

ORDINANCE NO. 947

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE XVIII OF THE CITY CODE OF ORDINANCES RELATING TO THE SALE OF TOBACCO RELATED PRODUCTS

The Maplewood City Council approves the following revision to the Maplewood Code of Ordinances:

ARTICLE XVIII. - TOBACCO-RELATED PRODUCTS

Sec. 14-1371. - Recitals.

Sec. 14-1372. - Purpose.

Sec. 14-1373. - Definitions.

Sec. 14-1374. - License required.

Sec. 14-1375. - Basis for denial of license.

Sec. 14-1376. - Prohibited sales.

Sec. 14-1377. - Smoking prohibited.

Sec. 14-1378. - Compliance checks and inspections.

Sec. 14-1379. - Violations and penalty.

Secs. 14-1380—14-1400. - Reserved.

ARTICLE XVIII. - TOBACCO-RELATED PRODUCTS

FOOTNOTE(S):

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Editor's note— Ord. No. 920, §§ 1—9, adopted Mar. 26, 2012, amended Art. XVIII in its entirety to read as set out herein. Former Art. XVIII, §§ 14-1371, 14-1372, pertained to similar subject matter and derived from Ord. No. 823, § 10-22, adopted Feb. 25, 2002.

State Law reference— Authority of city to license and regulate the sale of tobacco, Minn. Stats. § 461.12.

Sec. 14-1371. - Recitals.

The Minnesota Legislature has enacted the Minnesota Clean Indoor Air Act (Minn. Stats., §§ 144.411 to 144.417), the purpose of which is to protect employees and the general public from the hazards of secondhand smoke by eliminating smoking in public places, places of employment, public transportation and at public meetings, and nothing in the Minnesota Clean Air Act prohibits the city from enacting and enforcing more stringent measures to protect individuals from secondhand smoke. Pursuant to this authority and for the purpose of protecting individuals from the hazards of secondhand smoke, the city has determined that it is in the best interest of the public to prohibit the lighting of tobacco or the use of an electronic delivery device in a retail establishment by a customer or potential customer for the purpose of sampling tobacco products or electronic delivery devices.

(Ord. No. 920, § 1, 3-26-2012)

Sec. 14-1372. - Purpose.

The city recognizes the public health hazards of exposure of individuals to secondhand smoke. This article is intended to regulate the sale, possession, and use of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to protect individuals from the hazards of secondhand smoke and tobacco use, and to further the official public policy of the State of Minnesota as stated in Minn. Stats. §§ 144.391 and 144.412, as they may be amended from time to time.

(Ord. No. 920, § 2, 3-26-2012)

Sec. 14-1373. - Definitions.

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

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.

Cigar means 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 Minn. Stat. §297F.01, subd.3, as amended from time to time.

Compliance checks means the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products are following and complying with the requirements of this article. Compliance checks shall involve the use of minors as authorized by this article.

Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products 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-related devices, electronic delivery devices, and nicotine or lobelia delivery products.

Electronic delivery devices means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to stimulate 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 such a product whether or not sold separately. Electronic Delivery Device does not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment for other medical purposes, and is being marketed and sold solely for that approved purpose.

Individually packaged means the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually-wrapped tobacco and tobacco products shall include, but [shall] not be limited to, single cigarette packs, single cigars, 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 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. A 0.001 gauge window screen with an 18 by 16 mesh count is not considered a wall.

Loosies means the common term used to refer to a single or individually-packaged cigar or 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 \$2.60 per cigar.

Minor means any natural person who has not yet reached the age of eighteen (18) years.

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 and not a fixed-address storefront or other permanent type of structure authorized for sales transactions.

Nicotine or lobelia delivery products 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, 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.

Retail establishment means any place of business where tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products 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 means any transfer of goods for money, trade, barter or other consideration.

Self-service merchandising means open displays of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in any manner where any person shall have access to the tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products, 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-related device, electronic delivery device, or nicotine or lobelia delivery product 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 means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product, or inhaling or exhaling vapor from any electronic delivery device. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

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 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-related devices means pipes, rolling papers, ashtrays, 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 means any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

(Ord. No. 920, § 3, 3-26-2012)

Sec. 14-1374. - License required.

