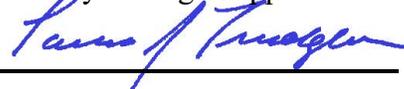


**ROSEVILLE**  
**REQUEST FOR COUNCIL ACTION**

Date: October 19, 2020  
Item No.: 7.b

Department Approval

City Manager Approval



Item Description: Discuss considering amendments to Title 3, Section 306 Cigarette and Tobacco Products of the City Code including prohibiting the sale of flavored tobacco products in the City of Roseville

**BACKGROUND**

Recently Councilmember Groff requested staff bring back an item for discussion regarding prohibiting the sale of flavored tobacco products within the City of Roseville.

According to the Association for Non Smokers-MN targeting youth with flavored products is a critical step in the tobacco industry’s strategy to encourage addiction.

Duluth, Falcon Heights, Mendota Heights, Lauderdale, Lilydale, Hennepin County, Golden Valley, Shoreview and Edina have restricted or banned the sale of all flavored tobacco products, including menthol. Staff has included the Shoreview ordinance for reference as Attachment B. A copy of Roseville’s current tobacco ordinance is included as Attachment C.

**POLICY OBJECTIVE**

One of Roseville’s Community Aspirations is to be a “Physically and mentally active and healthy” community. Tobacco use is the leading cause of preventable death in the United States.

**BUDGET IMPLICATIONS**

Not applicable at this time.

**STAFF RECOMMENDATION**

Staff requests that the City Council discuss and provide direction for prohibiting the sale of flavored tobacco products in Roseville.

**REQUESTED COUNCIL ACTION**

Provide direction to staff on amending Title 3, Section 306 Cigarette and Tobacco Products to prohibit the sale of flavored tobacco products within the City of Roseville.

Prepared by: Katie Bruno, Deputy City Clerk  
Attachments: A: Postcards received from Residents  
B: City of Shoreview ordinance adopted September 21, 2020  
C: City of Roseville Chapter 306

# COUNTLESS FLAVOR



The tobacco industry targets youth with flavored tobacco products but there's nothing **Sweet** about **Tobacco**

Dear Roseville City Council SAINT PAUL MN 550

The tobacco industry is targeting our kids with cheap and flavored tobacco. These toxic and addictive products come in candy, fruit and other sweet flavors. By regulating the sale of flavored tobacco products in our community you can help prevent addiction and tobacco-related disease. Please act now to protect our youth.

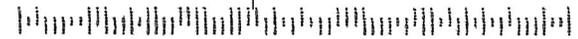
Sincerely,  
Myrna Schreur

Address:  
1998 Hamline Ave N  
Roseville 55113



Roseville City Council  
2660 Civic Center Dr  
Roseville, MN 55113

5113-189999



Dear Roseville City Council SAINT PAUL MN 550

The tobacco industry is targeting our kids with cheap and flavored tobacco. These toxic and addictive products come in candy, fruit and other sweet flavors. By regulating the sale of flavored tobacco products in our community you can help prevent addiction and tobacco-related disease. Please act now to protect our youth.

Sincerely,  
Greg Tharaldson

Address:  
1840 Hamline Ave N.  
Roseville, MN 55113



Roseville City Council  
2660 Civic Center Dr  
Roseville, MN 55113

113-181360



Attachment A  
**BEAUTIFUL LIE  
UGLY TRUTH**

ABOUT MENTHOL TOBACCO

**I don't believe the  
lie the tobacco  
companies try to  
sell me."**

The truth is: Menthol  
cigarettes increase youth  
smoking, lead to greater  
addiction and decrease  
success in quitting smoking.

[www.BeautifulLieUglyTruth.org](http://www.BeautifulLieUglyTruth.org)



Dear ROSEVILLE Roseville City Council

The tobacco industry targets our communities and our youth with menthol tobacco. Menthol cools and numbs the throat, disguising the harshness of the smoke. Menthol tobacco is easy to start and even harder to quit. By regulating the sale of menthol tobacco, you can help prevent addiction and tobacco-related disease. Please act now to protect our community and our youth.

