

**CITY OF SCANDIA  
ORDINANCE NO. 212**

**AN ORDINANCE REGULATING THE SALE OF TOBACCO PRODUCTS**

The City Council of the City of Scandia ordains:

The City Council of the City of Scandia adopts the following regulations pertaining to the sale of tobacco products within the City of Scandia:

- Section 1. Purpose and Intent
- Section 2. Definitions and Interpretations
- Section 3. License
- Section 4. Fees
- Section 5. Basis for denial of license
- Section 6. Prohibited acts
- Section 7. Responsibility
- Section 8. Compliance checks and inspections
- Section 9. Other prohibited acts
- Section 10. Revocation hearing
- Section 11. Exceptions and defenses
- Section 12. Violation and penalties
- Section 13. Severability
- Section 14. Effective date
- Section 15. Repealer

**SECTION 1. 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 18 violates both state and federal laws; and because studies, which the city accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of smokers 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.

## **SECTION 2. DEFINITIONS AND INTERPRETATIONS.**

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

**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.

**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 Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

**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 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 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.

**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.

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

**LOOSIES.** The common term used to refer to cigars, cigarettes, or any other licensed product, whether individually packaged or that has been removed from its intended retail packaging and offered for sale. Loosies does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least \$4.00 per cigar.

**MOVEABLE PLACE OF BUSINESS.** Any form of business operated out of a kiosk, 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.

**RETAIL ESTABLISHMENT.** Any place of business where licensed products are available for sale to the general public. Retail establishments shall include, without limitation, grocery stores, tobacco products shops, convenience stores, off-sale liquor stores, service stations, bars and restaurants.

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

**SELF-SERVICE DISPLAY.** 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.

**TOBACCO.** 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 DEVICE.** 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.

**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 by or on behalf of a person seeking to purchase the licensed product.

**YOUTH ORIENTED FACILITY.** Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. Youth-oriented facility includes, but is not limited to, schools, playgrounds, recreation centers, and parks.

### **SECTION 3. LICENSE.**

No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city.

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

(B) Action. The City Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the license, the Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the Council's decision.

(C) Term. All licenses issued under this section shall be valid for the current calendar year in which the license is issued.

(D) Revocation or suspension. Any license issued under this section may be revoked or suspended as provided in this Ordinance.

(E) Transfers. All licenses issued are 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.

(F) 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.

(G) Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

(H) Renewals. The renewal of a license issued under this section shall be processed 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.

(I) Proximity to youth-oriented facilities. No license shall be approved for any sales of licensed products within 1,000 feet of any youth-oriented facility, as measured by a straight line between the space to be occupied by the proposed licensee and the occupied space of the youth-oriented facility, unless the applicant has been lawfully in the business of selling such products in that location before the date this section was adopted.

(J) Proximity to other tobacco retailers. No license shall be approved for any sales of licensed products within 2,000 feet of any other establishment holding such a license, as measured by a straight line between the space to be occupied by the proposed licensee and the occupied space of the nearest existing licensee, unless the applicant has been lawfully in the business of selling such products in that location before the date this section was adopted.

#### **SECTION 4. FEES.**

No license shall be issued under this Ordinance until the appropriate license fee shall be paid in full.

#### **SECTION 5. BASIS FOR DENIAL OF LICENSE.**

(A) Grounds for denying the issuance or renewal of a license 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 5 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 the application;
- (4) The applicant fails to provide any information required on the application or provides false or misleading information;
- (5) The applicant is prohibited by federal, state, or other local law, ordinance or other regulation from holding such a license.

(B) 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.

If a license is mistakenly issued or renewed it shall be revoked upon the discovery that the person was ineligible for the license under this Ordinance.

#### **SECTION 6. PROHIBITED ACTS.**

(A) In general. No person shall sell or offer to sell any licensed product:

- (1) By means of any type of vending machine.
- (2) By means of loosies.
- (3) Containing opium, morphine, jimson weed, belladonna, strychnos, cocaine, marijuana, or other type of deleterious, hallucinogenic, or toxic or controlled substance except nicotine and not naturally found in tobacco or tobacco products;
- (4) By any other means, or to any other person 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 every 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 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 ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.

(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.

