

**CITY OF CHAMPLIN
COUNTY OF HENNEPIN
STATE OF MINNESOTA**

ORDINANCE AMENDING CHAPTER 30, ARTICLE XI REGARDING TOBACCO

ARTICLE XI. TOBACCO

DIVISION 1. GENERALLY

Sec. 30-486. ~~Recognition; purpose~~Purpose and Intent.

(a) The city recognizes that:

~~(1) Many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of both state and federal laws;~~

~~(2) Studies have shown that most smokers begin smoking before they have reached the age of 18 years;~~

~~(3) Persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and~~

~~(4) Smoking has been shown to be the cause of several serious health problems, which subsequently place a financial burden on all levels of government.~~

~~(b) This article shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, and tobacco related 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, and tobacco-related devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke.~~

(1) Tobacco use 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 is intended to regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, and to protect youth and young adults against the serious effects associated with use and initiation. Youth and young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users.

(2) This Ordinance is intended to regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to

protect the public, especially youth and young adults, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke and to protect employees and the general public from the hazards of secondhand smoke and involuntary exposure to aerosol or vapor from electronic delivery services as stated in Minn. Stat. §144.391 and .412, as they may be amended from time to time.

(Code 1977, § 11-101)

Sec. 30-487. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cigar means any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouth piece that is not a cigarette as defined in Minnesota Statutes, Section 297F.01, subd. 3, as amended from time to time.

City means the City of Champlin, its officers, agents and employees.

Compliance checks means the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, ~~and~~ tobacco-related devices, and electronic delivery devices are following and complying with the requirements of this article. Compliance checks shall involve the use of ~~minors~~ persons under the age of 21 who purchase or attempt to purchase tobacco, tobacco products, tobacco-related devices or electronic delivery devices as authorized by this article. The term "compliance checks" shall also mean the use of ~~minors~~ persons under the age of 21 who attempt to purchase tobacco, tobacco products, or tobacco-related devices 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 products, ~~and~~ tobacco-related devices, and electronic delivery devices.

Electronic delivery device means any product containing or delivering nicotine or lobelia intended for human consumption that can be used to deliver nicotine, lobelia or any other substance through inhalation of vapor or any other product or byproduct by any means, or any component part of such a product that is not a Tobacco product as defined in this section. Electronic delivery devices include, but are not limited to, e-cigarettes, e-cigars, personal vaporizers, vape pens, mods, tank systems, or any other product where it delivers a substance into the human body through the inhalation of vapor or any other product or byproduct. Electronic delivery devices do

not include any product that has been approved or otherwise certified for legal sale by the U.S. Food and Drug Administration as a tobacco-cessation product or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Hookah means a pipe with a long, flexible tube by which the smoke is drawn through a jar of water and thus cooled for the use of tobacco or tobacco related products.

Individually packaged means the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually packaged 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 as described in this definition shall not be considered individually packaged.

Licensed products means the term that collectively refers to tobacco, tobacco products, tobacco-related device, or electronic delivery device.

Loosies means the common term used to refer to a single or individually packaged cigarette.

~~*Minor* means any natural person who has not yet reached the age of 18 years.~~

Moveable place of business means 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.

Retail establishment means any place of business where ~~tobacco, tobacco products, or tobacco-related devices~~ licensed products are available for sale to the general public. The sale of such shall be merely incidental to the establishments primary business purpose. The section displaying shall be located within the immediate vicinity of the establishment's primary point to sale. There can be no entrance door from the outside opening directly to the section of the store displaying tobacco, tobacco products, or tobacco-related devices. The term "retail establishments" shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

Sale means any transfer of goods for money, trade, barter, or other consideration.

Sampling means the lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic delivery devices in a retail establishment or tobacco store by a customer or potential customer for the purpose of sampling the product or device before purchase.

Self-service merchandising means any open displays of tobacco, tobacco products, ~~or tobacco-related devices,~~ or electronic delivery devices in any manner where any person shall have access to the tobacco, tobacco products, ~~or tobacco-related~~

devices, or electronic delivery devices without the assistance or intervention of an employee of the premises maintaining the self-service merchandising. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco products ~~or~~, tobacco-related devices or electronic delivery devices between the customer and the licensee or employee. The term "self-service merchandising" shall not include vending machines.

Tobacco or tobacco products means ~~as provided in Minn. Stats. § 609.685, subd. 1~~ cigarettes 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 any component, part, or accessory of a tobacco product including but not limited to 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 any tobacco product as well as a pipe, rolling papers, or other device used in a manner that enables the chewing, sniffing, or smoking of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

Tobacco store means a retail establishment with an entrance door opening directly to the outside that derives more than 90 percent of its gross revenue from the sale of licensed products and which the sale of other products is merely incidental.

Vending machine means any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, or tobacco-related 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.

