

ORDINANCE NO. 1009

AN ORDINANCE AMENDING NORTHFIELD CITY CODE, CHAPTER 30 – HEALTH AND SANITATION, ARTICLE II. – TOBACCO

THE CITY COUNCIL OF THE CITY OF NORTHFIELD DOES ORDAIN THAT (new material is underlined; deleted material is lined out; sections which are not proposed to be amended are omitted; sections which are only proposed to be re-numbered are only set forth below as to their number and title):

SECTION 1. Northfield Code, Chapter 30 – Health and Sanitation, Article II. – Tobacco, Division 1. Generally, is hereby amended to read as follows:

Sec. 30-26. - 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:

Child-resistant packaging means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20.

Compliance checks means the system the city uses to investigate and ensure that those authorized to sell licensed products ~~tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery products or devices~~ are following and complying with the requirements of this article. Compliance checks shall involve the use of persons under the age of 21 ~~minors as authorized by this article. Compliance checks shall also mean the use of minors who purchase or attempt to purchase licensed products, tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices~~ Compliance checks may also be conducted by the city or other units of government for educational, research and training purposes ~~as authorized by state and federal laws. Compliance checks may also be conducted by other units of government or~~ for the purpose of investigating or enforcing appropriate federal, state, or local laws and regulations relating to tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery products or devices licensed products.

Electronic delivery device means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of aerosol or vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified 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 marketed and sold for such an approved purpose.

Indoor area means 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.

Individually packaged means the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products include but are not 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 collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

Loosies means the common term used to refer to a single or individually packaged cigarette or any other ~~tobacco product licensed product~~ that has been removed from its intended retail packaging and offered for sale sold individually. The term "loosies" does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.

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

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.

Nicotine or lobelia delivery products or devices means any product containing or delivering nicotine, lobelia or any other substance intended for human consumption, or any part of such a product or device, including electronic delivery devices and related products as defined herein, that is not tobacco as defined in this section. Nicotine or lobelia delivery products or devices do not include any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation treatment, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Retail establishment means any place of business where ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices licensed products~~ are available for sale to the general public. Retail establishments include but are not limited to grocery stores, convenience stores, tobacco products shops, gasoline service stations, bars and restaurants, and drug stores.

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

Self-service display or merchandising means open displays of ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices licensed products~~ in any manner where any person shall have access to the ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices licensed products~~, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices licensed products~~ between the customer and the licensee or employee. Self-service display or merchandising does not include vending machines.

Smoking means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

Tobacco or tobacco products mean any substance or item containing tobacco leaf, including but not limited to cigarettes; 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 flowers; cavendish; shorts; plug and twist tobaccos; dipping tobaccos; 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 and tobacco products also include 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 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 products shop means a retail establishment with an entrance door opening directly to the outside that derives more than 70 percent of its gross revenue from the sale of ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices licensed products~~. This includes but is not limited to the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories 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.

Tobacco-related devices means any tobacco products as well as pipes, rolling papers, and other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, ingesting, absorbing, or smoking of tobacco or tobacco products.

Vending machine means any mechanical, electric or electronic, or other type of device which dispenses ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices~~ licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices~~ licensed products.

Sec. 30-27. - Violations.

