

ORDINANCE 2025-01

CITY OF SAINT ANTHONY
HENNEPIN COUNTY, MINNESOTA

AN ORDINANCE REGULATING THE SALE OF TOBACCO
AND RELATED DEVICES AND PRODUCTS

§ 115.001 PURPOSE.

(A) This subchapter 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.

(B) The city further recognizes the public health hazards of exposure of individuals to secondhand smoke. This subchapter is intended to regulate the sale, possession, and use of tobacco, tobacco products, tobacco-related devices, and electronic delivery devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco related devices, and electronic delivery devices, to protect individuals from the hazards of secondhand smoke, and to further the official public policy of the state as stated in M.S. § 144.391 and M.S. § 144.412, as they may be amended from time to time.

(Prior Code, § 111.045)

§ 115.002 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CANNABIS or MARIJUANA. Includes "cannabis flower," "cannabis products," "lower-potency hemp edibles," and "hemp-derived consumer products" and shall have the definitions given to them in M.S. § 342.01, as it may be amended from time to time.

CHILD-RESISTANT PACKAGING. Packaging that meets the definition set forth in 16 C.F.R. § 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in 16 C.F.R. § 1700.20, as in effect on January 1, 2015.

CIGAR. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in M.S. § 297F.01, Subd. 3, as may be amended from time to time.

COMPLIANCE CHECKS. The process the city uses to investigate and ensure that those authorized to sell licensed products are complying with the requirements of this subchapter. **COMPLIANCE CHECKS** shall involve persons under the age of 21 who are authorized by this subchapter, state, and federal regulations and who purchase or attempt to purchase licensed products for educational, research, and training purposes, and for the enforcement of the aforementioned city, state, and federal regulations pertaining to licensed products.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. **ELECTRONIC DELIVERY DEVICE** includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. **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 U.S. 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.

INDIVIDUALLY PACKAGED. 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**.

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% 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. A standard window screen (0.011 gauge with an 18 by 16 mesh count) is not considered a wall.

LICENSED PRODUCTS. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

LOOSIES. The term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a truck, van, kiosk, 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 PRODUCT. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco or an electronic delivery device as defined in this section. **NICOTINE OR LOBELIA DELIVERY PRODUCT** does 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, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

PLACE OF EMPLOYMENT. Any indoor area at which two or more individuals perform any type of a service for consideration of payment under any type of contractual relationship, including, but not limited to, an employment relationship with or for a private corporation, partnership, individual, or government agency. PLACE OF EMPLOYMENT includes any indoor area where two or more individuals gratuitously perform services for which individuals are ordinarily paid. A PLACE OF EMPLOYMENT also includes, but is not limited to: public conveyances, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, and rooms or areas containing photocopying equipment or other office equipment used in common. Vehicles used in whole or in part for work purposes are PLACES OF EMPLOYMENT during hours of operation if more than one person is present. An area in which work is performed in a private residence is a PLACE OF EMPLOYMENT during hours of operation if:

- (1) The homeowner uses the area exclusively and regularly as a principal place of business and has one or more on-site employees; or
- (2) The homeowner uses the area exclusively and regularly as a place to meet or deal with patients, clients, or customers in the normal course of the homeowner's trade or business.

PUBLIC MEETING. All meetings open to the public pursuant to M.S. § 13D.01, as it may be amended from time to time.

PUBLIC PLACE. Any enclosed, indoor area used by the general public, including, but not limited to, restaurants; banks; bars; any other food or liquor establishment; hotels and motels; reception areas; retail establishments and other commercial establishments; shopping malls; educational facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; government buildings; and common areas of rental apartment buildings.

PUBLIC PLACE, OUTDOOR. All city and county parks; parking lots adjacent to such parks; trails within city parks; on the main city campus, including City Hall and fire station; on other city-owned property, including the public works maintenance facility; and adjacent parking lots to each of these facilities.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. RETAIL ESTABLISHMENTS include, but are not limited to, grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants.