Sincerely,

Katie Engman

Address

1413 Elderidge Ave W.

City

Roseville

Zip

55113

**BEAUTIFUL LIE  
UGLY TRUTH**

ABOUT MENTHOL TOBACCO

[www.BeautifulLieUglyTruth.org](http://www.BeautifulLieUglyTruth.org)



POSTCARD USA

Roseville City Council  
2660 Civic Center Dr  
Roseville, MN 55113



Dear ROSEVILLE City Council

The tobacco industry targets our communities and our youth with menthol tobacco. Menthol cools and numbs the throat, disguising the harshness of the smoke. Menthol tobacco is easy to start and even harder to quit. By regulating the sale of menthol tobacco, you can help prevent addiction and tobacco-related disease. Please act now to protect our community and our youth.

Sincerely,

Deb Crandall

Address

1397 Belmont Ln

City

Roseville

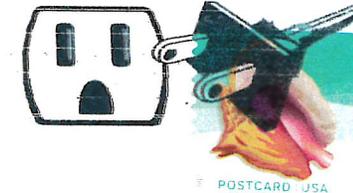
Zip

55113

**BEAUTIFUL LIE  
UGLY TRUTH**

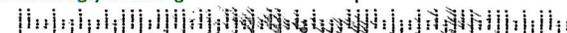
ABOUT MENTHOL TOBACCO

[www.BeautifulLieUglyTruth.org](http://www.BeautifulLieUglyTruth.org)



POSTCARD USA

Roseville City Council  
2660 Civic Center Dr  
Roseville, MN 55113



**CITY OF SHOREVIEW****ORDINANCE NO. 984****AN ORDINANCE OF THE CITY OF SHOREVIEW, MINNESOTA, AMENDING  
SECTION 706, TOBACCO PRODUCTS**

**The Shoreview City Council ordains that Section 706 of the Shoreview Municipal Code is amended to read as follows:**

**706 Tobacco Products**

**706.010 Purpose and Intent.** Because the city recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates both state and federal law; and because studies, which the city accepts and adopts, have shown that high school use of any commercial tobacco product has increased to 27.6% in Minnesota; and because nearly 90% of people who smoke begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the City Council accepts the conclusions and recommendations of: the U.S. Surgeon General reports, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking — 50 Years of Progress* (2014) and *Preventing Tobacco Use Among Youth and Young Adults* (2012); the Centers for Disease Control and Prevention in their studies, *Tobacco Use Among Middle and High School Students — United States, 2011– 2015*(2016), and *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students*,

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

**706.020 Definitions.** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (A) Child-Resistant Packaging. Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- (B) Compliance Checks. The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of persons under the age of 21 as authorized by this ordinance. Compliance checks shall also mean the use of persons under the age of 21 who purchase or attempt to purchase licensed products 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 investigating or enforcing appropriate federal, state or local laws and regulations relating to licensed products.

- (C) Electronic Delivery Device. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.
- (D) Flavored Product. Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, menthol, mint, or wintergreen, that is distinguishable by an ordinary consumer either prior to or during the consumption of the licensed product, including, but not limited to, any taste or smell relating to chocolate, cocoa, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco, menthol, mint, or wintergreen, shall constitute presumptive evidence that the product or device is a flavored product.
- (E) Indoor Area. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.
- (F) Licensed Products. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
- (G) Loosies. The common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder

made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

- (H) Moveable Place of Business. 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.
- (I) Nicotine or Lobelia Delivery Products. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section. Nicotine or lobelia delivery products does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.
- (J) Retail Establishment. Any place of business where licensed products are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants, and drug stores.
- (K) Sale. Any transfer of goods for money, trade, barter or other consideration.
- (L) Self-Service Merchandising. Open displays of licensed products in any manner where any person shall have access to the 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 licensed product between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.
- (M) Smoking. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device.
- (N) Tobacco. Tobacco includes 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; 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, clipping, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

- (O) Tobacco-Related Device. Tobacco-related device includes any pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products. Tobacco-related device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. Tobacco-related devices may or may not contain tobacco.
- (P) Vending Machine. Any mechanical, electric or electronic, or other type of device which dispenses licensed products upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the licensed product.

