

## **ORDINANCE NO. 1381**

### **AN ORDINANCE AMENDING THE FRIDLEY CITY CODE CHAPTER 12, TOBACCO PRODUCTS, REVISING DEFINITIONS, LICENSING PROCEDURES, PROHIBITED ACTS, ADMINISTRATIVE PROCEDURES AND VIOLATIONS**

The City Council of the City of Fridley does ordain, after review, examination and staff recommendation that Chapter 12, Tobacco Products, of the Fridley City Code be amended as follows:

#### SECTION 1.

That Chapter 12 of the Fridley City Code entitled "Tobacco Products" be hereby repealed in its entirety and replaced with the language in Section two of this Ordinance.

#### SECTION 2.

That Chapter 12 of the Fridley City Code entitled "Tobacco Products" be hereby replaced with the following language:

#### FRIDLEY CITY CODE CHAPTER 12. TOBACCO PRODUCTS (1084, 1381)

##### 12.01. DEFINITION OF TERMS

The following definitions shall apply in the interpretation and application of this chapter and the following words and terms, wherever they occur in this chapter, are defined as follows:

1. "Self Service Merchandising"

This is an open display of tobacco products where the public has access without the intervention of an employee.

2. "Tobacco Product"

Any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; little cigars; pipe tobacco; snuff; snuff flour; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, Cavendish; shorts; plug and twist tobacco; dipping tobacco; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking. "Tobacco product" includes any products 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. Tobacco excludes any 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.

3. “Tobacco-Related Devices”

“Tobacco-Related Devices” shall mean cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of aerosol or vapor of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately

4. “Electronic Delivery Devices”

"Electronic Delivery Devices" shall mean 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 are 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. Electronic delivery devices include any component part of a product, whether or not marketed or sold separately. Electronic delivery devices exclude 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.

5. “Tobacco Products Shop”

“Tobacco Products Shop” shall mean a retail establishment that cannot be entered at any time by persons younger than 21 years of age, has an entrance door opening directly to the outside, and that derives more than 90 percent of its gross revenue from the sale of tobacco, tobacco-related devices, and electronic delivery devices, and in which the sale of other products is merely incidental. Tobacco Products Shop does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

6. “Flavored Tobacco”

“Flavored Tobacco” shall mean any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or aroma, other than the taste or aroma of tobacco, that is distinguishable by any ordinary consumer either prior to or during consumption of a tobacco product, including, but not limited to, tastes or aromas of menthol, mint, wintergreen, chocolate, vanilla, honey, cocoa, or any candy, dessert, alcoholic beverage, fruit, herb or any spice. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate such statements or claims, that a tobacco product has or produces a taste or aroma other than tobacco may be the one of the methods used to determine that the product is a flavored tobacco product, and shall, to the extent permitted by law, create a rebuttable presumption that the product is a flavored tobacco product.

## 12.02. LICENSE REQUIRED

No person shall directly, by coin machine, or otherwise, keep for retail sale, sell at retail, or otherwise dispose of, any tobacco product, tobacco-related devices or electronic delivery device at any place in the City unless they have obtained a license therefor as provided herein.

### 12.03. APPLICATION FOR LICENSE: GRANTING OF LICENSE BY COUNCIL; ISSUANCE OF LICENSE BY CITY MANAGER OR THEIR DESIGNEE

Application for such license shall be made to the City Manager or their designee and shall state the full name and address of the applicant, the location of the building to be occupied by the applicant in the conduct of his business, the kind of business to be conducted, and such other information as the City Manager or their designee may require. The license shall be granted by the City Council and issued by the City Manager or their designee upon payment of the required fee.

New licenses and license renewals shall be issued or denied by the City Manager or their designee with an initial review period of up to 30 business days in which to issue or deny a license.

Administrative offenses are outlined in Section 12.08.

### 12.04. LICENSE FEE; TERM; DATE; RESTRICTION ON NUMBER OF LICENSES ISSUED

The annual license fee and expiration date shall be as provided in Chapter 11 of this Code. Licenses are not transferable.

The total number of Tobacco Product Shop licenses shall be limited to five.

### 12.05. DISPLAY OF LICENSE ON PREMISES

Every such license shall be openly displayed at all times in the place of business to which it has been issued.