SALE. Any transfer of goods for money, trade, barter, or other consideration.

SELF-SERVICE MERCHANDISING. The open display of licensed products in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employee.

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, cannabis, hemp, or other plant, whether natural or synthetic, that is intended for inhalation. SMOKING also includes carrying or using an activated electronic delivery device.

TOBACCO or TOBACCO PRODUCTS. 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 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 does not include any product that has been approved by the U.S. 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. Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with 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.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device that 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.

(Prior Code, § 111.046) (Ord. 2011-01, passed 4-26-2011; Ord. 2023-06, passed 11-28-2023)

§ 115.003 LICENSE REQUIRED.

(A) Generally. No person may, directly or indirectly, or by means of any device keep for retail sale, sell at retail, offer to sell, or otherwise dispose of any licensed products at any place in the city unless a license has first been issued by the City Council as provided in this section.

(B) Specifically:

(1) 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

Commented [WA1]: If the city is issuing no new licenses, then there is not a need for an application or action on an application.

~~business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk will forward the application to the City Council for action at its next regularly scheduled meeting. If the City Clerk determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.~~

~~(2) Action. The City Council may either approve or deny the license, or it may delay action for any reasonable period of time as necessary to complete any investigation of the application or the applicant that it deems necessary. If the City Council approves the application, the Licensing Clerk shall issue the license to the applicant. If the City Council denies the application, 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) Term. All licenses issued under this subchapter shall be valid for one calendar year from the date of March 15.~~

~~(4) Revocation or suspension. Any license issued under this subchapter may be revoked or suspended as provided in § 115.012.~~

~~(5) 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. The transfer of any license to another location or person is prohibited.~~

~~(6) Maximum number of licenses. The maximum number of licenses issued by the city at any time is limited to zero. The city will not issue any new licenses for the sale of licensed products after January 15, 2025. The city will only renew existing licenses to license holders that were issued prior to January 15, 2025 and have applied for renewal by March 15 of each year. Eligible parties will lose the existing license if they fail to renew it annually or if the license is revoked for any reason.~~

~~(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 subchapter.~~

~~(78) Display. All licenses shall be posted and displayed at all times in plain view of the general public on the licensed premises.~~

~~(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 license holder is not entitled to an automatic renewal of the license.~~

(Prior Code, § 111.047)

§ 115.004 FEE

~~If an application is granted by the City Council, a license will be issued by the Licensing Clerk upon payment in full of the fee required under Chapter 33.~~

Commented [WA2]: Some jurisdictions have chosen to limit the number of licenses granted. These may be limited to the current number, a reduced number (sometimes reduced over time through attrition), and some have chosen to cap at zero with an end date for all licensing to end all sales of the products.

Commented [WA3]: If the city is not issuing any new licenses, and there is no application process, then the application Fee can be deleted.

(Prior Code, § 111.048)

§ 115.005 BASIS FOR DENIAL OF LICENSE.

(A) The following shall be grounds for denying the issuance or renewal of a license under this subchapter.

- (1) The applicant is under 21 years of age.
- (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 suspended or revoked within the preceding 12 months of the date of application.
- (4) The applicant fails to provide any of the information required on the licensing 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.
- (6) Nonpayment by the property owner and/or applicant of any fees or charges owed to the city and/or county, including, but not limited to, utilities and property taxes.

(B) If a license is mistakenly issued or renewed to a person, it will be revoked upon the discovery that the person was ineligible for the license under this subchapter. The city will provide the license holder with notice of the revocation, along with information on the right to appeal.

(Prior Code, § 111.049)

§ 115.006 PROHIBITED SALES.

(A) In general. It shall be a violation of this subchapter 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 loosies as defined;
- (3) 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 products subject to this subchapter; and/or

Commented [WA4]: If the city is not issuing any new licenses, then then Basis For Denial of License can be deleted.

(4) 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 that the purchaser is at least 21 years of age.

