

ORDINANCE NO. 2017-37

AN ORDINANCE AMENDING CHAPTERS 5, 12, AND 14 TO INCREASE THE TOBACCO SALES AGE TO 21 AND MISCELLANEOUS RELATED AMENDMENTS.

The City Council of the City of Bloomington hereby ordains:

Section 1. That Chapter 5 of the City Code is hereby amended by deleting those words that are in ~~strike through~~ font contained in brackets [] and adding those words that are underlined, to read as follows:

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CHAPTER 5: PUBLIC FACILITIES AND PROPERTY

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ARTICLE III: PARKS AND PLAYGROUNDS

§ 5.20 DEFINITIONS

ELECTRONIC DELIVERY DEVICE. A[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 the inhalation of aerosol or vapor from 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[S]** also includes any component part of [such] a product whether or not sold separately. [An] **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.

NICOTINE DELIVERY PRODUCT. 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 by this section. **NICOTINE 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 [PRODUCT]. 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, [C]cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimp[t] cut, ready[,-rugged] rubbed and other smoking tobacco; snuff, snuff flower, cavendish, plug and twist tobacco; fine cut and other chewing tobaccos; shorts, refuse scripts, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco[,-prepared in such a manner as to be suitable for chewing, sniffing or smoking in a pipe; rolling paper or other tobacco-related devices].

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

TOBACCO USE. Smoking, chewing, snuffing or otherwise inhaling or ingesting [any] tobacco [product].

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§ 5.21 REGULATIONS.

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(7) Beaches and public waters.

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(E) No person shall use a tobacco-related product[s or electronic delivery devices] at any of the city's designated beach areas, or other designated pool and play areas at city-owned swimming pools and

aquatic facilities. These areas shall be posted by appropriate signs and markers as directed by the Manager of Parks and Recreation.

* * *

(21) No person shall use a tobacco-related product~~[s or electronic delivery devices]~~ on city-owned athletic play fields, including their spectator areas, while the fields are being used for organized youth athletic events or organized adult recreational events. These areas shall be posted by appropriate signs and markers as directed by the Manager of Parks and Recreation.

(22) No person shall use a tobacco-related product~~[s or electronic delivery devices]~~ on city-owned property during city sponsored cultural programs such as Arts in the Park, Summer Fete and River Rendezvous. The Manager of Parks and Recreation may permit the use of tobacco-related products for special events such as historical programs and theatrical productions if such use is an integral part of the event. These areas shall be posted by appropriate signs and markers as directed by the Manager of Parks and Recreation.

(23) City-owned parks, open spaces and recreation areas.

(A) No person shall use a tobacco-related product~~[s or electronic delivery devices]~~ on city-owned golf courses and on the exterior premises of the Bloomington Ice Garden. These areas shall be posted by appropriate signs and markers as directed by the Manager of Parks and Recreation.

(B) No person shall use a tobacco-related product~~[s or electronic delivery devices]~~ on city-owned parks, conservation areas and open spaces, including trails used for walking and biking or on property for which the city retains a perpetual easement for public use as a park. These areas shall be posted by appropriate signs and markers as directed by the Manager of Parks and Recreation.

(C) No person shall use a tobacco-related product~~[s or electronic delivery devices]~~ at city-owned picnic shelters during private rentals of these facilities. These areas shall be posted by appropriate signs and markers as directed by the Manager of Parks and Recreation.

(D) This section does not apply to the use of a tobacco-related product~~[s]~~ in a motor vehicle~~[s]~~ parked on the premises of a city-owned park~~[s]~~, conservation area~~[s]~~, open space~~[s]~~ and recreational facility~~[ies]~~.

* * *

Section 2. That Chapter 12 of the City Code is hereby amended by deleting those words that are in ~~strike through~~ font contained in brackets [] and adding those words that are underlined, to read as follows:

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CHAPTER 12: PUBLIC PEACE AND SAFETY

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ARTICLE II: NUISANCE CONDUCT AND CONDITIONS

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DIVISION K: DRUG PARAPHERNALIA

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§ 12.63 EVIDENCE.

