

## CHAPTER 510

### TOBACCO AND VAPING PRODUCTS

#### Section

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#### 510.01 Findings and Purpose.

This Chapter regulates the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

The City finds such regulation is necessary because the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates both state and federal law; and because studies, which the City accepts and adopts, have shown that high school use of any commercial tobacco product has increased to 27.6% in Minnesota; and because nearly 90% of people who smoke begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government

#### 510.02 Definitions.

The following terms, as used in this Chapter, shall have the meanings stated in this section:

“Child-resistant packaging” means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

"Compliance checks" means the use of persons under the age of 21 who purchase or attempt to purchase licensed products for compliance, investigation, research, or training purposes as authorized by this Chapter, state law or federal law.

“Deliver sale” means the sale of a licensed product to a person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales

transaction in a licensed retail establishment including, but not limited to, the sale of any licensed product when the sale is conducted by telephone, mail, internet, or curbside pick-up.

“Electronic delivery device” means: i) 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 from the product including, but 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; and ii) any component part of a such a product. “Electronic delivery device,” however, does not include a nicotine cessation product.

“Indoor area” means 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.

“Licensed product” means tobacco, a tobacco-related device, an electronic delivery device, a nicotine or lobelia delivery product, or any combination of the above.

“Licensee” means a person to whom a valid license has been issued pursuant to this Chapter to sell licensed products.

"Loosie" means a single cigarette, cigar or any other licensed product that has been removed from its original retail packaging and offered for sale. “Loosie,” however, does not include a premium cigar.

"Moveable place of business" means any form of business operated out of a kiosk, truck, van, automobile, or other type of vehicle or transportable shelter that is not a fixed address or other permanent structure licensed for over-the-counter sales transactions.

“Nicotine cessation product” means any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

“Nicotine or lobelia delivery product” means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco, or an electronic delivery device as defined in this section. “Nicotine or lobelia delivery product,” however, does not include a nicotine cessation product.

“Premium cigar” means a hand-constructed cigar with a wrapper made entirely from whole tobacco leaf and a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

"Retail Establishment" means any place of business where licensed products are available for sale to the general public including, but not be limited to, tobacco product shops, grocery stores, convenience stores, liquor stores, gasoline service stations, bars, and restaurants.

"Tobacco related device" means: i) any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products; and ii) any component part of a such a product.

"Tobacco" means 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, or any component, part, or accessory of a tobacco product including but not limited to cigarettes; cigars; 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; and other kinds and forms of tobacco. "Tobacco," however, does not include a nicotine cessation product.

"Sale" means any transfer of goods for money, trade, barter, or other consideration.

"Self-service display" means an open display of licensed products in a retail establishment where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee and where a physical exchange of the licensed product from the licensee or the licensee's employee to the person is not required to access the licensed product.

"Vending machine" means any mechanical, electric or electronic, or other type of device that dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into or onto the device by the person seeking to purchase the licensed product.

#### 510.03. Prohibited Acts.

Subd. 1.        Sale of Licensed Products Prohibited Without a License. A person shall not sell or offer to sell a licensed product within the corporate limits of the City unless such person has a valid license issued pursuant to this Chapter.

Subd. 2.        Purchasing for a Person Under 21 Prohibited. A person 21 years of age or older shall not purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. A person 21 years of age and older shall not coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product.

Subd. 3.        Use of False Identification Prohibited. A person shall not use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.

#### 510.04        Licenses.

Subd. 1        Application and Renewals. Each license application is governed by Section 500.01, Subd. 3, of the Waconia City Code. The provisions of this Section 510.04 apply to both initial and renewal license applications.

Subd. 2        Required Information. Each license 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 Clerk deems necessary. If the City Clerk determines 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.

Subd. 3        City Council Approval Required. Upon receipt of a completed license application and the required fee, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled meeting. The City Council, in its discretion, may either approve or deny the license application, or it may delay action for a reasonable period of time to

complete any investigation the City Council deems necessary. If the City Council approves a license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, the City Clerk shall give the applicant notice of the denial and the applicant's appeal rights. The issuance of a license pursuant to this Chapter is a privilege and not a right. Grounds for denying the issuance of license include, but are not limited to, the following:

- A. The applicant is under the age of 21 years.
- B. The applicant has been convicted, within the past five years, of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.
- C. The applicant has had a license to sell licensed products suspended or revoked within the preceding twelve months of the application date.
- D. The applicant fails to provide any information required on the application or provides false or misleading information.
- E. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation, from holding such a license.
- F. A license has been requested for a moveable place of business.

Subd. 4 Term. The term of a license issued under this Chapter is governed by Section 500.03 of this Code.

Subd. 5 Transfers. A license is only valid for the person and premises for which the license is issued. Pursuant to Section 500.04 of this Code, a licensee shall not transfer a license to another person or location without the prior approval of the City Council.

Subd. 6 Revocation or Suspension. If a license is mistakenly issued, the City Clerk shall promptly revoke it after the mistake is discovered. Further, any license issued under this Chapter may be suspended or revoked as provided in Section 500.07 of this Code.

