

## **CHAPTER 306**

### **CIGARETTE AND TOBACCO PRODUCTS**

#### **SECTION:**

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- (Ord. 1597, 02-08-2021)

#### **306.01: FINDINGS OF FACT AND PURPOSE:**

Because the city recognizes that 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 marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; 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, this ordinance is intended to regulate 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.

In making these findings, the City Council accepts the conclusions and recommendations of: the U.S. Surgeon General reports, E-cigarette Use Among Youth and Young Adults (2016), The Health Consequences of Smoking — 50 Years

of Progress (2014) and Preventing Tobacco Use Among Youth and Young Adults (2012); the Centers for Disease Control and Prevention in their studies, Tobacco Use Among Middle and High School Students — United States, 2011– 2015(2016), and Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997(1998); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. *Health Reports*, 9(4), 39-46; D’Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at starting smoking and number of cigarettes smoked. *Annals of Epidemiology*, 4(6), 455–459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. (1999). Initiation of cigarette smoking and subsequent smoking behavior among U.S. high school students. *Preventive Medicine*, 29(5), 327–333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. *Oncogene*, 21(48), 7326–7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673–677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740–746; Minnesota Department of Health. (2020). Data Highlights from the 2019 Minnesota Youth Tobacco Survey. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). *The Verdict Is In: Findings from United States v. Philip Morris, The Hazards of Smoking*. University of California San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. *American Journal of Preventive Medicine*, 48(3), 326–333, copies of which are adopted by reference. (Ord. 1597, 02-08-2021), (Ord. 1555, 6-18-2018)

### **306.02 DEFINITIONS:**

As used in this Chapter, the following words and terms shall have the meanings ascribed to them in this Section:

**AGE-RESTRICTED TOBACCO RETAILER:** An Retail Establishment licensed under this Chapter which:

1. Prohibits persons under 21 from entering at all times;
2. Derives at least 90 percent of their gross revenues from the sale of licensed products;
3. Meets all of the following building or structural criteria:
  - a. Shares no wall with, and has no part of their structure adjoined to any other business or retailer, unless the wall is permanent, completely opaque, and without doors, windows, and pass-throughs to the other business or retailer;
  - b. Shares no walls with, and has no part of their structure directly adjoined to, another licensed tobacco retailer;
  - c. Is accessible by the public only by an exterior door; and
  - d. Is licensed under this ordinance and meet these building or structural criteria as of February 8, 2021

(Ord. 1597, 02-08-2021)

**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. (Ord. 1597, 02-08-2021)

**CIGAR:** Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as it may be amended from time to time. (Ord. 1597, 02-08-2021)

**COMPLIANCE CHECKS:** The system the city uses to investigate and ensure that those authorized to sell Licensed Products are following and complying with the requirements of this ordinance. Compliance checks involve the use of persons under the age of 21 who purchase or attempt to purchase Licensed Products. Compliance checks may also be conducted by the city or other units of government for educational, research and training purposes or for investigating or enforcing federal, state or local laws and regulations relating to Licensed Products. (Ord. 1555, 6-18-2018) (Ord. 1597, 02-08-2021)

**ELECTRONIC DELIVERY DEVICE.** 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. 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 includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include 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. (Ord. 1597, 02-08-2021)

**FLAVORED PRODUCT.** Any Licensed Product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a Licensed Product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product. (Ord. 1597, 02-08-2021)

**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. (Ord. 1597, 02-08-2021)

**LICENSED PRODUCTS.** The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product. (Ord. 1597, 02-08-2021)

**LOOSIES.** The common term used to refer to single cigarettes, cigars, and any other Licensed Product that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor. (Ord. 1597, 02-08-2021)

**MOVEABLE PLACE OF BUSINESS.** Any form of business that is operated out of a kiosk, truck, van, automobile 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. (Ord. 1597, 02-08-2021)

**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 a tobacco or an electronic delivery device as defined in this section. Nicotine or lobelia delivery product does not include 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. (Ord. 1597, 02-08-2021)

**RETAIL ESTABLISHMENT:** Any place of business licensed under this chapter where Licensed Products are available for sale to the general public. This phrase includes but is not limited to grocery stores, convenience stores, gasoline service stations, pharmacies, bars, and restaurants, but does not include Age-Restricted Tobacco Retailers. (Ord. 1555, 6-18-2018) (Ord. 1597, 02-08-2021)

**SELF SERVICE MERCHANDISING:** An open display of Licensed Products in any manner where any person has access to the Licensed Products without the intervention of a licensee or licensee’s employee. (Ord. 1555, 6-18-2018) (Ord. 1597, 02-08-2021)