(11) Whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco-related products;

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DIVISION O: SMOKING PROHIBITED

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§ 12.80 DEFINITIONS

ELECTRONIC DELIVERY DEVICE. 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 the inhalation of aerosol or vapor from 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**[S] also includes any component part of [such] a product whether or not sold separately. [An] **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.

NICOTINE DELIVERY PRODUCT. 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 by this section. **NICOTINE 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 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 flower, cavendish, plug and twist tobacco; fine cut and other chewing tobaccos; shorts, refuse scripts, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco.

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

* * *

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

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CHAPTER 14: LICENSES AND PERMITS

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ARTICLE IV: BUSINESS LICENSES AND REGULATIONS

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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. 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 has concluded that ~~[minors]~~ 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 ~~[48]~~ 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. 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 ~~[minors]~~ youth and young adults and reduce the likelihood that ~~[minors]~~ youth and young adults will become ~~[tobacco]~~ users of tobacco-related products later in life.

§ 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.

~~[ADULT. A person 18 years of age or older.]~~

~~BUSINESS.~~ Refers to the business of selling tobacco-related products~~[-, devices or nicotine delivery products].~~

CHILD-RESISTANT PACKAGING. 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.

~~CIGAR[S].~~ 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.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the inhalation of aerosol or vapor from 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.

MOVABLE PLACE OF BUSINESS. A business whose physical location is not permanent or is capable of being moved or changed.

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

PERSON. One or more natural persons; a partnership, including a limited partnership; a corporation, including a foreign, domestic or nonprofit corporation; a trust; a political subdivision of the state; or any other business organization.

SELF-SERVICE MERCHANDISING. A method of displaying tobacco-related products ~~[devices, or nicotine delivery products]~~, so that they are accessible to the public without the intervention of an employee.

~~[TOBACCO-RELATED DEVICES. Cigarette papers or pipes for smoking.]~~

TOBACCO[-RELATED PRODUCT]. Any product[s] 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 flower, cavendish, plug and twist tobacco; fine cut and other chewing tobaccos; shorts, refuse scripts, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco. TOBACCO [-RELATED PRODUCTS] 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 medical purposes, and is being marketed and sold solely for such an approved purpose.

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

VENDING MACHINE. Any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco-related products ~~[and devices]~~ including vending machines equipped with manual, electric or electronic locking devices.

§ 14.437 LICENSE REQUIRED.

(a) No person shall keep for retail sale, sell at retail or otherwise dispose of any tobacco-related product ~~[, devices, or nicotine delivery products]~~ 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 ~~[and devices]~~ unless that person has implemented a program for instructing all employees in the legal requirements pertaining to the sale of tobacco-related products, ~~[devices or nicotine delivery products,]~~ including, but not limited to, reviewing the law on the sale of tobacco-related products, ~~[devices or nicotine delivery 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 ~~[25]~~ 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, ~~[devices or nicotine delivery products,]~~ and such training includes information that the sale of tobacco-related products ~~[, devices or nicotine delivery products]~~ to ~~[minors]~~ a person under 21 years of age is illegal, what proof of age is legally acceptable, and that a sale to a ~~[minor]~~ 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.

§ 14.438 LICENSE FEE.

The fee for a license to sell tobacco-related products ~~[, devices or nicotine delivery products]~~ shall be as set forth in § 14.03 of this code for such location. The annual license shall be effective for one year from the date of approval and such license shall be renewed annually on the anniversary date of such approval. The license fee shall cover the administrative and enforcement costs, including the conducting of unannounced compliance checks. The city will conduct at least one such compliance check each calendar year at each location where tobacco-related products ~~[, devices or nicotine delivery products]~~ are sold to test compliance with this Division W.

§ 14.439 PROHIBITED ~~[SALES]~~ ACTS.

