

**CITY OF WEST ST. PAUL
DAKOTA COUNTY, MINNESOTA**

ORDINANCE NO. 20-008

**AN ORDINANCE AMENDING SECTION 113 OF THE WEST ST. PAUL CITY CODE
PROHIBITING SALES OF TOBACCO TO ANYONE UNDER THE AGE OF 21**

The City of West Saint Paul does ordain:

SECTION 1. AMENDMENT. West St. Paul City Code Section 113 is hereby amended as follows:

113.01 PURPOSE.

Because the city recognizes that many persons under the age of 21 years may purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products; and the sale of these products to persons under 21 ~~minors under 18~~ years of age are violations of both state and federal laws; and because smoking has been shown to be the cause of several severe health problems which subsequently place a financial burden on all levels of government, this chapter is intended to regulate the sale, possession and use of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect persons under 21 ~~minors~~ against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products, 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.

113.02 DEFINITIONS.

COMPLIANCE CHECKS. The system the Police Department uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this chapter and state law. **COMPLIANCE CHECKS** shall involve the use of persons at least 17 years old, but less than 21 ~~under the age of 21~~ as authorized by state law who may attempt to purchase licensed products for educational, research and training purposes. The age requirements for persons participating in compliance checks under this section shall not affect the age requirements in federal law for persons participating in federally required compliance checks.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic delivery devices include, but is not limited to, devices manufactures, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately.~~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, as defined by Minn. Stat. §609.685 subd. 1(e), or as it may be amended.~~

LICENSED PRODUCTS. The term that collectively refers to any tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

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 tax, of more than \$2.00 per cigar.

~~**NICOTINE OR LOBELIA 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 in this section. **NICOTINE OR LOBELIA DELIVERY PRODUCT** does not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation or for other medical purposes, and is being marketed and sold solely for that approved purpose.~~

RETAIL ESTABLISHMENT. Any place of business that is a permanent building or structure where licensed products are available for sale to the public. **RETAIL ESTABLISHMENTS** includes, but is not limited to, grocery stores, bars, drug stores, convenience stores, gasoline service stations, and restaurants.

SELF-SERVICE DISPLAY. Open displays of licensed products in any manner where a person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employees. **SELF-SERVICE DISPLAY** does not include vending machines.

TOBACCO-RELATED DEVICE. Any tobacco product 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, smoking, or other consumption, whether by inhalation aerosol or vapor, ingestion, or any other method of consumption, of tobacco or tobacco products~~with tobacco products~~. **TOBACCO-RELATED DEVICE** includes components of tobacco-related devices which may be marketed or sold separately.

VENDING MACHINE. Any mechanical, electric, electronic, or other type of device that upon the insertion of money, tokens, or other form of payment dispenses licensed products.

113.03 LICENSE REQUIRED.

(A) *General rule.* No person shall sell or offer to sell any licensed product without first obtaining a license from the city pursuant to Chapter 110. Each retail establishment location shall require a separate license.

(B) *Applications.* In addition to the application information requirements of § 110.03, the applicant shall submit a copy of the educational materials the applicant uses to educate employees as part of its instructional program.

(C) *License fee.* The applicant shall submit the license fee pursuant to Chapter 110. The license fee shall be used to process applications and by the Police Department for education, training and enforcement of this chapter.

(D) *Investigations.*

(1) For all new and renewal applicants, a background investigation will be conducted on the applicant listed on the application, pursuant to § 110.03(C)(5). If more than one background investigation is required, the applicant shall pay a background investigation fee for each background investigation conducted. For applicants who have an existing tobacco license and want to add an additional location at any time other than annual renewal, a background investigation will be required.

(2) For applicants who are applying for a license for more than one location, only one background investigation and background investigation fee shall be required.

(E) *License term.* The license term begins on January 1 and terminates on December 31.

(F) *Changes in ownership.* A license is non-transferable. If there is a change in the ownership of the retail establishment, a new license is required and the applicant shall be required to submit to a background investigation as a new applicant.

(G) *Instructional program.* No person shall be issued a license or renewal license to sell licensed products unless an applicant or licensee has a program for instructing all employees regarding the legal requirements pertaining to the sale of licensed products at the retail establishment for which the license was issued. The instructional program shall include, but is not limited to, reviewing the law on the sale of licensed products, requiring employees to request identification from every customer who is under 27 years of age, providing information that the sale of licensed products to anyone under 21 is illegal, explaining what kind of proof of age is legally acceptable, and that a sale to a person below the legal sales age can subject the applicant or licensee and its employees to criminal and/or civil liability.

(H) *Age verification device and digital security video.* All license holders shall be required to install or possess age verification devices and digital security video at the licensed location. The Police Department shall confirm that the devices have been installed prior to approval of the license.

(I) *Sampling.* Sampling of licensed products shall not be permitted within the indoor area of any retail establishment.

(J) *Moveable place of business.* No license shall be issued to a movable place of business. Only fixed retail establishment locations shall be eligible to be licensed under this section.

(K) All tobacco, tobacco products, tobacco-related devices or electronic nicotine 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.

(L) *Signage*. Notice of the legal sales age and age verification requirement must be posted 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 who is or is considering making a purchase.

113.04 RESPONSIBILITY FOR ACTS OF EMPLOYEES.

All licensees shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed retail establishment premises, and the sale of any such item by an employee shall be considered a sale by the licensee for the purposes of this chapter.

