WORKSESSION MEETING
WebEx Meeting
For the Public
Join by phone 1-312-535-8110
Access code: 802 237 425

Monday, March 23, 2020
7:00 pm

AGENDA:

1. Hardman Triangle Redevelopment Plan
2. Tobacco Ordinance Revisions
3. COVID-19 Update
4. Goal Setting Session – No Attachment
5. Council Comments & Questions
AGENDA ITEM: Hardman Triangle Redevelopment Plan

DESIRED MEETING OUTCOMES:

- Discussion and feedback on Plan document
- Discussion and consensus on implementation steps

OVERVIEW:

The City’s Economic Development Strategy identified an approximately 25-acre area lying between Concord Street, Hardman Avenue, and Grand Avenue (the “Hardman Triangle”) as a key focus area for redevelopment. In the 2nd half of 2019, a consulting team led by Cunningham Group led a focused planning and development analysis of the “Hardman Triangle”. The final report, market analysis, and design guidelines are prepared and we’d like to review this with the Council at the worksession. With the plan wrapping up, we also shift our focus to identifying and beginning to implement some of the key actions that will help to bring the plan to life.

The Plan is included in the packet, and we encourage Council to review the document if possible prior to Monday’s session. In addition to summarizing the key elements of the Plan, we’ll want to talk through key future steps that will be needed to realize the redevelopment plan.
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1. Background
Purpose

The purpose of this report is to deliver a market analysis and redevelopment strategy for the Hardman Triangle - the area bound by Concord Street, Grand Avenue and Hardman Avenue in South St. Paul, MN. This 22 acre area sits strategically between the residential neighborhoods of South St. Paul and the Mississippi River. It is an area likely to undergo significant change in the upcoming decades because of market demand, changing uses, and a new Concord Street which will be rebuilt within the next 3 years. The area has been designated in the last two comprehensive plans as “Mixed-Use”, but has yet to be redeveloped.

History of Hardman Triangle

The Mdewakaton Dakota Indians are the earliest known inhabitants of what is now known as South St. Paul, Minnesota. Between 1851 and 1854 the indians were moved from the area by the federal government in order to open up land for settlement.

In 1885 Alpheus Beede Stickney purchased land along the Mississippi River to construct the first stockyards in South St. Paul. The banks of the river in South St. Paul provided a convenient location for western cattle ranchers to unload and fatten their livestock before moving them onto meatpacking plants in Chicago.

Shortly thereafter meatpacking companies saw the potential for profit and several established plants in the area - which turned into a magnet for European immigrants seeking work. Throughout the first half of the 20th Century the area grew to become one of the largest concentrations of meatpacking plants and stockyards in the country.

At its peak, the industries along the river employed over 15,000 people - creating one of the region’s most successful downtowns along Concord Street.

The Hardman Triangle area is the northern tip of the industrial area. It is adjacent to the former Downtown. The area was formerly the home to the Swift Comapny meat packing business during an era when the Swift Company and Armour and the Union Stockyards formed the economic backbone of the community.

After World War II, the meatpacking industry and the Swift and Armour Plants both eventually closed in the late 1960’s.

Throughout the 1980’s the City purchased much of the land and designated it the Bridgepoint Industrial park. In the ensuing decades, the City aggressively redeveloped much of the area by acquiring land, cleaning it up, and attracting new cleaner industries and modern businesses.

The Hardman Triangle was not included in the Bridgepoint Industrial Park. As a result it has not developed with the same consistency and quality as the rest of the area. Since the closure of the Swift plant in 1969 the site has been used for predominantly industrial or exterior storage uses.
Physical

The Hartman Triangle is strategically located in the City. It is between Concord Street and the river, north of Bridgepoint and just “down the hill” from the residential neighborhoods of South St. Paul. To many, the site is also a gateway to the community as it forms a strong impression to people arriving from the north. The Site also shares the “100% corner” of Grand Avenue and Concord Street.

Road Network

Most of South St. Paul is characterized by a tight grid of streets. However areas along the river that have been in transition from heavy industry to lighter industry have a street grid that creates larger blocks to accommodate larger footprint buildings than “up the hill”.

Park & Trail Network

The site is located adjacent to the Mississippi River Trail. A trail head is located adjacent to the site. The Mississippi River Trail connects seamlessly to other regional trails that provide recreational access to all parts of the South and east Metro.

Door Locations and Orientation

The Triangle has developed over time without clear orientation. There is no standard property size or orientation, nor a clear front or back to many properties and buildings. As a result, the district is confusing and disorienting. Redevelopment of the Triangle should include clear definition of where the public front of a property is and where the service areas are located. Coordination between properties is essential so the area redevelops in a coherent manner.

Transit Routes

The area is served by two Metro Transit Routes. Both routes extend north into Downtown St. Paul and South to Inver Grove Heights.

Concord Turnback

South St. Paul, Dakota County and MNDOT are currently in the process of redesigning Concord Street. Construction is slated for 2021. After construction the portion of Concord Street north of Grand Avenue will be turned back to the city, and the portion south will be turned back to the county.
Context

Due to topographic changes, the river and the bluff, South St. Paul has several different patterns of development that create different character areas. Hardman Triangle sits between the levee and Concord Street and therefore should contribute to the character of these areas.

The site’s western edge is Concord Street, however the elevation of most of the site is about 8-10’ below Concord Street. This presents the opportunity to develop two sides of the site - with fronts facing both Concord Street and the river.
Market Summary

Maxfield Research conducted a Market Potential Assessment analysis to determine the likely redevelopment uses on the Hardman Triangle. The market assessment provides a high level assessment of the types of land uses / real estate types best suited for the Hardman Triangle property based on site characteristics and market trends.

The Study finds the site, due to location near Downtown South St. Paul, proximity to St. Paul, and to several transportation nodes, is underutilized and not the highest and best use of the land.

The report identifies several supportable development types and uses on the site. They include:

- **Industrial**: Industrial continues to be among the best performing asset classes among all real estate types in the Twin Cities. While demand would be strong, encouraging additional industrial redevelopment would not yield the highest price for the land.

- **Retail**: a considerable amount of retail dollars in several categories “leaks” to adjacent communities. Although traffic counts are not particularly high (8,500 cars/day) the site is well positioned for a retail component.

- **Rental, For Sale, or Senior Housing**: South St. Paul has a 1% vacancy rate. There is considerable demand for new housing if the non-conforming uses are relocated.

- **Medical Office**: Medical offices are a potential use on the Hardman Triangle, however these facilities tend to be located adjacent to households they serve. Therefore if a portion of the site were developed with higher density housing, the remaining portion would be attractive for a medical office building. It is also possible that a health care provider would be interested in a ground floor space of an apartment building as the industry moves more towards a retail model.

**Leakage**

South St. Paul residents are purchasing neighborhood oriented retail goods and services outside the City. The two categories that are “over supplied” are gas stations, building supplies, and motor vehicles and parts. Many retail goods and services, such as restaurants and convenience goods would get additional support from South St. Paul’s relatively high daytime population (due to the employment areas).

**Leakage**

**Surplus**

- Food and Drink
- Non Store Retailers
- Misc Retailers
- General Merchandise
- Sparding Goods Hobby
- Clothing
- Gasoline Stations
- Health and Personal Care
- Food and Beverage
- Bldg Materials and Equip
- Electronic and Appliance
- Furniture
- Motor Vehicles and Parts

**Leakage**

- Apartments
- Senior Housing
- Office
- Medical
- Hospitality

**Market Assesment**

Different development types will return different amounts to the City by way of property tax revenue on a per acre basis. Currently the entire 15 acre site returns about $250,000 to the City, or about $16,000/acre. If the entire 15 acre are redeveloped with housing, it will generate approximately $1.2 million/year in revenues available for infrastructure, relocation or other public uses.

**Demographic Highlights**

- South St. Paul will experience growth among older adults. Aging baby boomers led to an 50% increase in people ages 55-64 between 2000 and 2010. As this group ages, the 65-74 year old age cohort is projected to experience rapid growth.
- In 2019 the median household income for the Primary Market Area is $58,000. This is lower than the Metro Area. However the median income for South St. Paul is expected to increase by 12% by 2024.
- Homeownership in South St. Paul is higher than the Metro area.
- Between 2010 and 2017 the greatest growth among family households in South St. Paul was among married couples with children.

**Demand**

Aptartment, retail and industrial uses are the development types with the greatest demand to locate on the Hardman Triangle. The area is proven to be successful for industrial and there is strong regional demand. While housing is not a proven development type on the immediate site, the site has many of the characteristics favorable to residential development. In addition, several housing projects are in the works immediately to the west of the site.
Comparison to Peer Cities

- Median income in South St Paul ($58,026) was similar to all other cities surveyed in 2018 with the exception of Shoreview ($84,362) and St. Louis Park ($71,346).
- Among owner households, the median income in South St. Paul ($69,552) was comparable to most of the similar sized cities surveyed. Among like sized cities, comparable median incomes included the City of Columbia Heights ($59,183), the City of Fridley ($72,279), the City of New Hope ($73,810) and the City of Hopkins ($77,198). Shoreview ($84,362) and St. Louis Park ($91,092) were the cities reporting a median owner income significantly higher than that of the City of South St. Paul.
- At the same time, renters in South St. Paul reported the fourth highest median income ($33,815) of like sized cities surveyed. Similar to median income own, the City of St. Louis Park has the highest median income for renters.

- Home ownership rates in South St Paul (64.1%) are comparable with most cities surveyed ranging in ownership rates from 55.4% to 64.1%. As of 2018, Hopkins had the lowest owner-ship rate reported at 32.7% and Shoreview was the highest with 81.7%.
- A generally accepted standard for affordable owner-occupied housing is that a typical household can afford to pay 3.0 to 3.5 times their annual income on a single-family home. The median home value in South St. Paul was 2.9 times the median household income, indic-at ing that home ownership is relatively affordable in South St. Paul.
- Among like size cities, contract rent reported in South St. Paul in 2018 was the lowest of all cities surveyed at $790 with Columbia Heights having the second lowest median contract rent at $830. St. Louis Park and Shoreview had the highest median contract rents at $1,032 and $1,105 respectively.