(2) 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, 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) Self-service sales. No person shall allow the sale of licensed products by any self-service displays where the customer may have access to those items without having to request the item from the licensee or the licensee's employee and where there is not a physical exchange of the licensed product from the licensee or the licensee's employee to the customer. All licensed products must be stored behind the sales counter, in another area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling licensed products at the time this subchapter is adopted must comply with this section within 90 days of the effective date of this subchapter.

(D) 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.

(E) Cigar minimum price and package size. No person shall sell or offer to sell any cigar unless it is within a package containing a minimum of five cigars; and any package of cigars for a sales price of less than [\$15.00] per package before taxes and fees.

(F) Cigarette minimum price. No person may sell or offer to sell cigarette packages or cartons for a sales price of less than fifteen dollars [\$15.00] per pack before taxes and fees.

(G) Moist snuff minimum price and package size. No person shall sell or offer to sell moist snuff retail packages or multipacks for a sales price of less than fifteen dollars (\$15.00) per 1.2-ounce package before taxes of fees. No person shall sell or offer to sell any smokeless tobacco or moist snuff for retail sale unless it is sold in a package of at least 1.2 ounces minimum package size. The price floor for packages larger than 1.2 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.3 ounce or any fraction thereof more than 1.2 ounces, excluding taxes and fees.

(H) Snus minimum price and package size. No person shall sell or offer to sell snus for a sales price of less than fifteen dollars (\$15.00) per 0.32 ounce package before taxes and fees. No person shall sell or offer to sell any snus unless it is sold in a package of at least

Commented [WA5]: This policy option requires that all cigars be sold in a minimum pack size and that each pack be sold for a minimum price based on the number of cigars in the package. For more information, see "Setting a Minimum Price and Package Size for Cigars" in the Public Health Law Center's Minnesota Commercial Tobacco Point-of-Sale Toolkit.

0.32 ounces minimum pack size. The price floor for packages larger than 0.32 ounces shall be computed by adding two dollars and fifty cents (\$2.50) for each 0.08 ounce or any fraction thereof more than 0.32 ounces excluding taxes and fees. In addition, no person shall sell or offer to sell a package of loose tobacco for three (3) ounces or less, prior to applicable sales taxes being imposed, of less than five dollars (\$5.00) nor a package of loose tobacco greater than three (3) ounces, prior to taxes being imposed, of less than fifteen dollars (\$15.00).

(I) Electronic delivery device minimum price. No person shall sell or offer to sell any electronic delivery device at a price that is less than [\$20.00] per device, excluding taxes or fees. This price is applicable to any type of electronic delivery device and applies per unit even if sold together.

(J) Price adjustment. The licensing official may annually modify by rule the minimum prices described in this section to account for changes in the Saint Anthony Village consumer price index, adjusted for inflation.

(K) Coupon and price promotion. No person shall accept or redeem any coupon, price promotion, or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any license products to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or an any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, excluding all applicable taxes and fees.

(Prior Code, § 111.050) Penalty, see § 115.999

§ 115.007 RESPONSIBILITY.

All licensees under this subchapter shall be responsible for the actions of their employees in regard to the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the license holder. Nothing in this subchapter shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this subchapter, state or federal law, or other applicable law or regulation.

(Prior Code, § 111.052)

§ 115.008 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 at least one compliance check that involves the participation of two persons: one person between the ages of 15 and 17 and one person between the ages of 18 and 20; at least one compliance check that involves the participation of a person between the ages of 15 and 17; and at least one compliance check that involves the participation of a person between

Commented [WA6]: This is the language in the Minneapolis ordinance and what was suggested for St. Paul. Both NYC and Chicago have a mechanism for minimum price adjustment within their minimum pricing laws. This language is adapted from NYC's ordinance. (NYC Code § 17-176.1(b) (9)) The CPI region for St. Paul is called the Minneapolis-St. Paul-Bloomington by the United States Board of Labor Statistics.