113.05 PROHIBITED ACTS.

(A) It shall be unlawful for any person to sell, offer for sale, or allow the sale of licensed products:

- (1) By the means of a vending machine;
- (2) By means of loosies as defined in § 113.02;
- (3) 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;
- (4) By any other means, to any other person, in any other manner or form prohibited by federal, state or local law, ordinance, or other regulation;
- (5) From a movable place of business, such as, but not limited to, any motorized vehicle, a kiosk, a trailer, a transportable shelter or table or any other movable structure;
- (6) By means of any self-service displays whereby the customer may have access to those items without having to request the item from the licensee or licensee's employee and whereby there is not a physical exchange of the licensed product between the licensee or licensee's employee and the customer.

(B) Sale or Distribution to Person Under 21 Years Old Prohibited.

- (1) No person shall sell or distribute licensed products to any person under 21 years old.
- (2) Any person found to have sold or distributed any licensed products to a family member who is under 21 years old shall be deemed to be in violation of subsection B (1) of this section.

(3) It shall be unlawful for any person under the age of 21 years old to represent that he or she has attained the age of 21 years old for the purpose of purchasing, asking for in any way, or receiving licensed products, except in cases authorized by law, including as authorized by the Department or law enforcement.

(4) It shall be unlawful for any person to give, lend, sell or otherwise provide any person under the age of 21 years old any falsified identification or identification of another person for the purpose of establishing the age of the individual as being 21 years old or older.

(5) Any person selling or distributing licensed products shall require proof of age from the prospective purchaser ~~showing~~ recipient is 21 years old or older.

(6) Notice of the legal sales age and the age verification requirement shall be posted at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the City, shall be posted in a manner so that it is clearly visible to anyone who is considering or making a purchase.

113.06 COMPLIANCE CHECKS AND INSPECTIONS.

(A) All licensed retail establishments shall be open to inspection by the Police Department or other delegated law enforcement officers or agencies during regular business hours.

(B) From time to time, but at least once per year, a law enforcement officer shall conduct unannounced compliance checks to ensure compliance with the provisions of this chapter.

(C) Compliance checks shall utilize persons ~~over the age of 15~~ 17 years old but less than 21 years old to enter the retail establishments to attempt to purchase licensed products. Prior written parental or guardian consent is required for any ~~minor person under the age of 18~~ who participates in a compliance check.

(D) Persons used for the purpose of compliance checks shall be supervised by designated law enforcement officers.

(E) Nothing in this chapter shall prohibit other 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.

113.07 OTHER PROHIBITED ACTS.

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

(A) *Legal age.* It shall be unlawful for any person to sell or otherwise provide any licensed product to any person under the age of 21.

(B) *Illegal purchase on behalf of persons under 21.* It shall be unlawful for any person to

purchase for, or otherwise obtain licensed products on behalf of a person under the age of 21. It shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain or use any licensed product.

(C) *Use of false identification.* It shall be unlawful for any person under the age of 21 to attempt to disguise the person’s 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.

(D) No ~~minor person under 18~~ may furnish, sell or attempt to sell licensed products on behalf of a licensee ~~unless written consent has been obtained from the minor’s parents. Such written consent must include a statement of the potential penalties that can be imposed under this Section.~~

113.08 LICENSE DENIAL, SUSPENSION OR REVOCATION.

(A) Grounds for denial, suspension or revocation. The City Council may deny, revoke or suspend a license for violating a provision of this chapter or for any of the reasons enumerated in § 110.12(A). In addition, the City Council shall impose a civil penalty for each violation pursuant to the City’s Fee Schedule.

~~(B) Minimum penalties. The following are deemed appropriate minimum penalties for a licensee’s failure to comply with an applicable statute, rule or ordinance relating to the license; however, the level and order of the penalties will be at the sole discretion of the City Council, based upon the nature of the infraction. When appropriate, the City Council may impose penalties exceeding those stated below or impose other conditions deemed appropriate:~~

~~(C)~~

Violation	Licensee	Employee
First violation	\$75 fine and attend training by Police Department	\$50 fine
Second violation within 24 months	\$200 fine, plus 3-day suspension	\$50 fine
Third violation within 24 months	\$750 fine, plus 7-day suspension	\$50 fine
Four or more violations within 24 months	\$1,500 fine + revocation	\$50 fine

~~(D)~~(B) Notice. Notice must be provided pursuant to § 110.12(D)(1).

(C) Hearing. A hearing will be conducted pursuant to § 110.12(D). It is not necessary that criminal charges be brought in order to support a determination of a license violation nor does the dismissal or acquittal of such a criminal charge operate as a bar to adverse license actions under this chapter.

~~(E)~~(C) Final decision. Following the hearing, the Council may deny, revoke, suspend or not renew the license for the retail establishments or may grant or continue the license upon such terms and conditions as it deems reasonable and necessary to accomplish the purposes of this chapter. The decision by the City Council following a hearing is final.

(D) Non-exclusive remedy. Enforcement actions provided in this chapter are not exclusive, and the Council may take any action with respect to a licensee, employee or the retail establishments as is authorized by the city code, state or federal law.

(E) Re-application. Upon revocation of a license, the owner must re-apply for a new license and comply with all the provisions of § 113.03.

SECTION 2. SUMMARY PUBLICATION. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

The ordinance amendment is in accordance with 2020 Minnesota State Statute changes, as well as the Federal Food, Drug and Cosmetic Act, raising the minimum age of the sale of any tobacco product, including cigarettes, cigars, and e-cigarette products from 18 to 21 years. The minimum civil penalties have been moved from the ordinance to the City's Fee Schedule.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect on August 5, 2020.

Passed by the City Council of the City of West St. Paul, Minnesota, this 27th day of July 2020.

Attest:

David J. Napier, Mayor

Shirley R Buecksler, City Clerk