- Amongst like sized cities, South St. Paul had had the fewest apartments constructed over the past five years (67 units). Most peer cities have constructed at least 250+ units during this time frame; with St. Louis Park with the most development (770 units). However, South St. Paul has several potential projects that could deliver over 300 units in the coming years.
Regulatory and Policy

The Hardman Triangle has been subject of Land Use discussions for over 20 years. In May 2019 the City issued a moratorium in order to establish clarity for property owners and to direct the properties in a manner that supports overall City Goals. The last two Comprehensive Plans have designated the area as a Mixed-Use District, not an Industrial District. Current Zoning splits the triangle into two separate districts.

Existing Zoning
The Hardman Triangle is currently guided by two separate zoning districts. The eastern half is zoned General Business and the western half is zoned North Concord Mixed Use. Several properties on the west half are legal non-conforming.

Future Land Use Plan
The recently adopted Comprehensive Plan designates the entire Hardman Triangle, and surrounding properties as Mixed Use. The previous Comprehensive Plan, designated the Triangle as Office-Research.

Non-conforming Properties
Several of the properties in Hardman Triangle have been operating as a Legal Non-Conforming use for several years. As industrial uses in a non-industrial district these businesses are permitted to continue operations, however they are not permitted to expand or improve operations. This Plan seeks to put an end to this situation by relocating the properties to an area of the City or Region where they are more compatible with surroundings and policies.
Existing Properties

Hardman Triangle is home to several businesses - ranging from office uses to production, to recycling, to meat production. Most of the businesses have been operating on the triangle for over 10 years.

<table>
<thead>
<tr>
<th>Property owner</th>
<th>Acres</th>
<th>Age of Building</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quality Service Corp.</td>
<td>1.82</td>
<td>1980</td>
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<tr>
<td>EDA (Vacant)</td>
<td>.31</td>
<td></td>
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<tr>
<td>Concord Fresh Meats</td>
<td>1.74</td>
<td>1930</td>
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<tr>
<td>Long Chen</td>
<td>2.83</td>
<td>1946</td>
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<tr>
<td>EDA</td>
<td>1.78</td>
<td>1936</td>
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<tr>
<td>Twin City Pallet</td>
<td>5.21</td>
<td>1973</td>
</tr>
<tr>
<td>Binder Heating and Air Conditioning</td>
<td>.99</td>
<td>1988</td>
</tr>
<tr>
<td>United Food and Commercial Workers Union</td>
<td>1.32</td>
<td>1987</td>
</tr>
<tr>
<td>South St. Paul Steel Supply</td>
<td>3.38</td>
<td>1991</td>
</tr>
</tbody>
</table>

Publicly owned outlined parcels in yellow

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Goals

Connect The Community to The River
The Triangle is a key link between the community and the Mississippi River Trail. Safe and comfortable walking and bike connections up and down the hill, connecting to the trail will increase the appeal of redevelopment on the Triangle.

Celebrate History, Culture and Assets of South St. Paul
South St. Paul has a proud history. It is known throughout the region as a hard working close knit community that values its roots. Though the meatpacking facilities are gone, the community remains a center of employment for the east metro and a bedroom community of simple modest homes. Redevelopment should seek opportunities to celebrate and highlight the history of the community through placemaking, art, interpretive exhibits, and events.

Create multiple blocks and opportunities for development
Hardman triangle is a 15 acre block. Over time, the block has been subdivided into different parcels for multiple industrial and general business users. As the area transitions into a greater mix of uses, including housing and retail, it should be subdivided into smaller blocks, bounded on all sides by public roads. Smaller blocks, with streets defining them will help clarify the orientation of the development, make it more pedestrian friendly and organize parking, and amenities.

Orientation to Both Concord and the River
Hardman Triangle has two orientations and exposures – one to Concord Street and another to the River. As the Site redevelops, with multiple buildings and uses, it should account for these multiple orientations. Buildings along Concord Street should address the street and create a gateway to the community. Buildings on the interior of the block, or along Hardman Street should seek opportunities to orient to the river, with views and terraces.

Create Windows to Concord Exchange
Concord Exchange and Concord Street have a unique relationship to each other. Concord Street is the "pass-by street" and Concord Exchange is the "stay-at street." With a half block between them, it is important to locate buildings so they create windows from Concord Street to Concord Exchange. Doing so will allow regional traffic to have visual access to the activity on Concord Exchange.
2. Concept Plan
The redevelopment Plan for Hardman Triangle subdivides the single 15 acre block into two smaller blocks, and re-establishes Concord Street and Grand Avenue as the primary streets in the District. The Plan strengthens the Concord / Grand intersection as the 100% corner of the City by building up to the corner with retail and other active uses. New development set on Concord Street will create a new and improved gateway to the City form the north.

A cultural trail is proposed along Grand Avenue, connecting the community from up the hill to the Mississippi River Trail. The trail should contain a cycle track for bicyclists and joggers to easily move between the trail and Concord Street.

Though the area will evolve into a mixed-use district, there should be an emphasis on residential uses in mid rise buildings. A strong residential presence will support retail and restaurant uses and will take advantage of proximity to the river and related amenities.

Retail and restaurants are also a viable use for redevelopment. They are encouraged to be located in the ground floor of buildings at the corner of Grand Avenue and Concord.

Redevelopment should take advantage of the grade change across the site by tucking parking beneath the buildings and the courtyard - which would be raised - thereby affording views above the levee.
2. Concept Plan

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Section Diagram through the Site
Grand Avenue Promenade

Grand Avenue is designed as a promenade between the hilltop neighborhoods and the riverfront trail. With enhanced landscaping, a bike trail, and a widened sidewalk, the avenue can facilitate the connection to the Mississippi River Trail. Wayfinding, signage, and public art can be used to enhance the experience along it and to recognize the history of the area and its significance to the City and the region.
Concord Street

Concord Street will be rebuilt and turned back to the city and County in the next few years. The new design offers the opportunity to create a more attractive environment for redevelopment. It will also create a safer and more pleasant environment for pedestrians, cyclists, transit riders as well as people travelling in cars. The current Right of way is 100'. By reducing lanes and adding greenspaces and sidewalk space, Concord can become an attractive boulevard and new entrance to the City.

Buildings on Hardman Triangle should be located close to the front property line. Individual entries to retail/restaurants as well as doors to ground floor residential should face directly onto the sidewalk with appropriate transitions / buffers.

Residential uses should either be set back slightly with a small patio yard and low wall, and / or be raised 3' from the sidewalk to create privacy. Retail uses, if possible should be directly at grade. If they are raised, they must have accessible entrances and graceful transitions to the sidewalk.

View South on Concord Street looking towards the Concord Exchange Building
2. Concept Plan

Projected Absorption

A full or partial redevelopment of the Hardman Triangle area is necessary to achieve the highest and best use of the area. The City of South St. Paul has already acquired two key parcels near the intersection of Grand Avenue and Concord Street that collectively make-up about 3.6 acres. In addition, the City acquired a small 0.31-acre site near the entrance of the Long Cheng meat processing business. However, to realize the full potential of the existing acquisitions and to achieve the highest returns on the property; additional measures are needed to achieve the Hardman Triangle’s development potential.

This Plan recommends the City acquire the following properties:
- Concord Fresh Meat (1.74 acres)
- Long Cheng (2.83 acres); and
- Twin City Pallet (5.21 acres).

The acquisition of these properties is critical; without the acquisition the marketability of the City’s existing properties is limited to the corner parcel. The existence of the current non-conforming business uses impedes development on the city’s parcels and all the other land uses in the Hardman Triangle.

Collectively the acquisition of these three businesses is 9.78 acres; together with the existing city properties the total developable acreage would be approximately 14 acres. As such, a significant development could be achieved that could transform the site area and provide connectivity to Downtown South St. Paul.

This Plan anticipates about a two-year time frame for the acquisition and relocation of the three businesses previously identified. As such, the additional 9.78-acre site would not be shovel ready until 2022 or 2023; however, the hard corner that consists of around 4 acres would be marketable sooner as long as the City has made it public that the surrounding sites will be transitioning to alternative uses.

Given the acquisition time-frame and the other multifamily projects in the pipeline in Downtown South St. Paul (Drover Phase II @ 110 units and the other 198 market rate units); a total of 308 rental units could be on-line by the time the Hardman Triangle is ready for construction. This timeframe would align nicely as the proposed projects would be either leased or nearly stabilized by the time the Hardman Triangle sites would be ready to start construction.

Multifamily housing continues to be one of the preferred asset classes for development in the Twin Cities as record apartment deliveries have resulted in the past three years and 2020 looks to break another peak (11,000 units estimated). However, South St. Paul has delivered the fewest apartment units since 2015 compared to other inner-ring suburban communities across the Metro Area. Apartment development in many of the peer cities has resulted from infill and redevelopment; which in most cases results in higher development costs than vacant, pad-ready sites. In many cases, communities have offered TIF or other incentives to help alleviate the costs associated with redevelopment.

Maxfield Research projects South St. Paul can absorb about 150 units annually across all multifamily product types (i.e. market rate or affordable rental, senior housing, for-sale housing, etc.). As such the build-out of the 14-acre site with predominantly multifamily housing could achieve 700 units; or a five-year plus build-out. Assuming commencement in 2023, the build-out would most likely run the course of the decade. Because the retail sales leakage in South St. Paul, this Plan highly encourages mixed-used formats with first-floor commercial space. The addition of commercial square footage will complement the housing development while providing amenities to South St. Paul residents and workers.
3. Design Guidelines
3. Guidelines

Intent

To shape the overall massing of the buildings so it creates a district that is cohesive, harmonious, and pleasant to be in. A series of buildings, whose overall massing protects and creates views, allows daylight to important spaces, and protects pedestrians from harsh microclimates will contribute to a successful district.

• Building Heights - Stepbacks: In order to ensure sunlight on Concord Street buildings are encouraged to utilize stepbacks on upper floors. Doing so will allow sunlight to penetrate down to the sidewalk during mid day for much of the year.

• Building Heights - Minimum: In order to create a well defined street space, buildings should be a minimum of three stories tall along Concord Street.

• Building Length: Building lengths should not exceed 250’ as measured along the front of the building. Buildings longer than 120’ and should employ techniques that reduce their horizontal scale.

• Building Types: Multiple building types that vary in size are encouraged. Doing so helps ensure variety and visual interest as well as diversity of units and uses.

• Preserving and creating views: Due to the slope from the bluff to the River, consideration should be given to how buildings are experienced from different vantage points, not just from the sidewalk. In order to prevent views towards the river, tallest portions of the buildings should be located perpendicular to Concord Street and the River.