#### **SECTION 7. RESPONSIBILITY.**

All licensees under this ordinance 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 such an item by an employee shall be considered a sale by the license holder. Nothing in this ordinance shall be construed as prohibiting the city from also subjecting the employee to whatever civil penalties the city deems are appropriate under this ordinance, state law, or other applicable law or regulation.

#### **SECTION 8. 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 once 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 aged 15 to 17 and one person aged 18 to enter licensed premises to attempt to purchase licensed products. Prior written consent by 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.

### **SECTION 9. OTHER PROHIBITED ACTS.**

It is a violation of this ordinance for any person 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 to coerce or attempt to coerce a person under the age of 21 to purchase or attempt to purchase any licensed product.

### **SECTION 10. REVOCATION HEARING.**

Revocation or suspension of a license shall be preceded by a hearing before the City Council. A hearing notice shall be given to the licensee at least 10 days prior to the hearing. The notice shall include the time and place of the hearing and shall state the nature of the charge against the licensee.

### **SECTION 11. EXCEPTIONS AND DEFENSES.**

- (A) Religious, Spiritual, or Cultural Ceremonies or Practices. Nothing in this ordinance shall prevent the providing of tobacco or tobacco related device to any person as part of an indigenous practice or lawfully recognized religious, spiritual or cultural ceremony or practice.
- (B) Reasonable Reliance. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

### **SECTION 12. VIOLATIONS AND PENALTIES.**

- (A) Violations.
  - (1) Notice. A person violating this ordinance may be issued, either personally or by mail, a citation from the city that sets forth the alleged violation and that informs 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.
  - (2) Hearings.
    - (a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 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 10 days of the issuance of the citation will terminate the person's right to a hearing.
    - (b) A 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 10 days prior to the hearing.
  - (3) Hearing Officer. The City Council 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.
  - (4) Decision. A decision will be issued by the hearing officer within 10 days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will 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

grounds for not imposing any penalty, those findings will be recorded and a copy will be 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 this section.

- (5) 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.
- (6) Appeals. Appeals of any decision made by the hearing officer must be filed in County district court within 10 days of the date of the decision.
- (7) Continued violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(B) Administrative penalties.

- (1) Licensees. Any licensee found to have violated this ordinance, or whose employee violated this ordinance, will be charged an administrative fine of \$200 for a first violation. Failure to pay the fine within 30 days from the date of invoice shall result in a 2-day license suspension. A second violation within 12 months shall result in a fine of \$500 and a 5-day license suspension. Failure to pay the fine within 30 days from the date of the invoice shall result in an additional 5-day license suspension. A third violation within 12 months, or for sales during a license suspension, shall result in license revocation. Licensees whose licenses have been revoked shall not be eligible for another tobacco product license for one year from the date of revocation. The City Council may attach reasonable conditions to the reinstatement of a revoked license.
- (2) Other individuals. Individuals, other than persons under the age of 21 regulated by division (B)(3) of this section, who are found to be in violation of this ordinance will be charged an administrative fine of \$50.
- (3) Persons under the age of 21. Persons under the age of 21 who violate this ordinance may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the city determines to be appropriate. The City Council will consult with court personnel, educators, parents, children and other interested parties to determine an appropriate penalty for persons under the age of 21 in the city. The penalty may be established by ordinance and amended from time to time.
- (4) 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.

- (C) Misdemeanor prosecution. Nothing in this section prohibits the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance by any person age 21 or older.

**SECTION 13. 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.

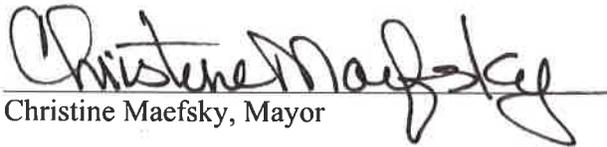
**SECTION 14. EFFECTIVE DATE.**

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.

**SECTION 15. REPEALER.**

Ordinance 92 is hereby repealed.

Passed by the City Council of Scandia, Minnesota this 15<sup>th</sup> day of October, 2019.

  
Christine Maefsky, Mayor

Attested:

  
Kenneth Cammilleri, City Administrator/Clerk