(a) No person shall sell ~~[,]~~ or offer for sale ~~[, give away, furnish or deliver]~~ any tobacco-related product ~~[, device or nicotine delivery product]~~ to any person under the age of ~~[48]~~ 21 years. No person shall sell, offer for sale or dispense any tobacco-related product ~~[, device or nicotine delivery product]~~ through the use of vending machines. No person shall sell, offer for sale or dispense ~~[single packages of cigarettes or smokeless]~~ 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 ~~[No person shall sell, offer for sale or dispense any other tobacco-related product, device or nicotine delivery product through the use of self-service merchandising unless a responsible employee is present to view and monitor the self-service display and prevent the purchase or theft of such products by minors and the self-service display is equipped with an alarm system or locking device capable of preventing the theft of tobacco-related products, devices or nicotine delivery products and the display is located within ten feet of the sales counter and in plain view of a responsible employee. A]~~ a license holder who ~~[operates an establishment or fully enclosed portion of an establishment that]~~ derives at least 90% of their revenue from tobacco-related products, ~~[devices or nicotine delivery products is exempt from the self-service merchandising provision if the license holder]~~ prohibits anyone under ~~[48]~~ 21 years of age from entering the establishment at all times, ~~[or fully enclosed portion of an establishment unless accompanied by a parent]~~ and ~~[the license holder]~~ who conspicuously displays a notice prohibiting persons under ~~[48]~~ 21 years of age from entering the establishment ~~[unless accompanied by a parent].~~

(b) ~~[Notwithstanding subsection (a) above, a product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco-related product as defined by § 14.436, may be sold to persons under the age of 18 if the product has been approved or~~

~~otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction or other medical purposes, and is being marketed and sold solely for that approved purpose.~~ (Reserved.)

(c) It shall be a violation of this chapter ~~[e]for~~ any person to sell, offer to sell or distribute cigars in a ~~[an original]~~ package containing five or fewer than five cigars. However, t[his] 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 where the package has a retail sales price of at least \$2.60 per cigar [and] contained therein, after any price promotions or discounts are taken into account and before the imposition of sales tax, but [excluding retail sales] after the imposition of excise tax [and tobacco product shops only accessible to those 18 years or older]. 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 years 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 provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

§ 14.440 MOBILE SALES.

No license shall be issued for the sale of tobacco-related products~~[, devices or nicotine delivery products]~~ at a movable place of business, including mobile sale of tobacco-related products made from motorized vehicles, mobile sales kiosks or trailers, unless the movable place of business is operated in an establishment licensed to sell tobacco-related products and all mobile sales are conducted within a building and within the licensed premises.

§ 14.441 SANCTIONS FOR LICENSE VIOLATIONS.

A licensee shall pay to the city a civil penalty of \$250 for an initial violation of a provision of this Division W or state laws governing the sale of tobacco-related products~~[, devices or nicotine delivery products]~~ and \$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~~[, devices or nicotine delivery products]~~ for a minimum of seven days and impose a civil penalty of \$600 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 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.

§ 14.441.01 ADMINISTRATIVE PENALTY FOR INDIVIDUALS.

Each individual who sells tobacco-related products [~~devices or nicotine delivery products~~] to a person under the age of [~~18~~] 21 years shall pay to the city an administrative penalty of \$75. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the City Manager or the City Manager's designated representative. A decision that a violation has occurred must be in writing.

§ 14.442 PENALTY.

(a) [~~It shall be a gross misdemeanor for anyone to sell tobacco-related products, devices or nicotine delivery products to a person under the age of 18 years.~~] (Reserved)

(b) [~~It shall be a misdemeanor for anyone to furnish tobacco-related products, devices or nicotine delivery products to a person under the age of 18 years.~~] (Reserved)

(c) [~~It shall be a petty misdemeanor for anyone under the age of 18 years to use, purchase, attempt to purchase or possess tobacco-related products, devices or nicotine delivery products, except that a person under 18 years of age who is employed in an establishment licensed to sell tobacco-related products, devices or nicotine delivery products may possess such products while selling or stocking them. This section shall not apply to a person under the age of 18 years who purchases or attempts to purchase tobacco-related products, devices or nicotine delivery products while under the direct supervision of a responsible adult for training, education, research or enforcement purposes.~~] (Reserved)

(d) A violation of any other provision of this Division W shall be a misdemeanor.

§ 14.442.01 AFFIRMATIVE DEFENSE.

It is an affirmative defense to a charge under § [~~14.442~~] 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.

Passed and adopted this 6th day of November, 2017.

/s/ Gene Winstead

Mayor

ATTEST:

APPROVED:

/s/ Denise M. Christenson
Secretary to the Council

/s/ Melissa J. Manderschied
City Attorney