenses issued under this section 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 City Council.

(G) *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible for licensing under this section.

(H) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

(I) *Renewals.* 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 30 days but not more than 60 days before the expiration of the current license. The applicant must provide proof that an employee training program on tobacco sales has been provided during the license year by submitting records supporting that training at the time of their license renewal each year.

(J) *Issuance as privilege and not a right.* The issuance of a license issued under this section represents a privilege and not an absolute right of the applicant and does not entitle the holder to an automatic renewal of the license.

(K) *Proximity to youth-oriented facilities.* No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices within 1,000 feet of any school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been in the business of selling such products in that location for at least one year before the date this section was enacted into law. For the purpose of this section, a youth-oriented facility includes any facility with residents, customers, visitors, or inhabitants of which 25 percent or

more are regularly under the age of 21 or which primarily sells, rents, or offers services or products consumed or used primarily by persons under the age of 21.

(L) Proximity to other tobacco retailers. No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices within two thousand feet of any other establishment holding such a license, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the nearest existing licensee, unless that person has been in the business of selling such products in that location before the date this section was enacted into law for at least one year.

(M) Smoking. Except as allowed under Minn. Stat. § 144.414, smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products generally is prohibited.

(N) Penalty, see Section 13.

SECTION 4. FEES.

No license shall be issued under this chapter until the appropriate license fee is paid in full. The fee for a license under this chapter shall be established in the city's Ordinance Establishing Fees and Charges, as amended from time to time.

Penalty, see Section 13.

SECTION 5. BASIS FOR DENIAL OF LICENSE.

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

- (1) The applicant is under the age of 18 years.
- (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 tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices.
- (3) The applicant has had a license to sell tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices revoked within the preceding 12 months of the date of application.
- (4) The applicant fails to provide any information required on the 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, however, does not mean that the city must deny the license.

(C) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery of the ineligibility of the applicant for the license under this chapter.

(D) Penalty, see Section 13.

SECTION 6. PROHIBITIONS.

(A) Prohibited Sales.

It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device or nicotine or lobelia delivery device:

(1) To any person under the age of 18 years.

(2) By means of any type of vending machine.

(3) 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 premise in order to receive the tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, electronic cigarette, electronic delivery device, nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer.

(4) By means of loosies as defined in Section 2.

(5) 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 tobacco products.

(6) 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.

(B) Smoking and Sampling Prohibitions.

(1) Except for exceptions listed in Minn. Stat. § 144.4167, smoking generally shall be prohibited and no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants. Other than provided for in 144.4167, subd. 4, tobacco sampling, including sampling of electronic delivery devices and products used in electronic delivery devices, is specifically prohibited in the city.

(2) To ensure that tobacco smoke or vapor electronic delivery devices does not enter public places and places of work and that persons entering such places are not exposed

involuntarily to smoke or vapor, smoking and the use of electronic delivery devices are prohibited within twenty-five (25) feet of entrances, exits, open windows and ventilation intakes of public places and places of work. This prohibition does not apply to entrances and exits used solely in the event of an emergency and appropriately signed for that purpose.

(C) Smoking Lounges

Smoking lounges, hookah lounges and vapor lounges are prohibited.

(D) Cigars

No person shall sell, offer to sell or distribute cigars in an original package containing fewer than five cigars. This restriction shall not apply to any sales, offer to sell, or distribution of an original package consisting of one, two, three, four, or five cigars, provided that each original package has a retail sales price of at least \$2.60 per cigar and after any price promotions or discounts are taken into account and before the imposition of sales tax, but excluding retail sales tax, and tobacco product shops only accessible to those 18 years or older.

(1) This section shall not apply to premium cigars as defined in Minnesota Statutes 297F.01 subd. 13a.

(2) The minimum pricing established in this section shall be adjusted periodically for inflation at least every three years.

(E) Penalty, see Section 13.

SECTION 7. SELF-SERVICE SALES.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices by any means where by the customer may have access to those 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, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device and nicotine or lobelia delivery 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, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter. A license holder who operates an establishment or fully enclosed portion of an establishment that sells at least 90 percent of its products in tobacco, or tobacco products, tobacco-related devices, electronic delivery devices or electronic cigarettes, is exempt from the self-service merchandising provision if the license holder prohibits anyone under 18 years of age from entering the establishment or fully enclosed portion of an establishment and the license holder conspicuously displays a notice prohibiting persons under 18 years of age from entering the establishment.

Penalty, see Section 13.

SECTION 8. RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices on the licensed premises, and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

Penalty, see Section 13.

SECTION 9. COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of the appropriate parents or guardians, minors over the age of 15 years but less than 18 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices. Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices when obtaining those items 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 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.

Penalty, see Section 13.

SECTION 10. OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a violation of this chapter:

- (A) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device to any minor.
- (B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device. This division (B) shall not apply to minors lawfully involved in a compliance check.
- (C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device.

(D) *Illegal procurement.* It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain those 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 or otherwise obtain or use any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This division (D) shall not apply to minors lawfully involved in a compliance check.

(E) *Use of false identification.* It shall be a violation of this chapter 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.

Penalty, see Section 13.

SECTION 11. EXCEPTIONS AND DEFENSES.

Nothing in this chapter shall prevent the providing of tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery 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 chapter for a person to have reasonably relied on proof of age as described by state law.

SECTION 12. SEVERABILITY.

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

SECTION 13. VIOLATIONS AND PENALTY.

(A) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

(B) *Violations.*

(1) *Notice.* A person violating this chapter may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) *Hearings.*

(a) Upon issuance of a citation, a person accused of violating this chapter may request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the citation and delivered to the city clerk or other designated city officer. Failure to request a hearing within ten (10) business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The city clerk or other designated city officer shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) *Decision.*

(a) A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division (B) of this section, shall be recorded in writing, a copy of which shall be provided to the city and the accused violator by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the city and the acquitted accused violator by in person delivery or mail as soon as practicable.

(b) Costs. If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing.

(c) The decision of the hearing officer is final.

(5) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred within ten (10) business days.

(6) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(C) *Administrative penalties.*

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven consecutive days.

(2) *Other individuals.* Other individuals, other than minors regulated by division (C)(3) of this section, found to be in violation of this chapter shall be charged an administrative fine of \$50.

(3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, tobacco-related devices, electronic cigarettes, electronic delivery device or nicotine or lobelia delivery devices, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by City Council ordinance upon the

City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may also be established from time to time by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

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

SECTION 14. EFFECTIVE DATE.

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

Passed by the City Council of _____, Minnesota this _____ day of Month, Year.

Mayor

Attested:

City clerk