https://www.bls.gov/regions/midwest/news-release/consumerpriceindex_minneapolis.htm. By way of background information, as stated by the Bureau of Labor Statistics on its website, "The Consumer Price Index (CPI) is a measure of the average change in prices over time in a fixed market basket of goods and services. The Consumer Price Index for Minneapolis is published bi-monthly. The set of components and sub-aggregates published for regional and metropolitan indexes is more limited than at the U.S. city average level; these indexes are byproducts of the national CPI program. Each local index has a much smaller sample size than the national or regional indexes and is, therefore, subject to substantially more sampling and other measurement error. As a result, local-area indexes are more volatile than the national or regional indexes. In addition, local indexes are not adjusted for seasonal influences. **NOTE: Area indexes do not measure differences in the level of prices between cities; they only measure the average change in prices for each area since the base period.**

The Minneapolis-St. Paul-Bloomington, MN-WI Core Based Statistical Area includes Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Le Sueur, Mille Lacs, Ramsey, Scott, Sherburne, Sibley, Washington, and Wright Counties in Minnesota and Pierce and St. Croix Counties in Wisconsin."

Commented [WA7]: The price of tobacco products directly affects the consumption levels, particularly among price-sensitive consumers, including youth, young adults, and those with limited financial means. The commercial tobacco industry uses innovative pricing strategies to entice new customers to purchase their products, to discourage current users from quitting, and to reduce the effectiveness of tobacco tax increases in decreasing tobacco sales and increasing users' quit attempts. These pricing strategies include "buy-one-get one" coupons, cents, or dollar off promotions, and multi pack offers, which are often marketed and redeemed at the point-of-sale. Jurisdictions can prohibit the redemption of these price discounts to negate the sophisticated discounting strategies of the commercial tobacco industry. Several jurisdictions in Minnesota have adopted this provision to keep the price of licensed products high to discourage availability to youth. For more information, here is a publication by the Public Health Law Center, "Death on a Discount."

Commented [WA8]: Deleting to align with state law and the passage of T21.

~~the ages of 18 and 20 to enter licensed premises to attempt to purchase licensed products.~~

Prior written consent 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. 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 their age asked by the licensee or the licensee's employee and shall produce any identification, if any exists, for which the person is asked. 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.

(Prior Code, § 111.053) Penalty, see § 115.999

§ 115.009 OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts are an administrative violation of this subchapter.

(A) Prohibited furnishing or procurement. It is a violation of this subchapter 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.

(B) Use of false identification. It is a violation of this subchapter for any person to use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.

(Prior Code, § 111.054)

§ 115.010 VIOLATIONS.

(A) Notice. Upon discovery of suspected violation, the alleged violator may be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.

(B) Hearings.

(1) Upon issuance of a citation, a person accused of violating this subchapter 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 officer. Failure to properly request a hearing within ten business days of the issuance of the citation will terminate the person's right to a hearing.

(2) The City Manager or designee 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 business days prior to the hearing.

(C) Hearing officer. The Police Chief or designee shall serve as the hearing officer.

(D) Decision. If the hearing officer determines that a violation did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under this section, shall be recorded in writing, a copy of which shall be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds ground for not imposing any penalty, the findings shall be recorded and a copy provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in division (E) below.

(E) Costs. If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of [\$1,000] must be paid by the person requesting the hearing.

(F) Appeals. Appeals of any decision made by the hearing officer shall be filed in the District Court having jurisdiction over the city.

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

(H) Misdemeanor prosecution. Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this subchapter by a person 21 years of age or older.

(Prior Code, § 111.055)

ADMINISTRATIVE PENALTIES.

(1) Licensees. Any licensee cited for violating this ordinance, or whose employee has violated this ordinance, will be charged an administrative fine of [\$1000] for a first violation; [\$2000] for a second offense at the same licensed premises within a 36-month period and a 3-day suspension of the license; and [\$2,000] for a third or subsequent offense at the same location within a 36-month period and a 7-day suspension of the license. Upon a fourth violation within a 36-month period, the license will be revoked.