**SMOKING:** Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product, whether natural or synthetic, containing, made, or derived from nicotine, tobacco, marijuana, or other plant, that is intended for inhalation.  
Smoking also includes carrying or using an activated electronic delivery device. (Ord. 1555, 6-18-2018)

**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 scraps, clippings, cuttings and sweepings of tobacco prepared in such manner as to be suitable for chewing, sniffing or smoking in a pipe, rolling paper or other tobacco related devices. "Tobacco" also means electronic delivery devices and any component or accessory used in the consumption of to a tobacco product, such as filters, rolling papers, pipes and liquids used in electronic smoking devices, whether or not they contain nicotine. Tobacco does not include 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. (Ord. 1424 02-13-12) (Ord. 1455, 10-21-13) (Ord. 1555, 6-18-2018) (Ord. 1597, 02-08-2021)

**TOBACCO-RELATED DEVICE:** Any pipe, rolling papers, or other device intentionally designed or intended to be used with tobacco products. Tobacco-related device includes components of tobacco-related devices which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco. (Ord. 1555, 6-18-2018) (Ord. 1597, 02-08-2021)

**VENDING MACHINE:** 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 the machine by the person seeking to purchase the Licensed Product. (Ord. 1555, 6-18-2018) (Ord. 1597, 02-08-2021)

### **306.03 LICENSE REQUIRED:**

- A. License Required. No person shall keep for retail sale, sell, or offer to sell at retail any licensed product as defined in this Chapter without first having obtained a license to do so from the city. (Ord. 1133, 1-24-94) (Ord. 1555, 6-18-2018) (Ord. 1597, 02-08-2021)
- B. Application. An application for a license to sell Licensed Products must be made on a form provided by the city. The application must 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 will forward the application to the City Council for action at its next regularly scheduled meeting. If the City Clerk determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete. (Ord. 1597, 02-08-2021)
- C. Action. The City Council may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the City Council approves the application, the City Clerk

will issue the license to the applicant. If the City Council denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision. (Ord. 1597, 02-08-2021)

- D. Term. Licenses issued are valid from July 1-June 30. (Ord. 1597, 02-08-2021)
- E. Revocation or suspension. Any license issued may be suspended or revoked following the procedures set forth in Section 306.09. (Ord. 1597, 02-08-2021)
- F. Transfers. All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited. (Ord. 1597, 02-08-2021)
- G. Moveable place of business. No license will be issued to a moveable place of business. Only fixed-location businesses are eligible to be licensed. (Ord. 1597, 02-08-2021)
- H. Display. All licenses must be posted and displayed at all times in plain view of the general public on the licensed premises. (Ord. 1597, 02-08-2021)
- I. Renewals. The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days, but no more than 60 days, before the expiration of the current license. (Ord. 1597, 02-08-2021)
- J. Issuance as privilege and not a right. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license. (Ord. 1597, 02-08-2021)
- K. Smoking is prohibited within the indoor area of any retail establishment licensed under this ordinance. Smoking for the purpose of sampling Licensed Products is prohibited. (Ord. 1424, 02-13-12) (Ord. 1555, 6-18-2018) (Ord. 1597, 02-08-2021)
- L. Samples prohibited. No person shall distribute samples of any Licensed Product free of charge or at a nominal cost. (Ord. 1597, 02-08-2021)
- M. The number of licenses issued under this Chapter to Age-Restricted Tobacco Retailers shall not exceed four (4) at any time. The number of licenses issued under this Chapter to Retail Establishments shall not be limited. (Ord. 1597, 02-08-2021)
- N. Any Age Restricted Tobacco Retailer that sells flavored products must provide financial records documenting its annual sales, upon request by the city. (Ord. 1597, 02-08-2021)

### **306.04 FEES**

No license will be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the city's fee schedule and may be amended from time to time. (Ord. 1133, 1-24-94) (Ord. 1555, 6-18-2018) (Ord. 1597, 02-08-2021)

### **306.05 BASIS FOR DENIAL OF A LICENSE**

A. Grounds for denying the issuance or renewal of a license include, but are not limited to, the following: (Ord. 1597, 02-08-2021)

1. The applicant is under 21 years of age.
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 Licensed Products.
3. The applicant has had a license to sell Licensed Products suspended or revoked within the preceding 12 months of the date of application.
4. The applicant fails to provide any of the information required on the licensing 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 does not compel the city to deny the license. (Ord. 1597, 02-08-2021)

C. If a license is mistakenly issued or renewed to a person, it will be revoked upon the discovery that the person was ineligible for the license under this ordinance. The city will provide the license holder with notice of the revocation, along with information on the right to appeal. (Ord. 1597, 02-08-2021)

### **306.06 PROHIBITED SALES:**

A. In general. No person shall sell or offer

B. or to sell any Licensed Product:

1. By means of a vending machine. (Ord. 1555, 6-18-2018)
2. By means of loosies as defined.
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. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other products

subject to this ordinance.