• Corners: primary corners throughout the district should be celebrated with special architectural treatments at both the ground level as well as in the massing of the building.

Building Massing

Building Length

Buildings are encouraged to be a maximum of 180’ in length along the street edge. Buildings longer than 100’ should have a massing and articulation that reduces horizontal scale of the building. While it is not necessary to articulate long buildings as if they are many small buildings, each building, and the assembly of buildings on a site should have variety and human scale.

Building Height and Street Enclosure

Comfortable, human-scale spaces are determined in part by whether or not they have a sense of enclosure - like a room, the walls are important. When the ratio of building height to overall street width is between 11 and 13, the street space will be feel enclosed, while still getting adequate sunlight. Therefore buildings along Concord and Grand Avenue should be between three and of six floors. The facade of any floor above the fourth floor should be set back from the right of way line of any public street.
Ground Floor Design

Intent

To create a superior pedestrian experience along all public streets by ensuring that facades are not exceedingly long, uninterrupted and rigidly uniform. Variations in the ground floor design break up the mass of large buildings, add visual interest and promote a human scale environment along the sidewalk. The guidelines on this page can be used to guide the design of the ground floor of all new buildings.

Guidelines

- **Transparency**: The ground floor of all buildings should be highly transparent with multiple doors, display windows, lobby spaces, and other semi-public spaces. The ground floor of all buildings should be at least 50% clear glass (transparent). Blank walls longer than 30 feet and opaque coverings on windows and doors should be avoided.

- **Setbacks**: Provide plane changes in the facade that create horizontal and vertical breaks, as well as shadow line. Longer buildings should have an “enhanced setback” along part of its length.

- **Materials**: Include elements such as textured materials, awnings, plantings, signage and seating to create a visually engaging and inviting ground floor.

- **Ground Floor Uses**: Active uses, such as retail, restaurants, and common spaces should be located on the ground floor where it meets the sidewalk. Those uses should be visible to the sidewalk. Ground floor spaces should be a minimum of 14’ tall.

- **Residential Uses**: When residential is located on the ground floor facing a public street it should be either at grade and set back 10’-15’ from the sidewalk, or slightly raised to create a greater sense of privacy.

- **Building entrances**: Building entrances should be clearly defined through the use of architectural details, fenestrations, canopies. All entrances to buildings and units should be accessible from the public sidewalk.

Building Placement & Setbacks

All new buildings are encouraged to be located close to the front property line. Use of an “enhanced setback” that offers public amenities and semi-private space for residential units is also encouraged. The Enhanced Setback can range in size however they should be limited to less than 50% of the frontage line and no deeper than 15’. Enhanced setbacks can also be used to mitigate the impact of exceedingly long buildings.

Building Entries

Building entrances should be clearly identifiable, and directly accessible from the adjacent sidewalks. Commercial entrances should be level with the adjacent sidewalk.

Residential entrances to units can be set at grade (if set back for privacy) or located close to the sidewalk and raised for privacy. The ground floor should be constructed with a minimum 14’ floor to floor height.
Facade Articulation

Intent

To create buildings whose facades are well designed, simple, and supportive of the goal of creating a district that is human scaled, pedestrian friendly, and pleasant to be in. Buildings in Hardman Triangle are likely to be larger and longer than the prevailing context of Concord Street, therefore it is important to design them so they maintain a comfortable scale for pedestrians while still creating a well defined outdoor street room.

• **Composition:** Buildings should be composed either as repeated structural bays as is common in many traditional buildings, or as a balanced composition (consisting of masses and solids and voids) as is common in many modern buildings.

• **Materials:** All materials should be long lasting and durable. Materials such as stone, brick, metal and glass are encouraged. Stucco, EIFS, overscaled block or brick, are discouraged.

• **Corners:** Buildings located at the intersection of Concord St and Grand Ave should be designed to engage and add interest to the public realm and create a visual presence at the corner. This should include corner entrances and architectural features such as chamfered or rounded corners, corner windows, and tower elements.

• **Building Elements:** Elements such as projecting bays, balconies, awnings, fins, overhangs, and cornices should be used to give depth and interest to facades.

Composition

Traditional buildings (top image) tend to be composed of repeating bays, modern buildings (bottom two images) tend to be balanced compositions of masses. The design of buildings should be appropriate for the time and not historical derivatives.

Corners

Articulation of important corners is an opportunity to define a District. Grand Avenue and Concord Street is the 100% corner of the District and should be celebrated as such with architectural treatments that highlight the corner. A special corner treatment is also encouraged at the Hardman Ave / Concord Street intersection because that location is the gateway to the District as approached from the north.
Site Considerations

Intent
To provide beautiful and functional outdoor spaces that serve public, private, passive and active uses and enhance the quality of life for residents. Buildings and other site elements in Hardman Triangle should be planned to create outdoor space that have a relationship to indoor building uses and the public sidewalk.

- **Plant Material:** Trees and landscaped areas play an important role in breaking down a space and in creating a sense of enclosure, providing shade, and adding needed softness in the urban environment.

- **Finish Floor Elevations:** Due to the grade change from Concord Street to the site, creative indoor and outdoor grade transitions are needed to ensure all building entrances are accessible to public sidewalks along Concord Street and Grand Ave. Commercial entrances should be level with the adjacent sidewalk. Residential entrances should be no more than a couple of feet above the level of the adjacent sidewalk, or set back no more than 15' from the sidewalk with appropriate buffering such as a low wall.

- **Stormwater Management:** Stormwater management should be approached in an artful manner. For example, celebrating the treatment of stormwater in an environmentally responsible way while also creating inviting landscapes and public art that enhance a site’s open space and aesthetic value.

- **Occupied Roofs:** Due to the proposed density, the necessity of structured parking, and the overall urban nature of the Hardman Triangle district, functional outdoor use areas should be provided above structured parking and connect to the sidewalks along Concord Street and Grand Avenue.

- **Vegetated Roofs:** Vegetated roofs should be used to meet impervious area requirements and as part of the stormwater management strategy within Hardman Triangle. Vegetated roofs reduce heat island effect and decrease the buildings demand for heating and cooling.

March 6, 2020
AGENDA ITEM: Discuss Proposed Revisions to Tobacco Ordinance

DESIRED MEETING OUTCOMES: DISCUSS CONCERNS RAISED BY THE TOBACCO-FREE ALLIANCE AND PROVIDE DIRECTION AS TO ANY MODIFICATIONS THE COUNCIL FEELS IS APPROPRIATE.

OVERVIEW:

In December of 2019, changes to the Family Smoking Prevention and Tobacco Control Act (Federal Tobacco 21 Law) prohibit retailers from selling tobacco products to anyone under the age of 21. With this change, the City Code needs to be amended. As part of the new law, cities are required to give at least 30 days mailed notice to current license holders prior to amending their current ordinance, therefore, the second reading of the proposed ordinance will occur on April 20th.

Elyse Less from Tobacco-Free Alliance, a local nonprofit working to reduce the harms of tobacco through assessment, education, and advocacy, contacted us this past Monday to express concerns about our proposed revisions to the tobacco ordinance. Her e-mail to us stated the following:

I’m writing because I noticed the proposed South St. Paul Tobacco 21 ordinance contains penalties against 18-20-year-olds for attempted purchase, use, and possession of tobacco products (“PUP penalties”). Almost all of Minnesota’s 60+ Tobacco 21 communities removed PUP penalties, while the proposed South St. Paul ordinance actually expands them. (See draft ordinance Sec. 18-677(2)-(4).) Evidence suggests PUP laws against youth actually detract from effective enforcement measures and tobacco control efforts. Further, the recent federal Tobacco 21 law focused on retailers and did not penalize kids. (Additionally, if you are updating your ordinance to comply with federal law, the new federal law requires retailers to request identification from every customer under age 30, raising this from the current age 27 carding requirement. (See draft ordinance Sec. 18-704(h).))

Our organization assisted West St. Paul, Mendota Heights, Lilydale, Hastings, and Lakeville when each city considered Tobacco 21. All of these Dakota County cities had thoughtful conversations about the PUP language and chose to remove the PUP penalties from their Tobacco 21 ordinances. (Attached are the final Tobacco 21 ordinances from West St. Paul and Mendota Heights as examples.) We are currently working with the City of Eagan. The Eagan City Council also decided at their March 10 work session to remove PUP penalties from their proposed Tobacco 21 ordinance.
We understand local jurisdictions are eager to update their local tobacco licensing ordinances to comply with the new federal Tobacco 21 law, which is a huge step forward. However, it takes a thoughtful approach and model language to achieve the best results. (There are additional items that the city may want to address when updating this ordinance. For example, the current ordinance does not include nicotine delivery devices in the list of prohibited products retailers cannot sell to those under 21.) Fortunately, we have great resources available through the Public Health Law Center (PHLC). I would love to speak further with you or connect you with Natasha Phelps, Lead Staff Attorney from PHLC, who could provide South St. Paul with model language for Tobacco 21.

In a subsequent e-mail, she provided the following information:

The city council may also want to consider the following language issues at the work session:

- Section 18-672 (“Purpose”) of the South St. Paul draft ordinance now reads "the city recognizes that many persons under the age of 21 years may purchase or otherwise obtain, possess and use tobacco, tobacco products and tobacco-related devices, and such sales, possession and use are violations of both federal and state laws..." This is an inaccurate iteration of both state and federal law. Federal law does not at all penalize underage purchase, use, or possession (i.e., PUP is not illegal under federal law—it is not addressed/it is silent/it is not criminalized or illegal). Bill language for state T21 is the same—PUP is not addressed/not illegal. State law only currently penalizes PUP of people under the age of 18, not 21. This is an especially important correction because if the City is interested in updating its ordinance to reflect the recent federal T21 law and align with state minimums, a statement on what federal and state law does should be clear so that the city can engage in a conversation about how to do that with accurate information on those laws. This may be a very helpful clarification when discussing PUP.