- (a) *Notice.* ~~Any person or licensee violating this article may be issued~~ Upon discovery of a suspected violation of this article, the alleged violator shall be issued, either personally or by mail, a notice of violation/citation that sets forth the alleged violation, the penalties imposed and timing for payment or serving a suspension, and ~~which shall that~~ informs the alleged violator of his/her right to ~~be heard a hearing~~ on the accusation matter. The notice of violation/citation shall provide notice that a hearing must be requested by the alleged violator within ten (10) business days of the date of issuance of the notice of violation/citation and that such hearing rights shall be waived by the alleged violator and terminated if a hearing is not requested in writing by the alleged violator within the ten (10) business day period. The notice of violation/citation shall provide information on how and where a hearing may be requested, including a contact address and phone number for the city clerk.
- (b) *Hearing.* If a person accused of violating this article so requests in writing filed with the city clerk, a hearing shall be scheduled, the time and place of which shall be published and provided by the city clerk to the accused violator. Hearing requests must be made within ten (10) business days of the issuance of the notice of violation/citation and delivered to the city clerk or other designated city officer. Failure to properly request a hearing within ten (10) business days of the issuance of the notice of violation/citation will terminate the person's right to a hearing and constitute waiver of said right to a hearing. 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 ten (10) calendar days prior to the hearing.
- (c) *Hearing officer.* The city council shall serve as the hearing officer or 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, if other than the city council.
- (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 ~~section 30-28~~ this article, shall be recorded in writing, a copy of which shall be provided to the accused violator by in person or mail delivery as soon as practicable following the hearing date or the date of any continuance, recess or postponement thereof. 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 violator by in person or mail delivery as soon as practicable. The decision of the hearing officer is final and appealable.
- (e) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the county in which the alleged violation occurred. Appeals of any decision made by the hearing officer must be filed in Rice County district court within 10 business days of the date of the hearing officer's decision.
- (f) *Misdemeanor prosecution.* In addition to the process contained in this section for civil license violations, a violation of this article shall be a criminal misdemeanor offense and may be prosecuted accordingly. In addition to any civil penalties imposed under this article, nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this article. If the city elects to seek misdemeanor prosecution, no administrative penalty shall be imposed, except that the city council may suspend, revoke, or not renew a license in appropriate circumstances.

- (g) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute separate offenses.
- (h) *Hearing costs and expenses.* If the notice of violation/citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000 shall be paid by the person requesting the hearing and shall be in addition to any penalties imposed. In such event, hearing expenses shall be included as part of the hearing officer's findings and paid at the same time the penalty is paid.
- (i) *Timely payment.* In the event that any imposed penalty or hearing costs and expenses are not timely paid in accordance with the notice of violation/citation or the hearing officer's decision, as applicable, such failure shall serve as grounds for immediate license suspension or revocation as provided in this article.

Sec. 30-28. - Penalties.

- (a) *Licensees.* In addition to any other penalties that may be imposed under this article, Any licensee found to have violated this article, or whose employee shall have violated this article, shall be charged an administrative fine, and suspension, as applicable, in the city clerk's notice of violation/citation in accordance with the following schedule:

- (1) ~~First offense: of \$200.00~~ \$250.00 for a first violation of this article,.
- (2) ~~\$400.00 for a s~~ Second offense at the same licensed premises within a 24-month period; \$500.00 and a tobacco license suspension of at least three (3) consecutive days.
- (3) ~~\$800.00 for a t~~ Third offense at the same location within a 24-36-month period; \$2,000.00 and a tobacco license suspension of at least eighteen (18) consecutive days.
- (4) ~~and \$1,600.00 for a f~~ Fourth offense at the same location within a 24-60-month period; \$2,500.00 and a tobacco license revocation for a minimum of one year following a hearing pursuant to sections 30-27 and 30-73.

~~In addition, after the third offense, the license shall be suspended for not less than seven days; and after the fourth offense, the license shall be suspended for not less than 30 days. For the purposes of this section, "within a 24-month period" means a period, two years in duration, which begins to toll on the date of the occurrence of the first violation, and ends two years from the date of the first violation. If no further violations occur within two years following the first violation, any violations occurring after the expiration of the two-year period will not be cumulative with regards to the first violation.~~

Notwithstanding the foregoing and the penalties contained in the city clerk's notice of violation/citation, the hearing officer, following notice and a hearing as provided in section 30-27, may deviate from the administrative penalties provided above herein, by increasing or decreasing such imposed penalties, based upon the hearing officer's findings following consideration of the facts, circumstances, history and evidence presented and such other factors and evidence as the hearing officer deems relevant. A history of repeated violations extending beyond notwithstanding the time periods stated herein may be considered by the hearing officer to impose a longer suspension period or license revocation or non-renewal of a license as provided in this article.