### 12.06. TRAINING

Every retailer requesting a license under this chapter shall implement a training program for employees regarding laws relating to the sale of tobacco products. Every licensee shall certify on its annual tobacco license application that all employees have been trained to comply with state laws regarding the sale of tobacco products.

### 12.07. PROHIBITED ACTS

A. No person shall sell, give away, or otherwise furnish any tobacco product, tobacco-related devices or electronic delivery device to any person under the age of 21 years.

B. No person shall keep for sale, sell, or dispose of any tobacco product, tobacco-related devices or electronic delivery device containing opium, morphine, jimson weed, bella donna, strychnia, cocaine, marijuana, or any other deleterious or poisonous drug, except nicotine.

C. Self-service and vending machine sales are prohibited within the City except in licensed Tobacco Product Shops.

E. Every licensee shall be responsible for the conduct of its employees while on the licensed premises. Any sale or other disposition of tobacco products, tobacco-related devices or electronic delivery device by an employee, or any other violation of any applicable statute, law, rule, or

ordinance shall also be considered an act of the licensee for purposes of imposing an administrative penalty, license suspension, or revocation.

F. Smoking and sampling indoors are prohibited. No person shall smoke in a public place, at a public meeting, or in a place of employment. This subdivision also prohibits the sampling of tobacco, tobacco products, electronic delivery devices, nicotine or lobelia delivery products and products used in electronic delivery devices and nicotine or lobelia delivery products.

G. No person or retailer shall sell or offer for sale any flavored tobacco products beginning May 1, 2021. This restriction does not apply to Tobacco Product Shops.

## 12.08. ADMINISTRATIVE OFFENSES

A. Administrative Civil Penalties. Administrative offense procedures established pursuant to this chapter are intended to provide the public and the City with an informal, cost effective and expeditious alternative to traditional criminal charges for violations of this chapter. The procedures are intended to be voluntary on the part of those who have been charged with administrative offenses.

1. Individual. At any time prior to the payment of the administrative penalty as is provided for hereafter, the individual may withdraw from participation in the procedures in which event the City may bring criminal charges in accordance with law. Likewise, the City, at its discretion, may bring criminal charges in the first instance. In the event a party participates in the administrative offense procedures but does not pay the monetary penalty which may be imposed, the City will seek to collect the costs of the administrative offense procedures as part of a subsequent criminal sentence in the event the party is charged and is adjudicated guilty of the criminal violation.
2. Licensee. At any time prior to the payment of the administrative penalty as is provided for hereafter, the licensee may withdraw from participation in the procedures in which event the City may permanently revoke the licensee's tobacco license in accordance with law. Likewise, the City, in its discretion, may revoke the licensee's tobacco license in the first instance. In the event a licensee participates in the administrative offense procedures but does not pay the monetary penalty which may be imposed, the City will suspend the licensee's tobacco license in accordance with section 12.08 subdivision B of this chapter.

B. Notice. The City Manager or their designee shall, upon determining there has been a violation, notify the violator of the violation. Said notice shall set forth the nature, date and time of violation, the name of the officer issuing the notice and the amount of the scheduled penalty.

C. Payment. Once such notice is given, the alleged violator may, within 20 days of the time of issuance of the notice pay the penalty as set forth on the notice, or may request a hearing in writing, as provided for hereafter. The penalty may be paid in person or by mail, and payment shall be deemed to be an admission of the violation.

D. Hearing. Any person contesting an administrative offense pursuant to this chapter may request a hearing before the Hearing Examiner. Such request shall be filed in writing with the office of the City Manager or their designee within 20 calendar days of the offense. The City Manager or their designee shall notify the Hearing Examiner, who will notify the licensee of the date, time, and place

of hearing. The hearing shall be conducted no more than 20 calendar days after the Hearing Examiner receives notice of the request, unless a later date is mutually agreed to by the Hearing Examiner, the licensee, individual and the City. Within ten calendar days after such hearing, the Hearing Examiner shall affirm, repeal, or modify the charge against the licensee or individual.

E. Appeal. Any person aggrieved by the decision of the Hearing Examiner may appeal with the City Manager or their designee within 20 calendar days of receiving notice of the Hearing Examiner's decision. At its next available regular meeting following the filing of a notice of appeal, the Council shall review the decision and findings of fact of the Hearing Examiner and shall affirm, repeal or modify that decision.