- The draft compliance check language currently could result in a violation of state compliance check requirements. State law (461.12, Subd. 5) requires every local licensing authority to conduct at least one compliance check each year. This state-mandated compliance check “must involve minors over the age of 15, but under the age of 18.” Section 18-676 (“Compliance checks and inspections”) of the city’s draft ordinance now requires only compliance checks with someone between the ages of 18 and 21-years-old. If the city did compliance checks only with someone between the ages of 18- and 20-years-old, it would not be in compliance with state compliance check laws. Cities with T21 laws can conduct this annual compliance check to both satisfy state law and to enforce its local T21 policy, but they should have accurate and specific language instructing enforcement agents how to do that. PHLC’s model tobacco ordinance suggests language that would allow a municipality to either conduct at least one compliance check with a person between the ages of 15 and 17 and a person between the ages of 18 and 20 in the same check, or conduct more than one compliance check—at least one check with a person between the ages of 15 and 17 and at least one additional check with a person between the ages of 18 and 20. (Note that the 3/16/20 agenda overview mentions the state law compliance check requirement, but does not include it in the draft ordinance.)
These above two points and the others mentioned in my previous emails are examples of why the city may want to consider engaging technical assistance from Public Health Law Center, the content experts on best practice tobacco prevention policies. PHLC can provide clear, concise, unambiguous language. There is no cost to the city for PHLC’s technical assistance. I can request that they provide the city with draft language if you would like or city staff can reach out to Natasha Phelps from PHLC at Natasha.Phelps@mitchellhamline.edu

Please also let the council know that Tobacco-Free Alliance can provide free Tobacco 21 decals and educational material for retailers to ensure a smooth transition to this new ordinance. Please let me know if there is additional information that I can provide or if you would like me to be available to answer questions at the work session. I hope we can discuss this in person soon!

ATTACHMENTS:

Proposed Ordinance Revision
LMC Information on Tobacco Licensing
Best practice removal of PUP penalties
Tobacco 21 fact sheet and map of MN T21 localities
Public Health Law Center – Minnesota City Retail Tobacco Licensing Ordinance

SOURCE OF FUNDS:

N/A
City of South St. Paul
Dakota County, Minnesota

Ordinance No. ________

AN ORDINANCE AMENDING ARTICLE XXI REGARDING TOBACCO SALES TO PERSONS UNDER AGE 21

The City Council of the City of South St. Paul does ordain:

SECTION 1. AMENDMENT. South St. Paul City Code Article XXI, Division I, Section 18-671, regarding Tobacco is hereby amended as follows:

ARTICLE XXI. - TOBACCO

DIVISION 1. - GENERALLY

Sec. 18-671. - Definitions and interpretations.

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

Compliance checks. The system the city police department uses to investigate and ensure that those authorized to sell tobacco, tobacco products and tobacco-related devices are following and complying with the requirements of this article. Compliance checks shall involve the use of minors—persons between the ages of 18 and 21 as authorized by this article. Compliance checks shall also mean the use of persons between the ages of 18 and 21 who attempt to purchase tobacco, tobacco products or tobacco-related devices for educational, research and training purposes as authorized by state and federal laws.

Individually packaged. The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packing 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 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes a retractable divider, garage door, or other physical barrier, whether temporary or permanent.

Loosies. The common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The
term “loosies” does not include individual cigars with a retail price, before any sales tax, of more than $2.00 per cigar.

Minor. Any person under 18 years of age.

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 storefront or other permanent type of structure authorized for sales transactions.

Nicotine delivery devices. Any product containing or delivering nicotine intended for human consumption, or any part of such product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the FDA for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

Retail establishment. Any place of business where tobacco, tobacco products or tobacco-related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, drug stores, bars, convenience stores and restaurants.

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

Self-service merchandising. Open displays of tobacco, tobacco products or tobacco-related devices in any manner where any person shall have access to the tobacco, tobacco products or tobacco-related devices without the assistance or intervention of the licensee or the licensee’s employee. Such assistance or intervention shall involve the actual physical exchange of the tobacco, tobacco product or tobacco-related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

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; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco or tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

Tobacco-related device. Any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or other consumption, whether by inhalation, ingestion, or any other method of consumption, of tobacco or tobacco products.
Vending machine. Any mechanical, electric or electronic self-service device that upon the insertion of money, tokens or other form of payment dispenses tobacco products, and includes vending machines equipped with manual, electric or electronic locking devices.

Sec. 18-672. - Purpose.

Because the city recognizes that many persons under the age of 18-21 years may purchase or otherwise obtain, possess and use tobacco, tobacco products and tobacco-related devices, and such sales, possession and use are violations of both state and federal laws, and because smoking has been shown to be the cause of several severe health problems which subsequently place a financial burden on all levels of government, this article is intended to regulate the sale, possession and use of tobacco, tobacco products and tobacco-related devices for the purpose of enforcing and furthering existing laws, to protect minors persons under the age of 21 against the serious effects associated with the illegal use of tobacco, tobacco products and tobacco-related devices, and to further the official public policy of the state to prevent young people from starting to smoke as stated in Minn. Stat. § 144.391.

Sec. 18-673. - Prohibited sales.

(a) It shall be a violation of this article for any person to sell, offer to sell, give away, furnish, or otherwise deliver any tobacco, tobacco product, or tobacco-related device to any person under the age of 18-21 years.

(b) It shall be unlawful for any person licensed under this article to allow the sale of tobacco, tobacco products or tobacco-related devices:

1. By the means of a vending machine unless minors persons under 18 are at all times prohibited from entering the licensed establishment;

2. By means of self-service merchandising whereby the customer does not need to make a verbal or written request to an employee of the licensee in order to receive the tobacco, tobacco product or tobacco-related device and where there is not a physical exchange of the tobacco, tobacco product or tobacco-related device between the licensee or the licensee’s employee and the customer. All tobacco, tobacco-related products and tobacco-related devices shall be stored behind the counter;

3. By means of loosies as defined in section 18-671;

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; or

5. By any other means, to any other person, in any other manner or form prohibited by federal, state, or local law, ordinance, or other regulation.
This section 18-673(b)(1)-(2) shall not apply to retail stores which derive at least 90 percent of their gross revenue from the sale of tobacco and tobacco-related products and which cannot be entered at any time by persons younger than 18 years of age.

Sec. 18-674. - Self-service sales.

It shall be unlawful for a licensee to allow the sale of tobacco, tobacco products or tobacco-related devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee’s employee and whereby there is not a physical exchange of the tobacco, tobacco product or the tobacco-related device between the licensee or the licensee’s clerk and the customer. All tobacco, tobacco products and tobacco-related devices 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.

Sec. 18-675. - Responsibility.

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

Sec. 18-676. - Compliance checks and inspections.

All licensed premises shall be open to inspection by the city police department or other delegated law enforcement officers or agencies during regular business hours. From time to time, but at least once per year, a law enforcement officer shall conduct compliance checks to ensure compliance with the provisions of this article. Compliance checks shall utilize, with the written consent of their parents or guardians, minors-persons over the age of 15-18 years, but less than 21 years, to enter the licensed premises to attempt to purchase tobacco, tobacco products or tobacco-related devices. Persons Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers. Minors-Persons used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, or the unlawful possession of tobacco, tobacco products or tobacco-related devices when such items are obtained as a part of the compliance check. No minor-person used in compliance checks shall attempt to use a false identification misrepresenting the minor’s-person’s age, and all minors-persons lawfully engaged in a compliance check shall answer all questions about the minor’s-person’s age asked by the licensee or employee thereof and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit other compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

Sec. 18-677. - Illegal acts.

Unless otherwise provided, the following acts shall be a violation of this article:
(1) **Illegal sales.** It shall be unlawful for any person to sell or otherwise provide any tobacco, tobacco product or tobacco-related device to any person under 21.

(2) **Illegal possession.** It shall be unlawful for any minor person under 21 to possess any tobacco, tobacco product or tobacco-related device. This section shall not apply to minors persons under 21 lawfully involved in a compliance check.

(3) **Illegal use.** It shall be unlawful for any minor person under 21 to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco-related device or nicotine delivery device.

(4) **Illegal purchase.** It shall unlawful for any minor person under 21 to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product or tobacco-related device, and it shall be unlawful for any person to purchase, or otherwise obtain such items on behalf of a minor person under 21. It shall further be a violation for any person to coerce or attempt to coerce a minor person under 21 to illegally purchase or otherwise obtain or use any tobacco, tobacco product or tobacco-related device.

(5) **Use of false identification.** It shall be unlawful for any minor person under 21 to attempt to disguise the minor’s true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with, to represent an age older than the actual age of the person.

**Sec. 18-678. - Civil enforcement.**

The licensee shall be responsible for the conduct of its agents or employees while they are on the licensed premises. Any violation of this article shall be considered an act of the licensee for the purpose of imposing a civil penalty, license suspension, or revocation. Each violation, and every day in which a violation continues, shall constitute a separate offense.

**Sec. 18-679. - Administrative penalties.**

(a) If a licensee or employee of a licensee sells tobacco to a person under the age of 18 21 years, or violates any other provision of this article, the licensee shall be charged an administrative penalty of $75.00. An administrative penalty of $200.00 and up to a three-day suspension with a one-day minimum suspension must be imposed for a second violation at the same location within 24 months after the initial violation. For a third violation at the same location within 24 months after the initial violation, an administrative penalty of $250.00 shall be imposed, and the licensee’s authority to sell tobacco at that location must be suspended for ten days. Any subsequent violation can result in license revocation. No suspension or penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the city council. A decision that a
violation has occurred must be in writing. If the city council determines that a violation of this article did occur, that decision, along with the city council’s reasons for finding a violation and the administrative penalty to be imposed under this section, shall be recorded in writing, a copy of which shall be provided to the violator. Likewise, if the city council finds that no violation occurred or finds grounds for not imposing any administrative penalty, such findings shall be recorded and a copy provided to the alleged violator.

(b) Individuals found to be in violation of this article shall be charged an administrative fee in the amount established by chapter 26. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the city council. A decision that a violation has occurred must be in writing.

Sec. 18-680. - Exceptions and defenses.

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

(b) Reliance on proof of age. It shall be an affirmative defense for a person to have reasonably relied on proof of age as described by Minn. Stat. § 340A.503, subd. 6.

Secs. 18-681—18-703. - Reserved.

DIVISION 2. - LICENSE

Sec. 18-704. - Required; application; non-transferability; renewals; other requirements.

(a) Required. No person shall sell or offer to sell any tobacco, tobacco products or tobacco-related devices without first obtaining a license from the city.

