

AN ORDINANCE RELATING TO THE SALE, POSSESSION, AND USE OF TOBACCO, TOBACCO PRODUCTS, TOBACCO RELATED DEVICES, AND ELECTRONIC DELIVERY DEVICES IN THE CITY AND TO REDUCE THE ILLEGAL SALE, POSSESSION, AND USE OF SUCH ITEMS TO PERSONS UNDER THE AGE OF 21

THE CITY COUNCIL OF THE CITY OF OAK PARK HEIGHTS DOES HEREBY ORDAIN AS FOLLOWS:

1409.010 Purpose.
Because the City recognized that many persons under the age of 21 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, tobacco related devices, and electronic delivery devices, and because studies, which the City hereby accepts and adopts¹, have shown that most smokers begin smoking before they have reached the age of 21 years and those persons who reach the age of 21 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this Ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, tobacco related devices, and electronic delivery devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco related devices, and electronic delivery devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke, as stated in Minn. Stat. 144.391.

1409.020 Definitions and Interpretations.
Except as otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term “shall” means mandatory and the term “may” means permissive. The following terms shall have the definitions given to them:

¹ The City of Oak Park Heights has relied upon the following sources: Preventing Tobacco Use Among Young People, A Report of the Surgeon General; Youth Access to Tobacco - Summary Points, Youth and Elders Against Tobacco Use; Stillwater Area School District Cigarette Use Permits, Youth Access to Tobacco, Minnesota Assist; Tobacco Sales to Youth and Nicotine Addiction in Adolescence, both by the Centers for Disease Control and Prevention.

- A. “Tobacco” or “Tobacco Products” : “tobacco” and “tobacco products” includes cigarette and 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 and component, part, or accessory of a tobacco product; cigars, pipe tobacco, snuff; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-rubbed, and other smoking tobacco; snuff flour; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; 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 State Food and Drug Administration for sale as a tobacco cessation product, as tobacco dependence product or for other medical purposes and is being marketed and solely for such approved purpose
- B. “Tobacco Related Devices” means any tobacco product, as well as any liquid containing nicotine, pipes, rolling papers, or other device reasonably designed to be used in a manner which enables the consumption by way of chewing, sniffing, smoking, or inhaling of tobacco or tobacco products.
- C. “Self-Service Merchandising” means open displays of tobacco, tobacco products, tobacco related devices, or electronic delivery devices in any way where any person shall have access to the product without the assistance or intervention of an employee of the premises maintaining the self-service merchandising. Self-service merchandising shall not include vending machines.
- D. “Vending Machine” means any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, tobacco related devices, or electronic delivery devices upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product, or tobacco related device.
- E. “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 not be limited to, single cigarette packs, 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 described in this subdivision shall not be considered individually packaged.

- F. “Loosies” means the common term used to refer to a single or individually packaged cigarette.
- G. “Minor” means any natural person who has not yet reached the age of 18 years.
- H. “Retail Establishment” means any place of business where tobacco, tobacco products, tobacco related devices, or electronic delivery devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, restaurants, and bars.
- I. “Moveable Place of Business” refers to any form of business operated out of a 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.
- J. “Sale” means any transfer of goods for money, trade, barter, or other consideration.
- K. “Compliance Checks” mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco related devices, and electronic delivery devices are following and complying with the requirements of this Ordinance. Compliance checks may involve the use of persons under the age of 21 as authorized by this Ordinance.
- L. “Electronic delivery device” means 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 device includes but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other product name or descriptor, and shall also include all liquids, aerosols, gels, salts, or other substances containing nicotine for use in such devices, including but not limited to e-liquid, e-juice, vape fluid, vape juice, and nicsalt. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device excludes drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration

No person shall sell or offer to sell any tobacco, tobacco product, tobacco related device, or electronic delivery device without first having obtained a license to do so from the City.

A. Application.

An application for a license to sell tobacco, tobacco products, tobacco related devices and electronic delivery devices 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. Upon receipt of a completed application, the City Clerk shall forward the application to the Council for action at its next regularly scheduled Council meeting. If the Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

B. Action.

The Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Council shall approve the license, the Clerk shall issue the license to the applicant. If the Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the Council's decision.

C. Term.

All licenses issued under this Ordinance shall be valid for one (1) calendar year from the date of issue.