- (b) ~~Other individuals.~~ Individuals other than licensees, and other than minors regulated by subsection (c) of this section, found to be in violation of this article shall be charged an administrative fine of \$50.00. The licensee will be responsible for ensuring that an employee pays the fine or takes necessary steps to appeal the penalty. Training. In addition to any other penalties that may be imposed under this article, any licensee found to have violated the training requirements contained in Sec. 30-62 of this article shall be charged an administrative fine in accordance with the following schedule:

- (1) First offense: \$100.00.

(2) Second offense at the same licensed premises within a 24-month period: \$250.00 and a tobacco license suspension of at least three (3) consecutive days.

(3) Third offense at the same location within a 36-month period: \$500.00 and a tobacco license suspension of at least eighteen (18) consecutive days.

(4) Fourth offense at the same location within a 60-month period: \$1,000.00 and a tobacco license suspension of at least thirty (30) consecutive days.

- (c) ~~Minors. Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase tobacco, tobacco products, or tobacco-related devices shall be charged an administrative fine of \$50.00 and shall be subject to any policy separately adopted by the city council with regard to administrative penalties for minors.~~ 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.
- (d) *Misdemeanor.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any violation of this article. Prosecution may precede, run consecutively with, or follow any administrative license action.

Sec. 30-29. - Purpose.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use licensed products, including but not limited to tobacco products, tobacco-related devices, and nicotine or lobelia delivery products or devices, and such sales, possession, and use are violations of both state and federal laws; because studies have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 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 article shall be intended to regulate the sale, possession, and use of ~~the licensed products tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery products or devices~~ for the purpose of enforcing and furthering existing laws; to protect minors against the serious effects associated with the illegal use of ~~the licensed productstobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery products or devices~~; and to further the official public policy of the state in regard to preventing 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), the Center for Disease Control in their study "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997," and of the following medical professionals in these medical journals: Khuder SA, et al., "Age at Smoking Onset and its Effect on Smoking Cessation," Addictive Behavior 24(5):673-7, September-October 1999; D'Avanzo B, et al., "Age at Starting Smoking and Number of Cigarettes Smoked," Annals of Epidemiology 4(6):455-59, November 1994; Chen, J & Millar, WJ, "Age of Smoking Initiation: Implications for Quitting," Health Reports 9(4):39-46, Spring 1998; Everett SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," Preventive Medicine, 29(5):327-33, November 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. (2018). Data Highlights from the 2017 Minnesota Youth Tobacco Survey. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). The Verdict Is In: Findings from United States v. Phillip 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.

Sec. 30-30. - Exceptions and defenses.

Nothing in this article shall prevent the providing of ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices~~ licensed products to a ~~minor~~ person under the age of 21 as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this article for a person to have reasonably relied on proof of age as described by state law in Minn. Stat. § 340A.503, subd. 6.

Sec. 30-31. - Prohibited ~~sales~~acts.

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

- (1) To any person under the age of ~~18~~21 years.
 - (i) Age verification. Licensees must verify by means proof of age as described by state law in Minn. Stat. § 340A.503, subd. 6 that the purchaser is at least 21 years of age.
 - (ii) Signage. Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (2) By means of any type of vending machine.
- (3) By means of self-service methods whereby the customer does not need to make an oral or written request to an employee of the licensed premises in order to receive the ~~tobacco, tobacco product, tobacco-related device or nicotine or lobelia delivery product or device~~ licensed products and whereby there is not a physical exchange of the ~~tobacco, tobacco product, tobacco-related device or nicotine or lobelia delivery product device~~ licensed products between the licensee or the licensee's employee and the customer, except as provided in subsection 30-33(b).
- (4) By means of loosies as defined in section 30-26.
- (5) 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 ~~tobacco~~-products subject to this ordinance.
- (6) By any other means, to any other person, or in any other manner or form prohibited by federal, state, or other local law, ordinance, or other regulation.