### **706.030 License.**

- (A) License Required. No person shall sell or offer to sell any licensed products without first having obtained a license to do so from the city.
- (B) Application. An application for a license to sell 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 business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.
- (C) Action. The City Council may either approve or deny the license, or it may delay action for a 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

City 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.

- (D) Term. All licenses issued under this section shall be valid for the calendar year during which it is approved.
- (E) Revocation or Suspension. Any license issued under this section may be revoked or suspended as provided in Section 706.130.
- (F) Transfers. All licenses issued under this section shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid.
- (G) 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 section.
- (H) Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- (I) 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.
- (J) Issuance as privilege and not a right. The issuance of a license issued under this section 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.
- (K) Smoking. Smoking shall not be permitted and no person shall smoke within the indoor area of any retail establishment or any licensed retail tobacco shop. Smoking for the purposes of sampling licensed products or any other product is prohibited.

**706.040 Fees.** No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be established in the City Code Exhibit B, as it may be amended from time to time.

**706.050 Basis for Denial of License.**

- (A) Grounds for denying the issuance or renewal of a license under this chapter include but are not limited to the following:
  - (1) The applicant is under the age of 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 licensed products.
  - (3) The applicant has had a license to sell 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 a license.
- (B) 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.
- (C) 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 chapter.

**706.060 Prohibited Sales.**

- (A) In general, it shall be a violation of this chapter for any person to sell or offer to sell any licensed products:
  - (1) By means of any type of vending machine.
  - (2) 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 premise in order to receive the licensed products and whereby there is not a physical exchange of the licensed products between the licensee, or the licensee's employee, and the customer.
  - (3) By means of loosies as defined in Section 706.020.

- (4) 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.
  - (5) By any other means, to any other person, or in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.
- (B) Legal age. No person shall sell any licensed product to any person under the age of 21.
- (1) Age verification. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
  - (2) Signage. Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (C) Liquid packaging. No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

**706.065 Flavored Products.** No person shall sell, offer for sale, or otherwise distribute any flavored products. This restriction does not apply to retail establishments that:

- (A) Prohibit persons under 21 from entering at all times; and
- (B) Derive at least ninety (90) percent of their revenues from the sale of licensed products.

**706.070 Self-Service Sales.** It shall be unlawful for a licensee under this chapter to allow the sale of licensed products by any means whereby the customer may have access to those 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 licensed products between the licensee or his or her clerk and the customer. All 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. This section shall not apply to retail stores which derive at least 90 percent of their revenue from licensed products and where the retailer ensures that no person younger than 21 years of age is present, or permitted to enter, at any time.

**706.080 Responsibility.** All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed premises, and the sale of 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 clerk to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

**706.090 Compliance Checks and Inspections.** All licensed premises must be open to inspection by law enforcement or other authorized city officials during regular business hours. From time to time, but at least twice per year, the city will conduct compliance checks. In accordance with state law, the city will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

**706.100 Prohibited furnishing or procurement.** It is a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product.

**706.110 Administrative Penalty, Suspension or Revocation-- Licensees.** Any violation of the City's regulations relating to the issuance of a license required by this ordinance, or any violation of any conditions/restrictions attached to the issuance of such license, shall be cause for the imposition of an administrative fine, the suspension of the license, or the revocation of

the license pursuant to the procedures described in Shoreview Code Section 701.030.