Vapor lounge means a vapor products shop which allows customers to be seated.

(Code 1977, § 11-102)

Sec. 30-488. Exceptions.

Nothing in this article shall prevent the providing of tobacco, tobacco products, or tobacco-related devices licensed products to a ~~minor~~ person under the age of 21 as part of a lawfully recognized religious, spiritual, or cultural ceremony.

(Code 1977, § 11-113; Ord. No. 656, 4-14-2008)

Sec. 30-489. Notification of changes.

Licensed retailers shall be notified 30 days in advance of any significant changes to this article.

(Code 1977, § 11-114)

Sec. 30-490. Violations.

(a) Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his right to be heard on the accusation. ~~The citation shall further state the penalty imposed if the alleged violator does not request a hearing.~~

(b) Hearings. ~~If a person accused of violating this article so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.~~ Upon issuance of a citation, a licensee accused of violating this Chapter may request in writing a hearing on the matter. Hearing requests must be made within ten business days of the issuance of the citation and delivered to the City Clerk or other designated City employee. Failure to properly request a hearing within ten business days of the citation will terminate the right to a hearing. The City Clerk or other designated City employee 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 ten days prior to the hearing.

(c) Hearing officer. A hearing officer, appointed on behalf of the ~~The~~ city council shall serve as the presiding hearing officer to hear appeals by an alleged violator.

(d) Decision. If the hearing officer determines that a violation of this article did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under this article, shall be recorded in writing, a copy of which shall be provided to the violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused.

(e) Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court of the jurisdiction of the city.

(f) Misdemeanor prosecution. Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this article.

(g) Continued violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(h) Penalties.

(1) Licensees. Any licensee found to have violated this article, or whose employee is found to have violated this article, shall be civilly fined and may have ~~his~~their license suspended or revoked. No fine, suspension, or revocation shall be imposed until the licensee has been afforded a due process hearing before the ~~city council~~ hearing officer. The penalties shall be as follows:

a. For the first violation, within any 12-month period, the city ~~council~~ shall impose a civil fine which shall not exceed ~~\$500.00~~\$300.00;

b. For the second violation within ~~any 12-month period~~ 36 months after the initial violation, the city ~~council~~ shall impose a civil fine which shall not exceed ~~\$1,000.00~~ \$600.00; and

c. For the third ~~and each subsequent~~ violation within ~~any 12-month period~~ 36 months after the initial violation, the city ~~council~~ shall impose a civil fine which shall not exceed ~~\$2,000.00~~ \$1,000.00 and the city ~~council~~ may, in addition to each fine, ~~suspend the license for a period not to exceed seven days~~ licensee's authority to sell licensed products at that location will be suspended for not less than seven days and the license may be revoked.

d. For the fourth violation within 36 months after the initial violation, the license shall be revoked.

(2) Proof of age defense.

a. Proof of age for purchasing tobacco products or tobacco-related products may be established only by one of the following:

1. A valid driver's license or identification card issued by the State of Minnesota, another state or a province of Canada, and including the photograph and date of birth of the purchaser;

2. A valid military identification card issued by the United States Department of Defense;

3. A valid passport issued by the United States; or

4. In the case of a foreign national by a valid passport.

b. In a prosecution under this article, it is a defense for the licensee or licensee's employee to prove by a preponderance of the evidence that ~~he~~ they reasonably and in good faith relied upon representations of proof of age authorized in paragraph (a) in selling ~~tobacco, tobacco products or tobacco-related devices~~ licensed products to a minor person under the age of 21.

(3) Exemption. A minor person under the age of 18 enlisted to assist with the tests of compliance may do so only with the prior written consent of the ~~minor's~~ parent or guardian ~~and the~~. The person ~~minor~~ shall at all times act only under the direct supervision of a law enforcement officer or an employee of the licensing department. A ~~minor~~ person under the age of 21 who purchases or attempts to purchase ~~tobacco, tobacco products or tobacco-related devices~~ licensed products while engaged to assist with tests of compliance shall be exempt from the penalties imposed by this article.

(4) Revocation. Nothing herein shall affect the right and authority of the City of Champlin to revoke a license for any proper cause not referred to in this section.

(Code 1977, § 11-112; Ord. No. 656, 4-14-2008)

Sec. 30-491. Responsibility.

(a) All licensees under this article shall be responsible for the actions of their employees in regard to the sale of ~~tobacco, tobacco products, or tobacco-related devices~~ licensed products on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder.

(b) Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to whatever penalties are appropriate under this article, state or federal law, or other applicable law or regulation.

(Code 1977, § 11-109)

Sec. 30-492. Compliance checks and inspections.

(a) All licensed premises shall be open to inspection by the city during regular business hours.