Sec. 30-32.- ~~Minors~~Other Prohibited 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 licensed products tobacco, tobacco product, tobacco-related device or nicotine or lobelia product delivery device to any minor to any person under the age of 21.
- (2) ~~Illegal possession~~-. It shall be a violation of this article for any person under the age of 18 ~~minor~~ to have in his/her possession any ~~tobacco, tobacco product, tobacco-related device or nicotine or lobelia delivery product or device~~ licensed products. This subsection shall not apply to minors lawfully involved in a compliance check.

- (3) *Illegal use.* It shall be a violation of this article for any person under the age of 18~~minor~~ to smoke, chew, sniff, or otherwise use any licensed product~~tobacco, tobacco product, tobacco-related device or nicotine or lobelia delivery product or device.~~
- (4) *Illegal procurement.* It shall be a violation of this article for any person under the age of 21~~minor~~ to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device or nicotine or lobelia delivery product or device~~licensed products~~, and it shall be a violation of this article for any person to purchase or otherwise obtain such item on behalf of a person under the age of 21~~minor~~. It shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21~~minor~~ to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco-related device or nicotine or lobelia delivery product or device~~licensed products~~. This subsection shall not apply to minors~~persons~~ lawfully involved in a compliance check.
- (5) *Use of false identification.* It shall be a violation of this article for any person under the age of 21~~minor~~ to attempt to disguise his/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.
- (6) *Liquid packaging - child resistant.* ~~Effective January 1, 2015, i~~It shall be a violation of this section for any licensee to sell any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in a nicotine or lobelia delivery device, or electronic delivery device that is not in child resistant packaging as required by applicable federal or state law. 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.

Sec. 30-33. - Self-service sales.

- (a) *Prohibited sales.* It shall be unlawful for a licensee under this article to allow the sale of tobacco, tobacco products, tobacco-related devices or nicotine or lobelia delivery products or 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 of the tobacco, tobacco product, tobacco-related device or the nicotine or lobelia delivery product or device~~licensed products~~ between the licensee or his/her clerk and the customer. All tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery products or devices~~licensed products~~ shall either be stored behind a counter or other area not freely accessible to customers or in a case or other storage unit not left open and accessible to the general public.
- (b) *Exception.* This section shall not apply to tobacco products shops where the retailer ensures that no person younger than 18~~21~~ years of age is present, or permitted to enter, at any time. This prohibition shall be clearly posted with a professional grade sign at the store entrance. The city may require a certified audit or other method or such other documentations as acceptable to the city to determine and verify the that at least 70 percent percentage of the revenue of the tobacco shop are derived from the sale tobacco, tobacco-related products or devices, or nicotine or lobelia delivery products or devices~~licensed products~~ for purposes of eligibility or continued eligibility of this exception.

~~Sec. 30-34. - Vending machines.~~

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

Secs. 30-354—30-60. - Reserved.

SECTION 2. Northfield Code, Chapter 30 – Health and Sanitation, Article II. – Tobacco, Division 2. Dealer’s License, is hereby amended to read as follows:

Sec. 30-61. - License Required.

No person shall sell or offer to sell any ~~tobacco, tobacco products, tobacco-related device, or nicotine or lobelia delivery products or devices~~licensed products without first having obtained a license to do so from the city.

Sec. 30-62. - Application.

An application for a license to sell ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices~~licensed products shall be made to the city clerk 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 names and addresses of all managers who will operate and/or manage the licensed location, the name and nature of the business for which the license is sought, the other information as required by the application form, and any additional information the city deems necessary. If the applicant is a corporation or any other type of business organization, the application shall also contain the names, addresses and respective percentage ownership interest of all of the owners of the corporation or business organization, provided however that if the number of owners exceeds 10 persons only the 10 owners having the largest percentage of ownership shall be listed. Upon receipt of a completed application, the city clerk shall forward the application to the chief of police for a background check on the applicant, which shall be completed and report made to the city clerk. Upon receipt of a report from the chief of police, the city clerk shall ~~forward the application and the~~prepare and submit a report regarding the application to the city council for ~~action-consideration~~ at its next regularly scheduled meeting. If the city clerk shall determine that an application is incomplete, he/she shall return the application to the applicant with notice of the information necessary to make the application complete.