Any licensee found to have violated this ordinance, or whose employee violated this ordinance, will be subject to the following administrative fines, suspensions or revocation:

- (A) The first such violation shall subject the licensee to the payment of an administrative fine of \$300 plus an additional compliance check;
- (B) The second violation within 36 months shall subject licensee to the payment of an administrative fine of \$600 plus an additional compliance check;
- (C) The third violation within 36 months shall subject the licensee to the payment of an administrative fine of \$1,000 and to a minimum seven (7) business-day suspension of the license;
- (D) The fourth violation within 36 months shall subject the licensee to the payment of an administrative fine of \$1,500 and to a minimum fifteen (15) business-day suspension of the license;
- (E) The fifth violation within 36 months shall subject the licensee to the payment of an administrative fine of \$2,000 and to a minimum of thirty (30) business-day suspension of the license.
- (F) The sixth violation within 36 months shall be cause for revocation of the license for up to one year.

The imposition of an administrative fine and a suspension of license or to a license revocation pursuant to this section shall be preceded by a hearing before the City Council.

**706.120 Administrative Penalties Procedures.** The following procedure should generally be followed for Council review of tobacco license violations that are subject to the administrative penalties established in 706.130 and 706.140:

- (A) The City Manager or designee will contact the licensee/seller asking if the licensee/seller will sign an admission of the facts of the alleged violation and an acceptance of the administrative penalty listed in Section 706.130 and 706.140. Licensees/sellers have the right to request a hearing before the City Council if not in agreement with the violation or the administrative penalty. The City Manager may also schedule a hearing before the Council if he/she believes there is a valid reason to deviate from the administrative penalty.

- (B) If a hearing is requested, it will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57 to 14.70. The Council will issue written findings on the alleged violation and an order imposing sanctions, if any.
- (C) If the licensee/seller and the City Manager agree on the violation and the administrative penalty, a written admission will be provided to the Council with a proposed order. For first and second violations, the matter will be scheduled as part of the consent agenda, and it is expected that the Council will generally issue the proposed order without discussion. Nevertheless, the Council may choose to schedule the matter for special Council review and action. The City must provide at least ten (10) days' notice to the licensee/seller before this review is conducted. Any violations beyond the second violation must be scheduled for a hearing before the Council.

**706.130 Exceptions and Defenses.** Nothing in this chapter shall prevent the providing of tobacco, tobacco-related devices, to a person under 21 as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.

**706.140 Severability.** If any section or provision of this ordinance is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

**706.150 Effective Date.** This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

**Adoption Date:** Passed by the City Council of the City of Shoreview on the 21st day of September, 2020.

**Effective Date:** This ordinance shall become effective the day following its publication in the City's official newspaper.

**Publication Date:** Published on the \_\_\_\_ of \_\_\_\_\_, 2020.

Sandra C. Martin, Mayor

## CHAPTER 306 CIGARETTE AND TOBACCO PRODUCTS

### SECTION:

- 306.01: Findings of Fact and Purpose
- 306.02: Definitions
- 306.03: License Required
- 306.04: Application
- 306.05: Prohibited Sales
- 306.06: Indoor Smoking Prohibited
- 306.07: Identification
- 306.08: Enforcement
- 306.09: Violations
- 306.10: Severability

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

In making these findings, the City Council accepts the conclusions and recommendations of the U.S. Surgeon General reports, “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 in their studies, “Current Cigarette Smoking Among Adults, United States (2011),” and “E-Cigarette Use Triples Among Middle and High School Students in Just One Year (2015)”, and of the following medical professionals in these medical journals: Xin Xu et al., Annual Healthcare Spending Attributable to Cigarette Smoking: An Update, *Am. J. Prev. Med* 48(3) (2015), Angelica M. Morales et al., Cigarette Exposure, Dependence, and Craving Are Related to insula Thickness in Young Adult Smokers, *39 Neuropsychopharmacology* 1816 (2014), Brian A. King et al., Attitudes Toward Raising the Minimum Age of Sale for Tobacco Among U.S. Adults, *40 (4) Am. J. Preventative Med.* (2015), Jonathan P. Winickoff et al., Retail Impact of Raising Tobacco Sales Age to Twenty-One, *104 Am. J. Pub. Health* 18, 18 (2014), Inst. of Med., Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products (2015), William DeJong & Jason Blanchette, Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States, *J. Stud Alcohol Drugs* 108 (Supp. 17 2014), copies of which are adopted by reference. (Ord. 1555, 6-18-2018)