(b) 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 ~~persons~~ between the ages of ~~15-17~~ 17 years and ~~17~~ 20 years, to enter the licensed premises to attempt to purchase ~~tobacco, tobacco products, or tobacco-related devices~~ licensed products.

(c) ~~Minors~~ Persons under the age of 21 lawfully engaged for the purpose of compliance checks:

(1) Shall not use false identification that misrepresents the ~~minor's~~ persons age; and

(2) Shall answer all questions about ~~his or her~~ their age asked by the licensee or the licensees' employees and shall produce any identification for which ~~he or she~~ they may be asked.

(d) Nothing in this section 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.

(Code 1977, § 11-110; Ord. No. 656, 4-14-2008)

State law reference(s)—Compliance checks, Minn. Stats. § 461.128, subd. 5.

Sec. 30-493. Prohibited sales.

It shall be a violation of this article for any person to sell or offer to sell any ~~tobacco, tobacco product, or tobacco-related device~~ licensed products:

(1) To any person under the age of ~~18~~ 21 years;

(2) By means of any type of vending machine, except as may otherwise be provided in this article;

(3) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the ~~tobacco, tobacco product, or tobacco-related device~~ licensed products, and whereby there is not a physical exchange of the ~~tobacco, tobacco product, or tobacco-related device~~ licensed products between the licensee or the licensee's employee, and the customer;

(4) By means of loosies as defined in section 30-487; or

(5) By any other means, or to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

(Code 1977, § 11-106)

State law reference(s)—Sale of tobacco to minors, Minn. Stats. § 609.685.

Sec. 30-494. Vending machines.

It shall be unlawful for any person licensed under this article to allow the sale of ~~tobacco, tobacco products, or tobacco-related devices~~ licensed products by the means of a vending machine unless minors are at all times prohibited from entering the licensed premises.

(Code 1977, § 11-107)

Sec. 30-495. Self-service sales.

(a) It shall be unlawful for a licensee under this article to allow the sale of ~~tobacco, tobacco products, or tobacco-related devices~~ licensed products 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 and whereby there is not a physical exchange for the ~~tobacco, tobacco product, or tobacco-related device~~ licensed products between the licensee or the licensee's employee and the customer.

(b) All ~~tobacco, tobacco products, and tobacco-related devices~~ licensed products shall 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.

(c) Any ~~retail establishment selling tobacco, tobacco products, or tobacco-related devices~~ licensed products at the time the ordinance from which this section is derived was adopted shall comply with this section within 30 days following the effective date of the ordinance from which this section is derived.

(d) This section shall not apply to ~~retail stores that derive at least 90 percent of their revenue from tobacco and tobacco-related products and which cannot be entered at any time by persons younger than 18 years of age~~ tobacco stores.

(Code 1977, § 11-108)

Sec. 30-496. Other illegal acts.

Unless otherwise provided, the following acts shall be a violation of this article:

(1) Illegal sales. It shall be a violation of this article for any person to sell or otherwise provide any ~~tobacco, tobacco product, or tobacco-related device~~ licensed products to any ~~minor~~ person under the age of 21.

(2) Illegal possession. It shall be a violation of this article for any ~~minor~~ person under the age of 21 to have in ~~his~~ their possession any ~~tobacco, tobacco product, or tobacco related device~~ licensed product. This subsection shall not apply to ~~minors~~ persons under the age of 21 lawfully involved in a compliance check on behalf of the city.

(3) Illegal use. It shall be a violation of this article for any ~~minor~~person under the age of 21 to smoke, chew, sniff, or otherwise use any ~~tobacco, tobacco product, or tobacco-related device~~ licensed product.

(4) Illegal procurement. It shall be a violation of this article for any ~~minor~~person under the age of 21 to purchase or attempt to purchase or otherwise obtain any ~~tobacco, tobacco product, or tobacco-related device~~ licensed product, and it shall be a violation of this article for any person to purchase or otherwise obtain such items on behalf of a ~~minor~~person under the age of 21. It shall also be a violation of this article for any person to sell or otherwise provide any ~~tobacco, tobacco product, or tobacco-related device~~ licensed product to any ~~minor~~person under the age of 21, and it shall further be a violation for any person to coerce or attempt to coerce a ~~minor~~person under the age of 21 to illegally purchase or otherwise obtain or use any ~~tobacco, tobacco product, or tobacco-related device~~ licensed product. This subsection shall not apply to ~~minors~~persons under the age of 21 lawfully involved in a compliance check on behalf of the city.

(5) Use of false identification. It shall be a violation of this article for any ~~minor~~person under the age of 21 to attempt to disguise ~~his~~their 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.

(6) ~~Tobacco and tobacco-related devices~~ Licensed products on school grounds. It shall be a violation of this article for any person to have in his possession any ~~tobacco, tobacco product, or tobacco-related devices~~ licensed product while on the grounds of any school. However, it is not a violation of this section for a person more than ~~18~~ 21 years of age to have contained in his vehicle ~~tobacco, tobacco product, or tobacco-related devices~~ licensed products not otherwise prohibited while lawfully on the school grounds.