(b) Application. An application for license to sell tobacco, tobacco products or tobacco-related devices shall be made on a form provided by the city clerk. 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, the name of the proposed license holder, the location of the proposed business, and a copy of the educational materials the applicant intends to use to educate employees, and any additional information the city clerk deems necessary. The completed application and fee shall be submitted to the city clerk for approval. If the city clerk determines that an application is incomplete, it shall be returned to the applicant with notice of the deficiencies.

(c) Reserved.

(d) Transfers. All licenses issued pursuant to this division 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 shall be valid without the prior written approval of the city clerk.

(e) *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 division.

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

(g) *Renewals.* The renewal of the license issued under this article 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. The issuance of a license under this article shall be considered a privilege and not a right of the applicant, and shall not entitle the holder to automatic renewal of the license.

(h) *Instructional program.* No person shall be issued a license or renewal license to sell tobacco-related products unless an applicant or license holder has a program for instructing all employees regarding the legal requirements pertaining to the sale of tobacco products at the business premises for which the license was issued. The instructional program shall include, but not be limited to, reviewing the law on the sale of tobacco products and requiring employees to request identification from every customer who is under 27 years of age. The training shall include information that the sale of tobacco products to *persons under 21* is illegal, explanation of what proof of age is legally acceptable, and that a sale to a *person under 21* can subject the applicant or license holder and their employees to criminal and/or civil liability.

(i) *Sampling.* Sampling of tobacco, tobacco products, tobacco-related devices or nicotine delivery devices shall not be permitted within the indoor area of any establishment with a retail tobacco license.

(j) *Storage.* All tobacco, tobacco products, tobacco-related devices or nicotine delivery devices 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.

**Sec. 18-705. - Fees.**

The license fee is set by chapter 26 of this Code.

**Sec. 18-706. - Basis for denial of license.**

The following shall be grounds for denying the issuance of or renewal of a license. The following list is not exclusive of the grounds for denial:
(1) The applicant is under the age of 18 years of age.

(2) The applicant or license holder has had a license to sell tobacco, tobacco products or tobacco-related devices revoked anywhere within the preceding 12 months of the date of application, or is subject to penalties under section 18-679.

(3) The applicant or license holder fails to provide any information required on the application, or provides false or misleading information.

(4) The applicant or license holder is prohibited by federal, state, or other local law, ordinance or regulation from holding such a license.

(5) The applicant or license holder has outstanding fines, penalties, or property taxes owed to the county or to the city.

SECTION 2. SUMMARY PUBLICATION. Pursuant to Minnesota Statutes Section 412.191, in the case of a lengthy ordinance, a summary may be published. While a copy of the entire ordinance is available without cost at the office of the City Clerk, the following summary is approved by the City Council and shall be published in lieu of publishing the entire ordinance:

This amendment is in accordance with the Federal Food, Drug and Cosmetic act, raising the minimum age of the sale of any tobacco product, including cigarettes, cigars and e-cigarette products from 18 to 21 years.

SECTION 3. EFFECTIVE DATE. This ordinance shall become effective upon publication.

Approved: ____________________________

Published: ____________________________

____________________________________
Christy Wilcox, City Clerk
However, state law specifically regulates the siting of small wireless facilities on city-owned structures in the rights-of-way ("collocating"), including limiting the amount cities can charge for rent and setting forth specific collocation permitting criteria. In addition, the Federal Communications Commission has place additional regulations on wireless telecommunication citing regulations. Again, because of the complexity of this issue, cities wanting to regulate wireless companies or other users of the public rights of way should consult League publications and work with their city attorney to develop the appropriate ordinance provisions, agreements and cost recovery systems.

H. Entertainments

State law no longer requires a license and police protection for public dances. Cities still have the authority, however, to regulate public dances. Cities also may regulate other types of entertainment not otherwise subject to state licensing, such as bowling alleys, recreational rides, shooting ranges, and sliding hills.

I. Carnival, circus, or fair

No person who obtains a state food handling license for a carnival, circus, or fair shall be required to obtain any additional license or permit from a city to engage in any aspect of food handling or to operate a restaurant. However, a city may require a carnival, circus, or fair to comply with any sanitation, public health, or zoning ordinance, or privilege license requirements when held within the city’s jurisdiction.

No city council may permit or allow an itinerant carnival, street show, street fair, sideshow, circus, or any similar enterprise within one mile of the corporate limits of any city of the fourth class without having first obtained in writing the consent thereto from the council of that city of the fourth class.

J. Tobacco and related products

Cities may license and regulate all retailers that sell tobacco products, tobacco-related devices, electronic delivery devices, and nicotine and lobelia delivery products. If a city does not adopt its own tobacco licensing ordinance, then the county must do so.

1. Tobacco

State law specifically defines and lists out products that constitute "tobacco", tobacco related products, electronic delivery devices and nicotine and lobelia delivery products. Consult the statutory resources cited on the left when determining regulation of specific products.
RELEVANT LINKS:

A city wishing to adopt an ordinance licensing the sale of tobacco and tobacco-related devices must give general notice of the intent to adopt or amend a tobacco ordinance, and must give retailers 30 days' written notice of the time, place, and subject matter of the meeting where the proposed ordinance or amendments are to be considered.

A tobacco licensing ordinance, whether adopted by the county or a city, must contain at least the following provisions:

- Establish an administrative hearing system where an alleged violator has the right to be heard before a designated hearing officer or panel (which could be the city council) and where a fine, instead of a criminal penalty, could be imposed for violating the ordinance. State law establishes a schedule of fines.
- Provide for and conduct at least one unannounced compliance check each year.
- Prohibit self-service (vending machines) sales of individual cigarette packages, tobacco-related devices, electronic delivery devices, and nicotine and inebria delivery products, except in establishments that prohibit minors, and in establishments that derive at least 90 percent of their revenue from the sale of tobacco.

In addition to the required regulations noted above, cities may also regulate other aspects of tobacco retail sales. Some of these restrictions may include:

- Limiting the sale of flavored tobacco products.
- Limiting the use of coupons or other discounts for tobacco products.
- Regulating the location, density, and type of tobacco retailers.
- Setting a minimum price and package size for tobacco products.
- Limit the use of samples.

More information on these optional restrictions can be found through the Public Health Law Center at Mitchell Hamline School.

The ordinance may establish a licensing fee sufficient to cover the costs of enforcing the above provisions.

6. **Hookah**

A hookah, also known as shisha and nargile, is a waterpipe used for smoking flavored tobacco. Shredded tobacco leaf flavored with molasses, honey, or dried fruit commonly is used in the hookah waterpipe. It is unclear if the Clean Indoor Air Act covers hookah; however, many communities have chosen to regulate hookah under their tobacco regulations.
Information about removing PUP penalties in a Tobacco 21 ordinance

Why is it important to remove penalties for underage purchase, use and possession (PUP penalties) in a Tobacco 21 ordinance?

- Tobacco licensing ordinances are meant to regulate the behavior of the licensees.

- The tobacco industry has targeted youth for decades, seeking to create generations addicted to its products. Instead of holding industry and retailers accountable, PUP laws shift responsibility to their victims—young consumers.

- PUP penalties have not been proven to reduce youth tobacco use.\(^1\)

- Data show that PUP penalties open the door to selective enforcement against youth of certain racial and ethnic groups and of low socioeconomic status.\(^2\)

- PUP penalties stigmatize youth who smoke/vape. Stigma is not an effective public health intervention, and it may keep kids from seeking cessation treatment or education.\(^3\)

- National organizations like Campaign for Tobacco Free Kids, the American Cancer Society, the American Heart Association, and the state-wide Minnesotans for a Smoke-Free Generation coalition, agree that Tobacco 21 policies should eliminate PUP penalties.

- The vast majority of T21 communities do not penalize underage purchase, use, and possession. (72 MN communities have Tobacco 21 ordinances as of 3/19/20). These communities discussed the ineffectiveness of the penalties and recognized that this is not about punishing our kids. It’s about holding Big Tobacco and retailers accountable.

- The new federal Tobacco 21 law does not penalize kids. It focuses solely on retailers.

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\(^1\) Wakefield M, Giovino G. Teen penalties for tobacco possession, use, and purchase: evidence and issues. *Tob Control.* 2003;12 Suppl 1:i6-13. [http://tobaccocontrol.bmj.com/content/tobaccocontrol/12/suppl_1/i6.full.pdf](http://tobaccocontrol.bmj.com/content/tobaccocontrol/12/suppl_1/i6.full.pdf); TobaccoFreeKids PUP Fact Sheet


Increasing the Tobacco Sale Age to 21

WHY RAISE THE TOBACCO SALE AGE?

The tobacco industry heavily targets young adults ages 18-21 in order to recruit new tobacco users and guarantee profits. Approximately 95 percent of current adult smokers started before they were 21. In Minnesota, no one under 18 years old is allowed to buy tobacco. Youth get tobacco from several sources, including social sources. A 16-year-old has more contact with and access to 18-year-olds who can buy tobacco. However, it is less likely a 16-year-old would ask a 21-year-old for tobacco. Increasing the age gap between young people and those who can legally buy tobacco will reduce youth access to tobacco.

A 2015 report from the Institute of Medicine (IOM) found that increasing the legal age to purchase tobacco to 21 would decrease smoking initiation among 15-17-year-olds by 25 percent. A Minnesota-specific study looked at the impact of raising the tobacco age and found that 25 percent fewer 15-year-olds would start smoking by the time they turn 18 and 15 percent fewer 18-year-olds would start smoking by the time they turn 18. This translates into 30,000 young people not becoming smokers over the next 15 years. If youth don’t smoke by the time they are 21, they likely never will.

WHAT IS THE IMPACT OF NICOTINE ON ADOLESCENT BRAIN DEVELOPMENT?

Nicotine is addictive and is particularly harmful to the developing adolescent brain. Evidence suggests that nicotine interferes with brain maturation and can have a long-term effect on cognitive development and mental health. Even brief or intermittent nicotine exposure during adolescence can cause lasting damage.

The addictive properties of nicotine can lead adolescents to heavier daily tobacco use and a more difficult time quitting later in life. Nicotine exposure can also increase the risk of addiction to other harmful substances. The long-term effects of nicotine on the adolescent brain is a significant public health concern.

WHO SUPPORTS RAISING THE TOBACCO SALE AGE TO 21?