### **306.02 DEFINITIONS:**

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

**COMPLIANCE CHECKS:** The system the city uses to investigate and ensure that those authorized to sell tobacco products are following and complying with the requirements of this ordinance. Compliance checks involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. Compliance checks may also be conducted by the city or other units of government for educational, research and training

purposes or for investigating or enforcing federal, state or local laws and regulations relating to licensed products. (Ord. 1555, 6-18-2018)

**ELECTRONIC DELIVERY DEVICE:** Any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic Smoking 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, or for other medical purposes, and is marketed and sold for such an approved purpose. (Ord. 1555, 6-18-2018)

**PERSON:** Any natural person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation, or any officer, agent, employee, factor, or any other personal representative thereof, in any capacity. (Ord. 1555, 6-18-2018)

**RETAIL ESTABLISHMENT:** Any place of business licensed under this chapter where tobacco products are available for sale to the general public. This phrase includes but is not limited to grocery stores, convenience stores, gasoline service stations, bars, and restaurants. (Ord. 1555, 6-18-2018)

**SELF SERVICE MERCHANDISING:** An open display of tobacco products in any manner where any person has access to the tobacco products without the intervention of a licensee or licensee's employee. (Ord. 1555, 6-18-2018)

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

**TOBACCO OR TOBACCO PRODUCT:** Any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including but not limited to cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready, rubbed and other smoking tobacco, snuff, snuff flower, Cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scrips, clippings, cuttings and sweepings of tobacco prepared in such manner as to be suitable for chewing, sniffing or smoking in a pipe, rolling paper or other tobacco related devices. "Tobacco" or "tobacco product" also means electronic delivery devices and any component or accessory used in the consumption of to a tobacco product, such as filters, rolling papers, pipes and liquids used in electronic smoking devices, whether or not they contain nicotine. This Chapter does not apply to devices that have been approved or otherwise certified for sale by the U.S. Food and Drug Administration for tobacco use cessation, or for other medical purposes, and is being marketed and sold solely for that approved purpose. (Ord. 1424 02-13-12) (Ord. 1455, 10-21-13) (Ord. 1555, 6-18-2018)

**TOBACCO-RELATED DEVICE:** Any pipe, rolling papers, or other device intentionally designed or intended to be used with tobacco products. Tobacco-related device includes components of tobacco-related devices which may be marketed or sold separately. (Ord. 1555, 6-18-2018)

**VENDING MACHINE:** Any mechanical, electric or electronic, or other type of device that dispenses tobacco products upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the licensed product. (Ord. 1555, 6-18-2018)

**306.03 LICENSE REQUIRED:**

No person shall keep for retail sale, sell, or offer to sell at retail any tobacco product as defined in this Chapter without first having obtained a license to do so from the city. (Ord. 1133, 1-24-94) (Ord. 1555, 6-18-2018)

**306.03 APPLICATION:**

The application for a license to sell tobacco products shall state the full name and address of the applicant, the location of the building and the part to be used by the applicant under the license, the kind of business conducted at such location and such other information as shall be required by the application form. (Ord. 1133, 1-24-94) (Ord. 1555, 6-18-2018)