D. Revocation or Suspension.

Any license issued under this Ordinance may be revoked or suspended as provided in the Violations and Penalties section of this Ordinance.

E. Transfers.

All licenses issued under this Ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the Council.

F. 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 Ordinance.

G. Display.
All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

H. Renewals.
The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty (30) days, but no more than sixty (60) days before the expiration of the current license. The issuance of a license issued under this Ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

1409.040 Fees.
No license shall be issued under this Ordinance until the appropriate license fee shall be paid in full. Fees shall be set from time to time by the City Council by resolution. A Class “A” Tobacco License shall be required for any retail establishment which sells tobacco, tobacco products, tobacco related devices, or electronic delivery devices in cartons or other packaging containing more than a single pack or other container as described in Section 200, Subd. 5. A Class “B” Tobacco License shall be required for any retail establishment selling only individually packaged tobacco or tobacco products wrapped individually for sale.

1409.050 Basis for Denial of License.
The following shall be grounds for denying the issuance or renewal of a license under this Ordinance, and 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.

- A. The applicant is under the age of 21 years.
- B. The applicant has been convicted within the past five (5) years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to tobacco, tobacco products, tobacco related devices, or electronic delivery devices.
- C. The applicant has had a license to sell tobacco, tobacco products, tobacco related devices, or electronic delivery devices revoked, in the City or at any other place, within the preceding twelve (12) months of the date of application.
- D. The applicant fails to provide any information required on the application, or provides false or misleading information.

- E. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

1409.060 Prohibited Sales.

It shall be a violation of this Ordinance for any person to sell or offer to sell any tobacco, tobacco product, or tobacco related device:

- A. To any person under the age of 21 years.
- B. By means of any type of vending machine.
- C. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of a licensed premises in order to receive the tobacco, tobacco product, or tobacco related device.
- D. By means of “loosies” as defined in Section 200, Subd. F of this Ordinance.
- E. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other type of deleterious, hallucinogenic, or toxic or controlled substance except nicotine and not naturally found in tobacco or tobacco products.
- F. By any other means or to any other person, prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

1409.070 Vending Machines.

It shall be unlawful for any person licensed under this Ordinance to allow the sale of tobacco, tobacco products, tobacco related devices, or electronic delivery devices by the means of a vending machine.

1409.080 Self-Service Sales.

It shall be unlawful for a license under this Ordinance to allow the sale of tobacco, tobacco products, tobacco related devices, or electronic delivery devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee’s employee. All tobacco, tobacco products, tobacco related devices, or electronic delivery devices shall be stored behind a counter or other area not freely accessible to customers.

1409.090 Responsibility.

All licensees under this Ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco related devices, or electronic delivery devices on the licensed premises, and the sale of such a item by an employee shall also be considered a sale by the license holder,

and each can be held responsible for any criminal and/or civil penalties imposed herein.

1409.100 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 persons under the age of 21 to enter the licensed premises to attempt to purchase tobacco, tobacco products, tobacco related devices, or electronic delivery devices.

A person under the age of 21 used for the purpose of compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco related devices, or electronic delivery devices when such items are obtained as a part of the compliance check. Retail establishments possessing a Class "A" License shall be subject to at least two (2) compliance checks per year.

1409.110 Other Illegal Acts.

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

A. Illegal Possession.

It shall be a violation of this Ordinance for any minor to have in his or her possession any tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to person under the age of 21 lawfully involved in a compliance check on behalf of the City.

B. Illegal Use.

It shall be a violation of this Ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco related device.

C. Illegal Procurement.

It shall be a violation of this Ordinance for any person under the age of 21 to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco related device, and it shall be a violation of this Ordinance for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco related device to any person under the age of 21, and 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 tobacco, tobacco product, or tobacco related device. This subdivision shall not apply to persons under the age of 21 lawfully involved in a compliance check on behalf of the City.

D. Use of False Identification.

It shall be a violation of this Ordinance for any person under the age of 21 years to attempt to disguise his or her 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. This subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the City.

1409.120 Violations and Penalties.

A. Criminal Penalty.

Any person 21 years of age or older who sells, gives, or otherwise furnishes tobacco, tobacco-related, or electronic delivery devices to a person under the age of 21 years is guilty of a petty misdemeanor for the first violation. Whoever violates this a subsequent time within five years of a previous conviction is guilty of a misdemeanor.