- (a) *Generally.* No person may directly or indirectly or by means of any device keep for retail sale, sell at retail, offer to sell or otherwise dispose of any tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products at any place in the city unless a license has first been issued by the city as provided in this section.
- (b) *Specifically.*
 - (1) *Application.* An application for a license 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.
 - (2) *Action.* Upon receipt of a completed application, the city clerk shall forward the application to the police department for investigation. The police department shall conduct an investigation of the applicant and application regarding the fitness of the applicant to hold a license pursuant to the standards set forth in this article, and report the results of its investigation to the city clerk within 30 days of receipt of the application. After the city finishes its investigation and reviews the finding, the application will be approved or denied by the city manager or his designee. If the application is approved, it will be issued by the city clerk. If the city manager or his designee denies the application, notice of the denial shall be given to the applicant along with notification of the applicant's right to appeal the decision.
 - (3) *Fees.* No license shall be issued under this article until the appropriate license or investigation fee is paid in full. The fee(s) shall be established by the city council by resolution from time to time.
 - (4) *Duration.* Licenses issued under this division shall have a duration period of one year. The expiration date of such license is as may be imposed, set, established and fixed by the city clerk, from time to time.
 - (5) *Sanctions for violation.* Shall be set by the city council at penalty phase not to be less than state mandated guidelines.
 - (6) *Transfers.* All licenses issued under this article shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued.
 - (7) *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 article.

- (8) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premises.
- (9) *Renewals.* The renewal of a license issued under this article shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days prior, but no more than 60 days before the expiration of the current license. The license holder is not entitled to an automatic renewal of the license.
- (10) *Sale by minors.* It shall be unlawful for any business licensed under this article to allow any person under the age of 18 years to sell, offer for sale, or attempt to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products.

(Ord. No. 920, § 4, 3-26-2012)

Sec. 14-1375. - Basis for denial of license.

The following shall be grounds for denying the issuance of or renewal of a license under this article; 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:

- (1) The applicant is under the age of 18;
- (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-related devices, electronic delivery devices, or nicotine or lobelia delivery products.
- (3) The applicant has had a license to sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products revoked or suspended 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 such a license.
- (6) Nonpayment by the property owner and/or applicant of any fees or charges owed to the city and/or county, including, but not limited to, utilities and property taxes.

(Ord. No. 920, § 5, 3-26-2012)

Sec. 14-1376. - Prohibited sales.

- (a) *Generally.* It shall be a violation of this article for any person to sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product:
 - (1) To a minor;
 - (2) By a vending machine;
 - (3) By self-service;
 - (4) As loosies;
 - (5) Containing opium, morphine, jimsonweed, belladonna, strychnos, cocaine, marijuana, or other delirious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process; and/or
 - (6) To any other person, in any other manner or form prohibited by federal or state law or regulation, or by local ordinance.

(b) *Specifically.*

- (1) *Cigars.* It shall be a violation of this ordinance to sell, offer for sale, or otherwise distribute any cigar that is not within an original package containing fewer than five cigars, unless that package has a sales price of no less than \$2.60 per cigar contained within. Cigars to which price promotions or discounts apply shall not be excluded from this restriction.
 - (a) This section shall not apply to premium cigars as defined in Minnesota Statutes 297F.01, subdivision 13a.
 - (b) The minimum pricing established in this section shall be adjusted periodically for inflation at least every three years.
 - (c) The minimum retail sales price of an original package of five or more cigars shall be at least \$10.40, after any price promotions or discounts are taken into account and before the imposition of sales tax.
- (2) *Liquid Packaging.* It shall be a violation of this ordinance to sell any liquid, whether or not such liquid contains nicotine, intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

(Ord. No. 920, § 6, 3-26-2012)

Sec. 14-1377. - Smoking prohibited.

Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a tobacco license. Smoking for the purpose of sampling tobacco, tobacco-related devices, or electronic delivery devices is also prohibited except for the following addresses which are grandfathered in upon passage of Ordinance 947: 2515 White Bear Avenue N, 1700 Rice Street N, 1703 Cope Avenue E, 3035 White Bear Avenue N. When the establishments are sold, rented or change hands the address will continue to qualify for cigarette or tobacco licenses but will not be permitted to allow e-cigarette sampling. Signage must be posted as directed by State of Minnesota Administrative Rules.

(Ord. No. 920, § 7, 3-26-2012)

Sec. 14-1378. - 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 their 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-related devices, electronic delivery devices, or nicotine or lobelia delivery products. 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-related devices, electronic delivery devices, or nicotine or lobelia delivery products when those items are 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 any identification, if any exists, for which he or she is asked.

(Ord. No. 920, § 8, 3-26-2012)

Sec. 14-1379. - 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 article.
- (b) *Administrative penalties.*
 - (1) *Licensees.* Any licensee found to have violated this article, or whose employee shall have violated this article, shall be charged an administrative fine of \$250.00 for a first violation of this article; \$500.00 for a second offense at the same licensed premises within a 24-month period; and \$750.00 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 this article, found to be in violation of this article shall be charged an administrative fine of \$50.00.
 - (3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products, 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. Stats. § 461.12, as it may be amended from time to time, differ from those established in this section, then the higher penalties shall prevail.

(Ord. No. 920, § 9, 3-26-2012)

Secs. 14-1380—14-1400. - Reserved.