**306.05 PROHIBITED SALES:**

- A. No person shall sell, offer to sell, or give away any tobacco related product to any person under the age of 21 years. (Ord. 1555, 6-18-2018)
- B. No person shall sell or dispense any tobacco product through the use of a vending machine. (Ord. 1555, 6-18-2018)
- C. No person shall allow the sale of tobacco products by self-service merchandizing whereby the customer may have access to those products without having to request the products from the licensee or licensee's employee and whereby there is not a physical exchange of the tobacco product between the licensee or licensee's employee and the customer. All tobacco products must be stored behind the sales counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. (Ord. 1133, 1-24-94)  
 Provided, however, the requirements of this section shall not apply to establishments which:
  - 1. Prohibit persons under 21 years of age from entering the establishment at all times;
  - 2. Post notice advising of the prohibition at all entrances to the establishment; and
  - 3. Derive at least 90 percent of their revenues from the sale of tobacco and tobacco-related products. (Ord. 1555, 6-18-2018)

**306.06 INDOOR SMOKING PROHIBITED:**

Smoking is prohibited within the indoor area of any retail establishment licensed under this ordinance. Smoking for the purpose of sampling licensed products is prohibited. (Ord. 1424, 02-13-12) (Ord. 1555, 6-18-2018)

**306.07 IDENTIFICATION:**

Any person who sells, gives, or furnishes a tobacco product must verify that the recipient is at least 21 years of age. Each person who sells, gives or furnishes a tobacco product shall examine the recipient's government-issued photographic identification. No such verification is required for a person over the age of 30. That a recipient appeared to be 30 years of age or older shall not constitute a defense to a violation of this section. (Ord. 1133, 1-24-94) (Ord. 1555, 6-18-2018)

**306.08 ENFORCEMENT:**

All licensed premises shall be open to inspection by Roseville law enforcement or other

authorized City officials during regular business hours. From time to time, but at least twice per year, the City shall conduct compliance checks. One check will be conducted by engaging, with the written consent of their parents or guardians, a person over the age of 15 years but less than 17 years of age, to enter the licensed premises to attempt to purchase tobacco or tobacco products, tobacco-related devices, or electronic delivery devices. A second check may be conducted by engaging a person over the age of 18 but less than 21 years of age, to enter the licensed premises to attempt to purchase tobacco, or tobacco products, tobacco-related devices, or electronic delivery devices. Persons used for the purpose of compliance checks shall be supervised by the Chief of Police, or the Chief of Police's designee. No person used in compliance checks shall attempt to use a false identification misrepresenting the person's age and all persons lawfully engaged in a compliance check shall answer all questions about the person's age, asked by the licensee or licensee's employee and shall produce any identification, if any exists, for which the person is asked. Nothing in the subdivision shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law. (Ord. 1555, 6-18-2018)

### **306.09 VIOLATIONS:**

- A. Any person who violates this Chapter shall be subject to criminal, administrative, and/or licensing penalties as described in this section. (Ord. 1555, 6-18-2018)
- B. Criminal Penalty: Any person who violates this Chapter shall be guilty of a misdemeanor. (Ord. 1555, 6-18-2018)
- C. Administrative Penalty: Any person who violates this Chapter shall be subject to administrative offense penalties under Chapter 102 and as set forth in the City's fee schedule. (Ord. 1555, 6-18-2018)
- D. Licensing Penalty: In the event any licensee or licensee's employee violates this Chapter, the City Council may revoke, suspend, or deny renewal of such license. Mandatory minimum suspension periods and revocations shall be set forth in the City's fee schedule. (Ord. 1555, 6-18-2018)
- D. Hearing and Notice: Revocation, suspension or denial of renewal of a license shall be given to the licensee by a hearing before the City Council. A hearing notice shall be given at least ten days prior to the hearing, including notice of the time and place of the hearing and shall state the nature of the charges against the licensee. (Ord. 1133, 1-24-94) (Ord. 1555, 6-18-2018)
- F. Remedies Not Exclusive: The remedies herein are in addition to any civil and/or criminal penalties permitted under State and Federal law. (Ord. 1555, 6-18-2018)

### **306.10 SEVERABILITY:**

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