Every person applying for a license under this article shall certify on the annual license application that the person: (i) has implemented a training program for employees regarding laws related to the sale of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices~~licensed products~~, and (ii) has trained all employees to comply with state and federal laws and/or regulations as well as this article regarding the sale of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices~~licensed products~~ within thirty (30) days of the hire date of each employee, and (iii) has submitted to the city clerk a current list of employees containing each employees' name, hire date, and training date with respect to the date when a respective employee completed the training required by this paragraph.

The person applying for a license under this article shall attest to the accuracy of all information contained in the application.

Sec. 30-63. - Approval or denial.

The city council may either approve, approve with conditions, or deny the license or it may delay action for a reasonable period of time as necessary to complete any additional investigation of the application or the applicant it deems necessary. If the council shall approve the license, the city 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 to the district court.

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.

Sec. 30-64. - Basis for denial of license.

The following shall be grounds for denying the issuance or renewal of a license required under this division, provided that, except as may otherwise be required 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, or any owner, partner, officer or manager in the business organization seeking a tobacco license under this article, has been convicted within the past five years of any violation of a federal, state, or local law, ordinance, or other regulation relating to ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices~~licensed products.
- (3) The applicant, or any owner, partner, officer or manager in the business organization seeking a tobacco license under this article, has had a license to sell ~~tobacco, tobacco products, tobacco-related devices or nicotine or lobelia delivery products or devices~~licensed products revoked or suspended within the preceding ~~24~~60 months of the date of application.
- (4) The applicant fails to provide any information required on the application or provides inaccurate, false or misleading information.
- (5) The applicant owner, partner, officer or manager is prohibited by federal, state, or other local law, ordinance, or other regulation from holding such a license.
- (6) No license shall be granted or renewed for operation on any premises on which taxes, assessments, service charges, or other financial claims of the city or of the state are delinquent. The city council may waive strict compliance with this subsection. No waiver may be granted, however, for taxes or any portion thereof which remain unpaid for a period exceeding one year after they become due, except, in the sole discretion of the city council under the circumstances presented, in instances of a lessee of leased property upon which taxes are delinquent.

(7) The fee for the application has not been paid as required.

(8) The tobacco license to be issued under this article is for the same address or location that has previously been revoked or suspended within the preceding five years of the date of application. Notwithstanding any other provision of this article, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

(a) the location has been transferred to new proprietor(s) in an arm's length transaction; and

(b) the new proprietor(s) provide the city with clear and convincing evidence that the new proprietor(s) have acquired or are acquiring the location in an arm's length transaction.

For purposes of this clause (8):

(i) "arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this article is not an arm's length transaction.

(ii) "proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

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. The city clerk shall provide written notice of revocation to the licensee and the decision of the city clerk shall be subject to hearing under the procedures contained in section 30-27. The license shall be revoked effective ten (10) days following the date on the notice of revocation from the city clerk, except that such revocation shall be stayed pending a hearing before the hearing officer if the licensee makes a timely written request for hearing pursuant to section 30-27.

Sec. 30-70. - Responsibility of licensee.

Every person issued a license under this division shall be responsible for the actions of his/her employees in regard to the sale of ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or 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. Nothing in this section shall be construed as prohibiting the city from also subjecting the licensee's employee(s) to whatever penalties are appropriate under this article, state or federal law, or other applicable law or regulation.

Sec. 30-71. - Compliance checks and inspections.