F. Hearing Examiner. The position of Hearing Examiner is hereby created. The City Manager or their designee may, at their discretion contract with third parties for the furnishing of all services of the Hearing Examiner as contained in this chapter and set the rate of compensation therefor.

G. Qualifications. The Hearing Examiner shall be an individual trained in law; however, it shall not be required that the Hearing Examiner be currently licensed to practice law in the State of Minnesota.

H. Duties. The Hearing Examiner shall have the following duties:

1. Set dates and hear all contested cases;
2. Take testimony from all interested parties;
3. Examine all facts, evidence and testimony presented;
4. Make a complete record of all proceedings including findings of fact and conclusions of law;
5. Affirm, repeal or modify the penalty assessed.

I. Failure to Pay. In the event a party charged with an administrative penalty is an individual who fails to pay the penalty, the party may be charged with a criminal offense. In the event a party charged with an administrative penalty is a licensee who fails to pay the penalty, the Council may suspend or revoke the licensee's tobacco license.

J. Disposition of Penalties. All penalties collected pursuant to this Chapter shall be paid to the City's treasurer and will be deposited in the City's general fund.

## 12.09. VIOLATIONS

A. Administrative Civil Penalties: Individuals. Any person who sells any tobacco product, tobacco-related devices or an electronic delivery device to a person under the age of 21 years or who otherwise violates any applicable statute, law, rule, or ordinance related to the sale of the products licensed in this chapter shall be subject to an administrative penalty. The administrative penalties are as follows:

1. First violation. The penalty for the first violation is \$250.00.
2. Second violation within 12 months. The penalty for the second violation is \$500.00.
3. Third violation within 12 months. The penalty for the third violation is \$750.00.

B. Administrative Civil Penalties: Licensee. If a licensee or an employee of a licensee is found to have sold tobacco, tobacco-related products or electronic delivery devices to a person under the age of 21 years or who otherwise violates any applicable statute, law, rule, or ordinance related to the sale of the products licensed in this chapter, the licensee shall be subject to an administrative penalty as follows:

1. First violation. The penalty for the first violation is \$500.00. If the fine is not paid within 20 days the City may suspend the license to sell tobacco products for a period not to exceed ten days.
2. Second violation within 36 months. The penalty for the second violation is \$1000.00. If the fine is not paid within 20 days the City may suspend the license to sell tobacco products for a period not to exceed 30 days.
3. Third violation within 36 months. The City may permanently revoke the tobacco license.

C. Defense. It is a defense to the charge of selling tobacco to a person under the age of 21 years, that the licensee or individual, in making the sale, reasonably and in good faith relied upon representation of proof of age described in State Statute Section 340A.503 subdivision six, paragraph (a).

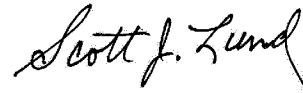
D. Compliance Checks; Exemption. The City shall conduct compliance checks as required by law, and may conduct compliance checks at any time it is deemed necessary as determined by the Public Safety Director or City Manager. A person, at least 17 years of age, but under the age of 21, may be enlisted to assist in the tests of compliance, provided that written consent from the person's parent or guardian has been obtained if the person is a minor and that the person shall at all times act only under the direct supervision of a law enforcement officer or an employee of the licensing department, or in conjunction with a compliance check effort that has been pre-approved by the Fridley Department of Public Safety.

A person who purchases or attempts to purchase tobacco product, tobacco-related devices or an electronic delivery device while in this capacity is exempt from the penalties imposed by subdivision (A) above.

E. Revocation. The City Council has the authority to revoke any license as noted in Fridley City Code Chapter 11.

EFFECTIVE DATE. The provisions in this Ordinance shall become effective pursuant to Section 3.08 of the Fridley City Charter, except that Section 12.07 subdivision G of this Ordinance shall become effective on May 1, 2021.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FRIDLEY THIS 14<sup>TH</sup>  
DAY OF SEPTEMBER, 2020.**



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Scott J. Lund, Mayor

ATTEST:



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Daniel Tienter, City Clerk

First Reading: July 27, 2020

Second Reading: September 14, 2020

Publication: September 18, 2020