A 2014 national survey shows that 75 percent of adults favor increasing the minimum sale age for tobacco to 21. A national consensus is growing to protect young people from a lifetime of addiction and health problems caused by tobacco by raising the tobacco sale age. In addition, 70 percent of current smokers and 65 percent of those age 18-24 support raising the minimum tobacco sale age.
"Raising the legal minimum age for cigarette purchaser to 21 could gut our young adult market where we sell about 25 billion cigarettes and enjoy a 70 percent market share."

Philip Morris report, 1986

**IS YOUTH TOBACCO USE STILL A PROBLEM?**

The progress made in youth tobacco prevention over the past 10 years is diminishing with rising numbers of youth using vaping products. According to the 2019 Minnesota Student Survey, one in four Minnesota 11th graders reported using an e-cigarette in the past 30 days. This is a 50 percent increase from 2016. Additionally, 72 percent of 11th graders report getting e-cigarettes from friends.¹⁰ Policies such as raising the tobacco sales age to 21 address the social sources through which youth access these products.

**WHAT CAN STATE AND LOCAL GOVERNMENTS DO?**

Nineteen states have raised the age to 21 since 2016. In Minnesota, 72 communities have raised the age to 21, joining 500-plus nationwide. On Dec. 20, 2019, President Trump signed Tobacco 21 into federal law. Raising the national tobacco sales age to 21 is a victory for youth and health, but state and local action is still needed to maximize health benefits.

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**MINNESOTA'S 72 TOBACCO 21 COMMUNITIES**

The Association for Nonsmokers-Minnesota is dedicated to reducing the human and economic costs of tobacco use in Minnesota.

2395 University Avenue W, Suite 310
St. Paul, MN 55114
651-646-3005 | www.ansrmn.org

Sources may be found at www.ansrmn.org

Updated: March 2020
MINNESOTA CITY RETAIL
TOBACCO LICENSING ORDINANCE

Through licensing and related regulations, Minnesota cities have the opportunity to address the sale of commercial tobacco and related devices and products in the retail environment.

This model ordinance includes all of the minimum retail tobacco sales restrictions required by Minnesota state and federal law. It also includes a number of additional provisions a city may choose to adopt in order to further advance public health. A city planning to adopt this model ordinance, in whole or in part, should review it with its city attorney beforehand to determine suitability for the city’s circumstances. While the model ordinance language can be modified by adding or omitting content concerning activities that a city does or does not seek to regulate, doing so may result in an ordinance that does not conform to state law, federal law, and best public health policy practices.

Because provisions within this model ordinance are controlled by statute and rule, the city attorney should review any modifications to ensure they conform to state and federal law. In addition, because the ordinance establishes rights and responsibilities of both the city and license applicants and holders, the city attorney should review the entire ordinance before it is adopted. The Public Health Law Center provides legal technical assistance to help communities that wish to adopt commercial tobacco control ordinances. We encourage communities to contact us for assistance when considering this model language.
Notice

This ordinance is drafted in the form prescribed by state law for statutory cities. Statutory cities must publish their ordinances — or a summary thereof — in the city’s official newspaper before they become effective. Home rule charter cities may have to follow the formatting and/or other procedural requirements found in their city’s charter. Charter cities should consult their charter and their city attorney to ensure that they comply with all charter requirements. All cities must provide copies of their ordinances to the county law library or its designated depository pursuant to Minn. Stat. § 415.021.

This ordinance may affect existing license holders. Under Minn. Stat. § 461.19, a city is required to give retailers notice that it is considering adopting or substantially amending a retail tobacco licensing ordinance. The city must take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license. The notice must state the time, place, and date of the meeting and the subject matter of the proposed ordinance. A city may also mail a copy of the proposed ordinance to all existing license holders to inform them of its contents and to provide them an opportunity to make their views known.

Additionally, Minn. Stat. § 415.19 requires statutory and home rule charter cities to post proposed new ordinances and ordinance amendments on the city website at least 10 days prior to a final vote by the city council, if the city already posts ordinances on its site. Under the same statute, within 10 days of a final vote, cities must also provide this same notice to all city listserv subscribers via their electronic notification system or, if the city does not have an electronic notification system, in the location that the city posts public notices. Cities must also provide new or renewing licensees with information about the city’s notification procedure at the time of application.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use. Communities differ on their readiness and willingness to adopt certain commercial tobacco control policies that are intended to help make that world a reality. As such, this model ordinance represents a balance between state and federal minimum standards, best public health policy practices, and practicality for city governments in Minnesota. This model ordinance contains several policy components that go beyond state minimum requirements and communities may or may not choose to adopt at this time, including:

- Raising the legal purchasing age to 21;
- Restricting the sale of flavored tobacco products, including menthol;
• Regulating the price of commercial tobacco products, such as establishing minimum prices for cigars and restricting price promotions and coupon redemptions;

• Regulating the distance between tobacco retailers, youth-oriented facilities and other retailers; and

• Prohibiting pharmacies from selling commercial tobacco products.

Context Box

Context boxes are included throughout this model ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A city wishing to adopt all or part of this model ordinance should keep this in mind and remove the context boxes.

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While the Public Health Law Center does not lobby, advocate, or directly represent communities, adopting effective commercial tobacco control policies starts early with education, stakeholder and community engagement, and a strong advocacy plan. If a community is unaware of the resources available to them for engaging the community and developing an advocacy plan, or if a city is considering adopting an ordinance and is interested in learning about the range of resources available, the Public Health Law Center can provide assistance through our publications and referrals to experts in the field. In certain, limited circumstances, Public Health Law Center staff may be able to speak at public hearings or work sessions to provide education about particular policy options.

This retail tobacco licensing ordinance was prepared by the Tobacco Control Legal Consortium at the Public Health Law Center, located at Mitchell Hamline School of Law in St. Paul, Minnesota.

The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not lobby nor does it provide direct legal representation or advice. This document should not be considered legal advice.

This publication represents the only Minnesota model city retailer licensing policy endorsed by the Public Health Law Center.
ORDINANCE NO. [ _____________ ]

AN ORDINANCE REGULATING THE SALE OF TOBACCO AND RELATED DEVICES AND PRODUCTS WITHIN THE CITY OF [ _____________ ], MINNESOTA

THE CITY COUNCIL OF THE CITY OF [ _____________ ] DOES ORDAIN:

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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.


### Purpose and Findings

A Purpose and Findings section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies and demonstrates the city's reasoning for adopting specific provisions. This Purpose and Findings section reflects language appropriate for all of the provisions suggested. The Public Health Law Center can provide support for communities to determine which Purpose and Findings statements and references should be retained in a final ordinance, depending on which provisions from the model ordinance the city chooses to adopt.

### Section 2. Definitions.

Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this ordinance, the following definitions 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 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.

**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.

**FLAVORED PRODUCT.** Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, 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 products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

**IMITATION TOBACCO PRODUCT.** Any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. IMITATION TOBACCO PRODUCT includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. IMITATION TOBACCO PRODUCT does not include electronic delivery devices or nicotine or lobelia delivery products.

**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. 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 common term used to refer to single or individually packaged cigars or cigarettes, or any other licensed product 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 \text{ per cigar.}

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

NICOTINE OR LOBELIA DELIVERY 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.

PHARMACY. A place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. The phrase includes but is 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 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.

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.

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. 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.

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.

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

(B) Application. An application for a license to sell licensed products must be made on a form provided by the city. The application must 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 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.

(C) Action. The City Council may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the City Council approves the application, the City Clerk will issue the license to the applicant. If the City Council denies the application, notice of the denial will be given to the applicant along with notice of the applicant’s right to appeal the decision.

(D) Term. All licenses issued are valid for one calendar year from the date of issue.
(E) **Revocation or suspension.** Any license issued may be suspended or revoked following the procedures set forth in Section 11.

(F) **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.

(G) **Moveable place of business.** No license will be issued to a moveable place of business. Only fixed-location businesses are eligible to be licensed.

(H) **Display.** All licenses must be posted and displayed at all times in plain view of the general public on the licensed premises.

(I) **Renewals.** The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must 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 is a privilege and does not entitle the license holder to an automatic renewal of the license.

(K) **Minimum clerk age.** Individuals employed by a licensed retail establishment under this ordinance must be at least [18 or 21] years of age to sell licensed products.

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**Minimum Age for Clerks**

Cities may be interested in establishing a minimum age for employees that work for licensed tobacco retailers. Doing so ensures that employees are of or above the minimum legal sales age for commercial tobacco sales. If a city chooses to raise the minimum legal sales age to 21, but leave the minimum clerk age at 18, clerks between the ages of 18 and 20 can legally sell licensed products within the purview of their employment, but would be unable to purchase them.

(L) **Maximum number of licenses.** The maximum number of licenses issued by the city at any time is limited to [see context box below]. When the maximum number of licenses has been issued, the city may place persons seeking licensure on a waiting list and allow them to apply on a first-come, first-served basis, as licenses are not renewed or are revoked. A new applicant who has purchased a business location holding a valid city license will be entitled to first priority, provided the new applicant meets all other application requirements in accordance with this ordinance.
Licensing Cap

Communities with a higher density of commercial tobacco retailers expose more youth and young adults to commercial tobacco industry marketing and make it easier for youth and young adults to obtain licensed products. This encourages commercial tobacco initiation, use, and brand choice. One way to address retailer density issues is to place a cap on the number of tobacco retailer licenses that may be issued by the city. The above provision would set the maximum number of licenses available.

Cities can choose how to structure a licensing cap to meet the needs of their communities. Potential options include setting the cap at the number of existing licensed retailers or limiting the number of licensed retailers based on population density. A city may also want to limit licenses to those that currently exist and reduce the number of available licenses over time, as licenses are revoked or expire and are not renewed. Cities are encouraged to work with local public health departments, city attorneys, and the Public Health Law Center to determine the appropriate licensing cap provision for their community.

For more information on retailer density, review our publication, *Location, Location, Location: Regulating Tobacco Retailer Locations for Public Health*.

**M** Proximity to youth-oriented facilities. No license will be granted to any person for a retail establishment location that is within [1,000] feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a youth-oriented facility. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in that same location for at least one year before the date this section was enacted into law.