#### 510.05 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 as provided for in Chapter 1100 of this Code. Fees for an initial license with a commencement date other than February 1<sup>st</sup> shall be prorated based on the number of days the license will remain in effect before it expires.

#### 510.06 Duties of Licensee.

Subd. 1 General Duties. All licensees shall comply with the requirements of Section 500.01, Subd. 6, of this Code.

Subd. 2 Age Verification. Licensees must verify that the purchaser is at least 21 years of age using government-issued photographic identification containing the bearer's date of birth. Verification is not required for a person over the age of 30. That a person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

Subd. 3            Posted Notice. Posted notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the City, must be posted in a manner that is clearly visible to anyone considering a purchase of a licensed product.

Subd. 4            Employee Liability. All licensees are responsible for the actions of their employees regarding the sale, offer to sell, and furnishing of licensed products at the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee.

510.07 Prohibited Sales.

Subd. 1            Sale to Persons Under 21. No person shall sell or offer to sell a licensed product to a person under the age of 21.

Subd. 2            Vending Machines. No person shall sell or offer to sell a licensed product using a vending machine.

Subd. 3            Self-Service Display. No person shall sell or offer to sell a licensed product using a self-service display unless the self-service display is in a retail store that derives at least ninety percent (90%) of its revenue from licensed products and cannot be entered by persons younger than 21 years of age.

Subd. 4            Loosies. No person shall sell or offer to sell loosies.

Subd. 5            Illicit Contents. No person shall sell or offer to sell a licensed product 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.

Subd. 6            Unprotected Liquids. No person shall sell or offer to sell a 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 by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

Subd. 7            Other Violation of Law. No person shall sell or offer to sell a licensed product in any other manner prohibited by federal, state, or local law or regulation.

510.08.            Inspections and Compliance Checks.

Subd. 1            Inspections. All licensees shall comply with the requirements of Section 500.01, Subd. 5, of this Code.

Subd. 2            Compliance Checks. At least once per year, the City shall conduct a compliance check in accordance with state law that involves the participation of a person at least 17 years of age, but under the age of 21, who shall enter the licensed premises and attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

Subd. 1Violations.

- A. Citation. The City may issue a citation to any person that violates this Chapter. Each citation shall notify the person of the alleged violation and the person's right to request a hearing.
- B. Delivery. Any citation, written request or written notice required or permitted by this Section 510.09 shall be delivered via personal service or mail. The date of issuance or delivery shall be deemed to be the day of actual delivery in the case of personal service and, in the case of mail, the day after the item is postmarked.
- C. Hearings. Upon issuance of a citation, a person accused of violating this Chapter may submit a written request for a hearing to the City Clerk or other designated city officer, which request must be deemed received by the City no later than 10 days after the day the citation is deemed issued. Failure to timely request a hearing will terminate the person's right to a hearing. Upon receiving a request for a hearing, the City Clerk or other designated city officer shall set the time and place for the hearing and deliver it to the person requesting the hearing.
- D. Hearing Officer. The City Administrator shall act as the hearing officer.
- E. Decision. The hearing officer shall issue a decision no later than 10 days after the hearing occurs and promptly provide a written copy of the decision to the accused person. If the accused person is found to be guilty, the decision shall recite the reasons for finding a violation and the penalty to be imposed. If the accused person is found to be innocent, the decision shall recite the reasons for the decision. The decision of the hearing officer is final, subject to any appeal pursuant to Subsection G below.
- F. 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.
- G. Appeal. Appeal of any decision made by the hearing officer must be filed in Carver County district court within 10 days of the date of the decision.
- H. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Subd. 2Administrative Penalties.

- A. Licensee. Any licensee cited for violating this ordinance, or whose employee has violated this ordinance, shall be charged an administrative fine of \$300.00 for a first violation; \$600.00 for a second offense at the same licensed premises within a 36-month period; and \$1,000 for a third or subsequent offense at the same location within a 36-month period. Upon the third violation, the license will be suspended for a period of not less than 3 consecutive days and may be revoked. Upon a fourth violation within a 36-month period, the license will be revoked.

- B. Employees and Other Individuals. Employees of a licensee and other individuals over the age of 21 who violate this Chapter may be charged an administrative fine of \$50.00.
- C. Persons Under 21. *[intentionally redacted]*
- D. Statutory Penalties. If the administrative penalty described in this Chapter differs from the penalty imposed by Minn. Stat. §461.12 for the same offence, the higher penalty shall apply.

Subd. 3 Misdemeanor Prosecution. Nothing in this section prohibits the City from seeking prosecution as a misdemeanor for an alleged second violation of this Chapter by a person 21 years of age or older within five years of a previous conviction under this Chapter.

Subd. 4. Religious Defense. Nothing in this Chapter 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.

Subd. 5. Reasonable Reliance Defense. It is an affirmative defense to a violation of this Chapter for a person to have reasonably relied on proof of age as described by state law.