(2) Employees of licensees and other individuals. Individuals, other than persons under the age of 21 regulated by paragraph (B)(3) of this section, who are found to be in violation of this ordinance may be charged an administrative fine of [\$50].

(3) Persons under the age of 21. Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to non-criminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the city determines to be appropriate. The City Council will consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel,

Commented [WA9]: This provision allows for the jurisdiction to recover costs for persons requesting a hearing if the citation is upheld to discourage baseless challenges and to help the city recoup administrative costs.

Commented [WA10]: This provides clarity for determining the penalties.

Commented [WA11]: How would the city like to renumber here to add a new section?

Commented [WA12]: State law (Minn. Stat. § 461.12 Subd. 2) sets a minimum fine schedule for underage sales and other violations of state law by licensed tobacco retailers: \$300 for a first violation, \$600 for a second violation within 36 months, and \$1,000 for a third or subsequent violation within 36 months. Upon the third or subsequent violation within 36 months of the first violation, state law requires a suspension of at least seven days and allows for license revocation. Jurisdictions may include stronger penalties for licensee violations. The sample language provided in this model includes a longer suspension period for a third violation (30 days) and requires license revocation for repeat offenders (four violations) within 36 months.

Commented [WA13R12]: Per Katie:

First violation—\$1,000.00 fine
Second violation within 36mo.—\$2,000.00 fine + 3-day suspension of the tobacco license
Third violation within 36mo.—\$2,000.00 fine + 7-day suspension of the tobacco license
Fourth violation—Revocation of the tobacco license

Commented [WA14]: State law (Minn. Stat. § 461.12 Subd. 3) permits an administrative fine of \$50 for individuals or employees who sell, give, or furnish licensed products to persons under age 21. This provision allows the jurisdiction to fine an employee or individual for any violation of this ordinance, with the exception of the non-monetary, non-criminal civil penalties provided for using a false ID.

Commented [WA15]: This non-monetary, non-criminal civil alternative penalty reflect state the penalty for underage persons using false ID to purchase licensed products. (Minn. Stat. § 461.12 Subd. 4)

and other interested parties to determine an appropriate remedy for persons under the age of 21 in the city in the best interest of the underage person. The remedies for persons under 21 who use a false identification to purchase or attempt to purchase licensed products may be established by ordinance and amended from time to time.

(4) Statutory penalties. If the administrative penalty for violations against licensed retailers under Section 11(B)(1) 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.

Commented [WA16]: This ensures that if the state changes its penalties to exceed those of the jurisdiction, the higher of the penalty prevails.

§ 115.011 EXCEPTIONS AND DEFENSES.

(A) Religious, spiritual, or cultural ceremonies or practices. Nothing in this subchapter shall prevent the providing of tobacco, tobacco products, and tobacco-related devices to any person as part of a lawfully recognized religious, spiritual, or cultural ceremony.

(B) Reasonable reliance. It shall be an affirmative defense to the violation of this subchapter for a person to have reasonably relied on proof of age as described by state law.

(Prior Code, § 111.056)

Commented [WA17]: Placeholder, Willow discuss with Katie.

§ 115.012 SMOKING PROHIBITED.

Smoking is prohibited, and no person shall smoke in a public place; in a public place, outdoor as herein defined; at a public meeting; in a place of employment; or in public transportation.

§115.013. Severability.

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

Commented [WA18]: A severability clause is important because it ensures that if for any reason one provision of the ordinance were to be challenged in court and struck down the remainder of the ordinance would remain in effect.

§115.014. 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. § 375.51, subd. 3, 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.

Commented [WA19]: Including an effective date ensures that state law notice requirements are met and provides clarity for when the new or amended sections will go into effect.

(Prior Code, § 111.059) (Ord. 2011-01, passed 4-26-2011; Ord. 2012-01, passed 1-24-2012; Ord. 2014-02, passed 9-3-2014; Ord. 2019-09, passed 10-8-2019; Ord. 2023-06, passed 11-28-2023) Penalty, see § 115.999