(7) Smoking and sampling prohibitions. Except for the exceptions listed in Minnesota Statutes, section 144.4167, smoking generally shall be prohibited and no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants. Other than provided for in Minnesota Statutes, section 144.4167, subd. 4, tobacco sampling, sampling of electronic delivery devices, and products used in electronic delivery devices, is specifically prohibited in the city.

(8) Smoking lounges. Smoking lounges, hookah lounges and vapor lounges are prohibited.

(Code 1977, § 11-111)

State law reference(s)—Sale of tobacco to minors, Minn. Stats. § 609.685.

Secs. 30-497—30-515. Reserved.

DIVISION 2. LICENSE

Sec. 30-516. Required; application; revocation or suspension.

No person or retail establishment, or tobacco store shall sell or offer to sell any tobacco, tobacco products, or tobacco related device licensed products without first having obtained a license to do so from the city.

(1) Application. An application for a license to sell tobacco, tobacco products, or tobacco related devices licensed products 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 retail establishment 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 city council for action at its next regularly scheduled council meeting. If the clerk shall determine that an application is incomplete, he shall return the application to the applicant with notice of the information necessary to make the application complete.~~

(a) Individuals. For applicants who are individuals the application shall include the following information:

1. The applicants name, current address and telephone numbers and the name of the retail establishment for which the license is sought.
2. Whether the applicant has had an interest in, as an individual or as part of a corporation, partnership, association, enterprise, business or firm, a tobacco license that was cited for tobacco violations or had a license revoked or suspended within the last ten years of the date the license application is submitted to the City.
3. Such other information as the City shall require.

(b) Partnerships. For applicants that are partnerships: the names and addresses of all general and limited partners and all information concerning each general partner as is required in paragraph (a) of this section of this Code. The managing partners shall be designated and the interest of each general and limited partner in the business shall be disclosed. A true copy of the partnership agreement shall be submitted with the application. The license shall be issued in the name of the partnership.

(c) Corporations and other organizations. For applicants that are corporations or other types of organizations:

1. The name of the organization, and if incorporated, the state of incorporation.

2. A true copy of the certificate of incorporation.

3. The name of the general manager and other person in charge of the premises licensed, and all the information about said persons as is required in paragraph (a) of this section of this Code.

4. A list of all persons who own or control an interest in the corporation or organization or who are officers of said corporation or organization and all the information regarding such persons as is required in paragraph (a) of this section of this Code.

(2) Approval; denial; issuance; appeal. The city 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 city council shall approve the license, the clerk shall issue the license to the applicant. If the city 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 city council's decision.

(3) Sunset on tobacco shops. The city will not issue any new licenses to tobacco shops for the sale of licensed products. Licenses may be renewed subject to the provisions of this chapter, provided that:

(a) A license held by an individual person is only eligible for renewal by the same person who currently holds the license, or by that person's spouse or child, as that term is defined in the Uniform Probate Code, M.S. Chapter 524; and

(b) A license held by an LLC, Partnership, or Corporation, is only eligible for renewal if at least 50 percent of the owners, shareholders, or partners in place on January 1, 2023, still remain as owners, shareholders, or partners, as applicable.

~~(34)~~ Term. All licenses issued under this article shall expire on December 31 after its issuance.

~~(45)~~ Revocation or suspension. Any license issued under this article may be revoked or suspended as provided in section 30-490.

~~(56)~~ Transfers. All licenses issued under this article shall be valid only on the premises of the establishment for which the license was issued and only for the person or retail establishment to whom the license was issued.

(67) 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.

(78) Display. Every license shall be conspicuously posted at the place for which the license is issued and shall be exhibited to any person upon request.

(89) 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 30 days, but no more than 60 days, before the expiration of the current license. The issuance of a license issued under this article 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.

(Code 1977, § 11-103)

Sec. 30-517. Fees.

No license shall be issued under this article until the appropriate license fee shall be paid in full. The fee for a license under this article shall be as set forth in chapter 22.

(Code 1977, § 11-104)

Sec. 30-518. Basis for denial of license.

(a) 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.

(b) The following shall be grounds for denying the issuance or renewal of a license under this article; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license:

(1) The applicant is under the age of ~~18~~21 years;

(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 or tobacco products, or tobacco-related devices~~ licensed products;

(3) The applicant has had a license to sell ~~tobacco, tobacco products, or tobacco-related devices~~ licensed products revoked 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; or

(6) The applicant is applying for a renewal of a license under this section and there have been three or more illegal tobacco sales to ~~minors~~persons under the age of 21 documented at the licensed place of business in the past ~~42~~36 months.