**N** Proximity to other licensed retailers. No license will be granted to any person for a retail establishment location that is within [2,000] feet of any other existing licensed retail establishment, as measured by the shortest line from the property line of the space to be occupied by the applicant for a license to the nearest property line of the existing licensee. This restriction does not apply to an applicant who has been licensed to sell licensed products in the same location for at least one year before the date this section was enacted into law.
**Proximity Restrictions**

Research has demonstrated that policies requiring set distances between retailers and youth-oriented facilities help to reduce tobacco retailer density and increase prices for commercial tobacco products. These proximity buffers have the largest impact in urban, low-income neighborhoods, which have been historically targeted by the tobacco industry with pervasive marketing and price promotions at the point-of-sale. The greatest public health impacts are seen when these policies are combined with a cap on the number of licenses issued.


(O) **Pharmacies ineligible for licensure.** No existing license will be eligible for renewal to any pharmacy, including any retail establishment that operates or contains an on-site pharmacy, and no pharmacy or any retail establishment that operates an on-site pharmacy will be granted a new license.

**Pharmacy Prohibitions**

Several communities have adopted laws prohibiting pharmacies from selling commercial tobacco products. These laws have been shown to significantly reduce commercial tobacco retailer density when compared to communities without similar laws. These gains have had the greatest impact on neighborhoods with higher median income, education, and proportion of non-Hispanic white residents. Although pharmacy restrictions alone are unlikely to address health disparities, some studies have shown that these policies are most effective when combined with proximity restrictions.

(P) **Smoking prohibited.** Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance.

(Q) **Samples prohibited.** No person shall distribute samples of any licensed product free of charge or at a nominal cost.

(R) **Instructional program.** Licensees must ensure that all employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the city. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the city at the time of renewal, or whenever requested to do so during the license term.

### Section 4. Fees.

No license will be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the city’s fee schedule and may be amended from time to time.

**Licensing Fees**

Fees provide revenue for the administration and enforcement of the ordinance and for retailer and community education. Periodic review and adjustment of licensing fees will ensure that they are sufficient to cover all administration, implementation, and enforcement costs, including compliance checks. Our publication, *Retail License Fees*, provides more information about retail licensing fees and a license fee checklist.

### 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 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.

(B) Except as may otherwise be provided by law, the existence of any particular ground for denial does not compel the city to deny the license.

(C) 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 ordinance. The city will provide the license holder with notice of the revocation, along with information on the right to appeal.


(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 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 ordinance.

(4) By any other means, to any other person, on 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. 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.
Raising the Minimum Legal Sales Age (MLSA) to 21

In 2015, the Institute of Medicine (now the Health and Medicine Division of the National Academies of Sciences, Engineering, and Medicine) (IOM) released a report containing compelling evidence of the significant public health benefits of raising the minimum legal sales age (MLSA) for tobacco products. The IOM concluded that raising the MLSA today to 21 would result in a 12 percent decrease in tobacco use, approximately 223,000 fewer premature deaths, 50,000 fewer deaths from lung cancer, and 4.2 million fewer years of life lost for those born between 2000 and 2019. Based on studies showing the effectiveness of enforced youth access laws, increasing the MLSA is likely to be particularly effective in reducing tobacco usage among high school-aged youth by reducing their access to commercial tobacco products. Studies have also indicated that older underage youth (i.e. those who are closer to age 18) are more likely to succeed in buying tobacco in stores. Further, high school friends and peers of legal age are an important social source of commercial tobacco products for underage youth.

Under Minnesota state law, it is unlawful to sell licensed products to any person under the age of 18. Minn. Stat. § 609.685, Minn. Stat. § 609.6855. State law does not prohibit local jurisdictions from enacting a higher minimum legal sales age.


(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) **Flavored products.** No person shall sell or offer for sale any flavored products. This prohibition does not apply to retail establishments that:
(1) Prohibit persons under 21 from entering at all times;

(2) Derive at least 90 percent of their gross revenues from the sale of licensed products; and

(3) Meet all of the following building or structural criteria:

   (a) Shares no wall with, and has no part of their structure adjoined to any other business or retailer, unless the wall is permanent, completely opaque, and without doors, windows, and pass-throughs to the other business or retailer;

   (b) Shares no walls with, and has no part of their structure directly adjoined to, another licensed tobacco retailer; and

   (c) Is accessible by the public only by an exterior door.

Any retail establishment that sells flavored products must provide financial records documenting its annual sales, upon request by the city.

Sales of Flavored Products

Research demonstrates that flavored tobacco products are especially attractive to youth. These products increase initiation among all populations by masking the harsh taste of tobacco and nicotine. Flavors like menthol and clove also provide a numbing effect that lead to longer breath-holding. This makes quitting flavored tobacco products difficult. Overwhelmingly, youth begin using tobacco with flavored products. Restricting the sale of flavored tobacco products to stores that youth and young adults cannot enter can reduce youth access to, and advertisements for, flavored products.

Many Minnesota jurisdictions have restricted the sale of flavored tobacco products by using the exemptions above. In response, some tobacco retailers have divided their establishment into two stores, separated by a wall or other structural divider. This results in a 21 year+ licensed tobacco retailer on one side that sells flavored tobacco products and a licensed tobacco retailer on the other side that sells only unflavored tobacco products. Adding structural requirements, as suggested in this model ordinance, would place limitations upon such practices.

For more information, please review our publication: Regulating Flavored Tobacco Products.
(E) **Cigars.** No person shall sell or offer to sell any cigar that is not within its intended retail packaging containing a minimum of five cigars and for a sales price, after any discounts are applied and before sales taxes are imposed, of less than $12.50 per package. This provision does not prohibit the sale of a single cigar with a sales price, after any discounts are applied and before sales taxes are imposed, of at least $4.00.

(F) **Imitation tobacco products.** No person shall sell, offer to sell, or otherwise distribute any imitation tobacco products within the city.

(G) **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.

(H) **Price promotion and coupon redemption.** No person shall accept or redeem any coupon or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any licensed 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 on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

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**Product Discounts**

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. Please see our publication, *Death on a Discount: Regulating Tobacco Product Pricing*, for more information on product pricing.
Section 7. Responsibility.

All licensees are 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 licensee. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to any civil penalties that the city deems to be appropriate under this ordinance, state or federal 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 between the ages of 15 and 17 and one person between 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.

Compliance Checks

State law requires every local licensing authority to conduct at least one compliance check each year. This state-mandated compliance check “must involve minors over the age of 15, but under the age of 18.” It appears that cities with T21 laws can conduct this annual compliance check to both satisfy state law and to enforce its local T21 policy. To do so, a municipality could either conduct at least one compliance check with a person between the ages of 15 and 17 and a person between the ages of 18 and 20, or conduct more than one compliance check — at least one check with a person between the ages of 15 and 17 and at least one additional check with a person between the ages of 18 and 20. Above, the bracketed language identifies two options that the city could choose and only one option should be retained in a final licensing ordinance.
Section 9. Other Prohibited Acts.

Unless otherwise provided, the following acts are an administrative violation of this ordinance:

(A) **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 illegally purchase or attempt to purchase any licensed product.

(B) **Use of false identification.** It is a violation of this ordinance 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.

**Penalizing Underage Purchase, Use, and Possession and the Use of a False Identification**

Prohibiting the attempted and actual possession, use, and purchase (PUP) of licensed products by underage persons or the use of a false ID to purchase tobacco products is a part of many local Minnesota ordinances. However, this model ordinance does not include penalties for underage PUP and only provides non-criminal, non-monetary penalties for the use of false IDs.

At its core, a licensing ordinance is intended to regulate the behavior of licensees. Penalizing underage persons detracts from the focus of the licensing code and siphons enforcement resources away from the licensees to young consumers, many of whom are addicted to nicotine. A 2017 *Minnesota Annual Synar Report* on youth access enforcement found that underage persons were cited 3.6 times, and assessed fines 2.6 times, more often than retailers. It is important to note that, even if PUP provisions are not included in an ordinance, retailers have the authority to ask underage persons to leave the premises if they attempt to purchase products.

There is no strong evidence to support an assertion that PUP penalties are effective in significantly reducing youth smoking. Historically, these laws were lobbied for by the commercial tobacco industry to punish youth users while the industry simultaneously targeted, and continues to target, youth to replace a dying consumer base and maintain profits in a dwindling market.
Penalizing Underage Purchase, Use, and Possession and the Use of a False Identification (continued)

Furthermore, many advocates are concerned that PUP penalties open the door to selective enforcement against youth from certain racial, ethnic, and socio-economic groups. Evidence suggests that youth of color in Minnesota are disproportionately over-represented in similar status-level offenses, increasing their interactions with law enforcement and resulting in their introduction to the criminal justice system. Finally, Minnesota law currently penalizes PUP and the use of false IDs and no further enforcement is needed at the local level.

Some of these concerns may be alleviated by offering alternative non-criminal, non-monetary penalties as suggested below in section 11(B)(3).


Section 10. Exceptions and Defenses.

(A) **Religious, Spiritual, or Cultural Ceremonies or Practices.** Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

(B) **Reasonable Reliance.** It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

Section 11. 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.
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 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 10 business days of the issuance of the citation will terminate the person’s right to a hearing.

(b) The City Clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.

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.

Decision. A decision will be issued by the hearing officer within 10 business 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 section 11, division (A)(6) of this section.

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.

Appeals. Appeals of any decision made by the hearing officer must be filed in County district court within 10 business days of the date of the decision.

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; [ $500 ] for a second offense at the same licensed premises within a 24-month period; and [ $750 ] for a third or subsequent offense at the same location within a 24-month period. Upon the third violation, the license will be suspended for a period of not less than [ 30 ] consecutive days. Upon a fourth violation, the license will be revoked.

(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 use a false identification to purchase or attempt to purchase licensed products 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 a person 21 years of age or older.

Section 12. 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 13. 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.
AGENDA ITEM:  COVID-19 Update

DESIRED MEETING OUTCOMES:

OVERVIEW:
The COVID-19 pandemic has caused a lot of concern and uncertainties for employers now and into the future. Below are some actions that we have taken in response to this pandemic and actions we are evaluating for the future. Please note, information changes quickly so some information listed below may be revised before Monday’s meeting.

1. All City buildings have been closed to the public through March 31, 2020. Many cities are now extending closing through mid or end of April. We are proposing to extend the closing through April 19, 2020.

2. Alternative Work Schedules. Management staff is evaluating which employees may be able to work from home on a full or part-time basis. Unfortunately, there are some positions that will not qualify for telework (i.e., Essential employees) and other positions that have work or job duties that cannot be done in a virtual environment. For those positions we are looking at options such as working part of the week at home and part at the office. We will need to approve a temporary telework policy so employees understand employer expectations if they are approved to work from home.