A person under the age of 21 years who purchases or attempts to purchase tobacco, tobacco-related devices, or electronic delivery devices shall be subject to an alternative civil penalty in accordance with subdivision C of this Ordinance.

B. Civil Penalties.

The provisions of the City of Oak Park Heights Civil Penalty Ordinance, Chapter 208, shall apply to any and all licenses issued hereunder. If a retail establishment has its tobacco license suspended pursuant to a hearing conducted under the City's Civil Penalty Ordinance, that retail establishment shall, during the period of suspension, remove all tobacco, tobacco products, tobacco related devices, or electronic delivery devices away from public view.

- a. The following designated civil penalties shall constitute advisory guidelines for City Council action in cases of violation by licensees of City issued tobacco licenses. It is understood the City Council may deviate from these advisory guidelines based upon compelling circumstances presented in individual cases.

SALE OF TOBACCO TO A PERSON UNDER THE AGE OF 21
(OR PERMIT A PERSON UNDER THE AGE OF 21 TO USE
TOBACCO PRODUCTS ON THE LICENSED PREMISES):

First Offense: Five Hundred Dollars (\$500) civil fine.

Second Offense: One Thousand Dollars (\$1,000) civil fine and one five-day license suspension (Monday through Friday).

Third Offense: One Thousand Five Hundred Dollars (\$1,500) civil fine and a ten-day license suspension [to include at least one weekend day (Friday or Saturday)].

Fourth or Subsequent Offense: At City Council Discretion.

- b. The above sanctions shall be issued and calculated as against all offenses occurring within a 24-month consecutive period counting back from the date of the most recent violation. Any violations having occurred beyond 24 consecutive months prior to the most recent violation shall not be counted in terms of imposing the sanctions noted above.
- c. Any license holder who has had their license or permits suspended or revoked pursuant to City action shall not be allowed to operate the activity which required the license until the license is reinstated. Any operation during a period of suspension or revocation shall be deemed to be an additional violation of the City's Tobacco License Ordinance and of state law subject to additional civil penalties, up to and including permanent license revocation.

C. Alternative Civil Penalty

Law enforcement and court system representatives shall consult, as applicable, with interested persons, including but not limited to parents, guardians, educators, and persons under the age of 21 years, to develop alternative civil penalties under the age of 21 years who purchases or attempts to purchase tobacco, tobacco-related devices or electronic delivery services and who uses false identification to misrepresent the person's age. Consulting participants shall consider a variety of alternative civil penalties including but not limited to tobacco-free education programs, community services, court diversion programs, and tobacco cessation programs, and for persons under the age of 18 years, notice to schools and to parents or guardians. Alternative civil penalties under this subdivision shall not include fines or monetary penalties.

1409.130 Exceptions and Defenses.

Nothing in this Ordinance shall prevent the providing of tobacco, tobacco products, tobacco related devices, or electronic delivery devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this Ordinance for a person to have reasonably relied on proof of age as described by State Law.

- 1409.140 Severability and Savings Clause.
If any section or portion of this Ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a Court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provisions of this Ordinance.
- 1409.150 Restriction on Age of Clerks.
It shall be illegal for a retail establishment to cause or permit a minor to sell tobacco, tobacco products, tobacco related devices, or electronic delivery devices. It shall also be illegal for any minor to sell tobacco, tobacco products, tobacco related devices, or electronic delivery devices.
- 1409.160 Signage.
Anyone holding a tobacco license under the provisions of this Ordinance shall post and display, in plain view of the general public, on the licensed premises a sign indicating that it is illegal to sell tobacco, tobacco products, tobacco related devices, or electronic delivery devices to anyone under the age of 21 years and that the possession and use of such items by minors is also illegal under both State law and local ordinance. Said signs shall be of a type approved by City staff and issued to a retail establishment at the time that a license is obtained. The cost of said sign shall be included within the licensing fee.
- 1409.170 Product Sampling.
Notwithstanding any exceptions for tobacco product shops as set forth in the Minnesota Indoor Clean Air Act, no licensee shall directly or indirectly permit smoking or use of their sale products in and upon the licensed premises. All licensees under this chapter shall be responsible for the actions of their employees and patrons in regard to any smoking or consumption in and upon the licensed premises.

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