4. By self-service merchandizing whereby the customer may have access to those products without having to request the products 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. All Licensed Products must be stored behind the sales 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. (Ord. 1133, 1-24-94) Provided, however, the requirements of this section shall not apply to Age-Restricted Tobacco Retailers. (Ord. 1555, 6-18-2018)

B. Legal age. No person shall sell any Licensed Product to any person under the age of 21.

1. Age verification. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth 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.
2. Signage. 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 who is or is considering making a purchase.

C. Flavored products. No person shall sell or offer for sale any flavored products ,except Age-Restricted Tobacco Retailers as herein defined.

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

(Ord. 1424, 02-13-12) (Ord. 1555, 6-18-2018) (Ord 1597, 02-08-2021)

### **306.07 RESPONSIBILITY:**

All licensees are responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of Licensed Products on 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. Nothing in this section shall be



construed as prohibiting the city from also subjecting the employee to any civil penalties that the city deems to be appropriate under this ordinance, state or federal law, or other applicable law or regulation. (Ord 1597, 02-08-2021) (Ord. 1133, 1-24-94) (Ord. 1555, 6-18-2018)

### **306.08 COMPLIANCE CHECKS:**

All licensed premises shall be open to inspection by Roseville law enforcement or other authorized City officials during regular business hours. From time to time, but at least twice per year, the City shall conduct compliance checks. In accordance with state law, the city will conduct compliance checks that involve the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to 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. Persons used for the purpose of compliance checks shall be supervised by the Chief of Police, or the Chief of Police's designee. No person used in compliance checks shall attempt to use a false identification misrepresenting the person's age and all persons lawfully engaged in a compliance check shall answer all questions about the person's age, asked by the licensee or licensee's employee and shall produce any identification, if any exists, for which the person is asked. Nothing in the subdivision 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. (Ord. 1555, 6-18-2018) (Ord. 1597, 2-08-2021)

### **306.09 VIOLATIONS AND PENALTIES:**

#### A. Violations:

1. Notice. A person violating this ordinance may be issued, either personally or by mail, a citation from the city that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number. (Ord 1597, 02-08-2021)
2. Hearings.
  - a. Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing. (Ord 1597, 02-08-2021)
  - b. The City Clerk or other designated city officer will set

the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing. (Ord 1597, 02-08-2021)

3. Hearing Officer. The City Council will designate a hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing. (Ord 1597, 02-08-2021)
4. Decision. A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in section 11, division (A)(6) of this section. (Ord 1597, 02-08-2021)
5. 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 ] must be paid by the person requesting the hearing. (Ord 1597, 02-08-2021)
6. Appeals. Appeals of any decision made by the hearing officer must be filed in Ramsey County district court within 10 business days of the date of the decision. (Ord 1597, 02-08-2021)
7. Continued violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense. (Ord 1597, 02-08-2021)

B. Administrative penalties.

1. Licensees. Any licensee found to have violated this ordinance, or whose employee violated this ordinance, will be charged an administrative fine of [ \$1,000 for a first violation; [ \$2,000 ] for a second offense at the same licensed premises within a 36-month period; and [ \$2,000 ] for a third or subsequent offense at the same location within a 36-month period. Upon the second violation, the license will be suspended for a period of 3 consecutive days. Upon the third violation, the license will be suspended for a period of 7 consecutive days. . Upon a fourth violation, the license will be revoked. (Ord 1594 12-07-2020) (Ord 1597, 02-08-2021)

2. Other individuals. Individuals, other than persons under the age of 21, who are found to be in violation of this ordinance will be charged an administrative fine of [ \$250 ]. (Ord 1594 12-07-2020) (Ord 1597, 02-08-2021)
  3. Statutory penalties. If the administrative penalty authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail. (Ord 1597, 02-08-2021)
- C. Misdemeanor prosecution. Nothing in this section prohibits the city from seeking prosecution as a misdemeanor for an alleged second violation of this ordinance by a person 21 years of age or older within five years of a previous conviction under the ordinance. (Ord 1597, 02-08-2021)

(Ord. 1555, 6-18-2018)

### **306.11 SEVERABILITY:**

If any such provision of this Chapter, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision of this ordinance that can be given effect without the invalid provision or application. Each invalid provision or application of this ordinance is severable. (Ord. 1555, 6-18-2018) (Ord 1597, 02-08-2021)

### **306.12 EFFECTIVE DATE:**

This ordinance becomes effective on July 1, 2021, following 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. (Ord 1597, 02-08-2021)