- (a) All premises licensed under this division shall be open to inspection by the city police or other authorized city official during regular business hours.
- (b) From time to time, but at least once per year, the city shall conduct compliance checks. In accordance with state law, the city will conduct at least one compliance check that involves the participation of a person over 15 years and under 21 years (persons between 15 and 17 years of age must be engaged by engaging, with the written consent of their parents or guardians), ~~minors over the age of 15 years but less than 18 years~~ to enter the licensed premises to attempt to purchase ~~tobacco, tobacco products, or tobacco-related devices~~ licensed products. ~~Minors~~ Persons used for the purpose of compliance checks shall be supervised by city-designated law enforcement officers or other designated city personnel. ~~Minors~~ Persons used for compliance checks shall not be guilty of unlawful possession of ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices~~ licensed products when such items are obtained as a part of the compliance check. No ~~minor~~ persons used in compliance checks shall attempt to use a false identification misrepresenting the ~~minor~~ person's age, and all ~~minors~~ persons lawfully engaged in a compliance check shall answer all questions about the ~~minor~~ person's age asked by the licensee or his/her employee and shall produce any identification, if any exists, for which he/she is asked.
- (c) 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.

Sec. 30-73. - Revocation, suspension or non-renewal.

Every license holder under this article will either be subject to a monetary penalty or in extenuating circumstances have their license revoked, suspended, or not renewed by the city council according to the penalty schedule and procedures as provided in sections 30-27 and 30-28, for any of the following reasons:

- (1) Violation of any provision of this article.
- (2) Violation of ~~of~~ section 50-89, drug paraphernalia.
- (3) Violation of any federal or state law or regulation pertaining to (a) trafficking in contraband tobacco products or illegal drugs, (b) the payment or collection of taxes on tobacco products, (c) the display of tobacco products or of health warnings pertaining to tobacco products, or (d) the sale of tobacco products.
- (4) One or more of the bases for denial of a license under section 30-64 existed at the time application was made or at any time before the license issued.
- (25) Other good cause related to the business of selling or furnishing ~~tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices~~ licensed products.

Sec. 30-74. - Smoking and sampling prohibited.

Pursuant to Minn. Stat. § 144.417, smoking or otherwise sampling of ~~licensed products tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery products or devices~~ is prohibited within a retail establishment and shall not be permitted by the licensee and no person shall smoke or sample the same within the indoor area of any retail establishment with a retail tobacco license.

Sec. 30-76. - Other license conditions for tobacco products shops.

In addition to the license conditions required in section 30-75, each license issued under this article for a tobacco products shop is subject to all of the following conditions:

- (1) The licensee must post signs in visible locations that prohibit loitering inside or near the front entrance of the retail establishment.
- (2) The sales counter, store entrance, and interior of the retail establishment shall be visually recorded with a videotape or similar device at a quality level that allows the visual identification of patrons and employees. The recordings shall be maintained and made available to the police for 15 days before being reused, erased or otherwise deleted.
- (3) The licensee must post a sign at front entrance of the retail establishment that prohibits ~~minors~~persons under the age of 21 from entering the retail establishment.
- (4) The front windows of the retail establishment must be clear, untinted, and unobstructed.
- (5) Each day of business, the licensee must inspect the parking lot and entrances of the retail establishment for litter and properly dispose of such litter.

Sec. 30-77. - Minimum clerk age.

Individuals employed by a licensed retail establishment under this ordinance must be at least 18 years of age to sell licensed products.

Secs. 30-78—30-99. - Reserved.

SECTION 3: This Ordinance shall take effect thirty days after its publication.

Passed by the City Council of the City of Northfield, Minnesota, this ____ day of _____ 2019.

ATTEST:

City Clerk

Mayor

First Reading: _____

Second Reading: _____

Published: _____

VOTE: ___ POWNELL ___ DELONG ___ GRABAU ___ NAKASIAN
 ___ NESS ___ PETERSON WHITE ___ ZWEIFEL

DRAFT