Other options we have proposed include the ability for employees to work alternative work schedules to accommodate issues such as day care and/or for social distancing purposes.

3. Employee Safety. We are encouraging social distancing among employees, including asking employees to refrain from entering other departments unless there is a job-related need. Additionally, we have started meeting via WebEx to avoid having multiple employees together at one time. Cleaners and hand sanitizers are readily available to employees and employees have been very good about keeping their desk area, counters and other areas clean and sanitized. We have provided PPE to employees who may have to meet with other members of the public as part of their regular job duties.

Public Works. We are trying to address work tasks that allow Social Distancing. Jobs such as street sweeping and sewer jetting are a couple of examples of this. We are also evaluating taking over property maintenance of EDA properties rather than paying a contractor to do this to help keep our people working. We have offer split shift or other accommodations to deal with daycare and social distancing challenges.

Airport. The terminal building has been closed to the public, with the exception of pilots or individuals who have a business need. The staff is discussing adjusting work hours to minimize contact as much as possible.
4. Seasonal Employees. The City will hold off on hiring seasonal employees for now. Current seasonal employees will continue to work if there is a need, otherwise they have been advised their job is on hold for now.

5. CSCC, Parks & Recreation, Woog Ice Arena. See attachment for full update.

6. Compost Site. Staff is evaluating whether to postpone the opening of the compost site.

7. Code Enforcement, Rental Licensing Inspections, Time-of-Sale Inspections.
   - Any rental license renewal that require an inspection due to current inspection expiration will be granted an extension to August 1, 2020. Their license will be considered pending until that time.
   - Time-of-Sale Inspections will continue to be processed, however, if a homeowner feels that they do not want the licensed evaluator to conduct the inspection in their home the City will honor that request. If at the time of closing the mortgage company requires an inspection, the owner or evaluator must provide the City with a copy of the inspection report. This will be monitored on a month-to-month basis.
   - Code Enforcement will be processed on a complaint-only basis until such time a Code Enforcement Officer has been hired. We are contemplating the use of other idled employees to fill this role on a temporary basis.

8. Management Team has been directed to take laptop computers home with them on a daily basis should work at City Hall become impractical on short notice.

9. Legislative updates. Staff will provide an update of the Public Health Emergency Leave and Emergency Sick Leave Act.

10. Other updates or concerns that have arisen following the completion of this memo will be discussed.

   - LMC Insurance Trust Coverage. See attached Q&A that provides information regarding insurance trust coverage during the COVID-19 pandemic. You can also find this information by following this link: https://www.lmc.org/insurance-trust/coverages/lmcit-coverage-covid/
Currently, South St. Paul parks and trails remain open. Public parks and open spaces provide a critical connection to the outdoors and green space as well as opportunities for physical activity, which studies demonstrate reduces stress and improves mental health. With the Centers for Disease Control and Prevention (CDC) flagging mental health as a top concern associated with the COVID-19 outbreak, we believe our parks and open spaces are needed now more than ever! If you choose to visit local parks and trails, the National Recreation and Park Association offers a few recommendations on observing social distancing in parks and on trails:

- Follow CDC’s guidance on personal hygiene prior to heading to parks and trails — wash hands, carry hand sanitizer, do not use public areas if you have symptoms, cover your mouth and nose when coughing or sneezing.
- Observe at all times CDC’s minimum recommended social distancing of six feet from other people. Practice it and know what it looks like. Keep it as you walk, jog, bike or hike.
- Warn other trail users of your presence and as you pass to allow proper distance. Step off trails to allow others to pass, keeping minimum recommended distances at all times. Signal your presence with your voice, bell or horn.
- Follow CDC guidance on the recommended size of social gatherings including outdoor picnicking, pick-up sports and other group hangouts, and maintain proper physical distance at all times.
- Bring water or drinks — public drinking fountains should not be used, even if operable.
- In South St. Paul park users will find public restrooms closed — be prepared before you leave and time outings so that you are not dependent on public restrooms.
- Bring a suitable trash bag. Leave no trash, take everything out with you to protect park workers.
- You are discouraged from using playgrounds and other outdoor equipment as surfaces are not able to be properly cleaned and disinfected during and after each use.

South St. Paul’s parks, trails and open spaces have always served as places where people can find respite and seek peace and restoration. During this time of uncertainty, we are working hard to maintain these spaces and keep them safe, accessible and benefiting our community. Let us all do our part to use them in a way that respects each other and public health guidance.

**Doug Woog Arena Closed:**
- The ice is currently being removed on both ice sheets. The ice plant costs approximately $2,500-$3,000 a week to operate.
- The Ted Brill Great 8 Tournament is scheduled to take place on April 18. We have not received official word whether it is delayed or cancelled.
- Three other hockey tournaments are scheduled to take place in April and May.
- To re-install the ice surfaces, it takes approximately nine days at a cost of approximately $3,500.
- Deep cleaning, minor repairs, and rink board maintenance on Rink 2 will be completed during the closure.
- Start date for the new 28-hour permanent part-time employee has been delayed.

**Central Square Community Center Closed:**
- Closed until at least April 17, 2020, which heavily affects those who have memberships.
- Annual and six month paid-in-full memberships will be given a 30-day extension. Additional consideration will be given depending upon duration of closure.
• ACH (automated clearing house) monthly deducted memberships will not be charged for the month of April.
• At this time, the insurance companies, health care providers, and employer groups are not changing the structure or workout threshold for the Fitness Reimbursement programs.
  o We have been instructed by our insurance providers that the visits collected in our tracking software during our open business hours in March is what will count towards a member's monthly submission in April.
  o While we would like to fulfill the 12 visits per person to report for March knowing that members did not have an opportunity to meet their visit quota, that is considered fraud so we cannot unilaterally extend that courtesy.
• All programs, classes and activities have been cancelled.
  o Swim lessons have two classes remaining in the session and will be made up at a later date.
  o Youth Gymnastics session that was scheduled to start March 23 will be fully refunded.
  o Fitness classes will be credited toward future sessions or refunded on a pro-rated basis if requested.
  o AARP free tax preparation is suspended as long as our building remains closed.
  o Fare for All on March 24 was cancelled by the sponsoring organization.
  o Lifeguard certification class on April 17 will be rescheduled.
  o The sold out Spring Fashion Show is scheduled for April 28, we are holding off making a determination for now.
• All pool and room rental groups through the end of March have been notified and will receive refunds. Notifications will continue to be made as closure period is extended.
• Central Square Board meeting of March 19 was cancelled. May be rescheduled for April dependent upon restrictions.
• Starting Monday, March 23, we will be offering, free live virtual on-line classes lead by our fitness instructors via Messenger (a Facebook program however you do not have to be a Facebook member to use).
  o To start out there will be one live daytime and one live evening class offered per day.
  o Classes will use minimal equipment or be modified to what viewers would readily have at home.
  o There will be yoga classes three times a week in addition to the two regular scheduled classes per day.
  o All access will be free to members and the general public as advertised through the CSCC Facebook page.

Recreation Programs Suspended:
• Giant Egg Hunt scheduled for Saturday, April 11, 2020 will be cancelled. Official announcement will occur after school students are settled in with their distance learning. Families will be alerted closer to April 1.
• Summer brochure has already been mailed to households. Program registrations are currently being accepted on-line through our standard RecTrac software and procedures.
• Summer seasonal staff interviews are being conducted via phone and FaceTime when available.
**Miscellaneous:**
- Kaposia Landing Phase 2 is out for bid with scheduled public bid opening of March 31, 2020 at city hall. We are exploring options including:
  - Amend posting to accept electronic bids only. Con: many contractors are not familiar with this method of bidding and may choose to not submit.
  - Remain accepting bids at city hall, conduct public bid opening in the parking lot, maintaining CDC recommend distancing. Con: weather.
  - Cancel and re-advertise at a later date.
  - Regardless of the option chosen, we will be requesting an extension from Dakota County beyond the September 30, 2020 ELF Grant deadline.
  - We have already received correspondence from one large contractor that they are suspending bidding projects at this time.
- Off-Leash Dog Area is closed currently due to the spring thaw, not COVID-19. Will likely reopen when conditions permit, advising users to observe CDC social distancing guidelines.
- Archery Range is open.
- Disc Golf Course is open (limited due to spring thaw).
- Park reservation procedures have been modified.
  - Requests for rentals have become calendar placeholders with no fees paid or deposited.
  - When facility and group size restrictions are lifted, reservation groups will be contacted to complete the full reservation process and fees will be collected.
  - Rental season begins May 9, 2020. Park reservations that have already been made and paid for will be handled on a case by case basis in consideration of future conditions and restrictions.
- Community Garden rentals are being accepted via standard mail.
  - Returning gardeners have received a mailing to reserve their same plots as last year.
  - New gardeners will be assigned plots in lieu of selecting their own. We have the flexibility to change when restrictions are lifted.
  - Community Gardens will be allowed to open at this point if Public Works is able to prep the site for the season.
- Public restrooms in parks will remain closed. Portable toilets are available at some sites.
- Parks & Recreation Advisory Commission meeting for April 14, 2020 has been cancelled. Staff will provide an e-mail update to commission members and solicit feedback.
League of MN Cities Insurance Trust Coverage

How and when does our insurance coverage respond during the COVID-19 pandemic?

Following are common coverage questions the Trust has received from members. Every situation has different facts and must be evaluated individually. If you think you might have a claim, please submit it to the League of Minnesota Cities Insurance Trust so we can determine whether coverage applies. Keep in mind, these guidelines only apply to organizations that are covered by the Trust. If you obtain coverage elsewhere, consult with your carrier.

Q1: If an employee or emergency response volunteer is exposed to COVID-19, does workers’ compensation coverage respond?

A1: Workers’ compensation only applies to injuries and diseases that arise out of work. There is no coverage for exposure to a disease under Minnesota’s workers’ compensation law. If an individual is quarantined due to an exposure, workers’ compensation coverage won’t apply.

Under the Governor’s Emergency Executive Order 20-05, financial assistance is available for some people who are required to self-quarantine or isolate because of exposure to COVID-19. According to the Minnesota Department of Employment and Economic Development, a person who works in a position covered by unemployment insurance may be entitled to unemployment compensation if their employer requires they self-quarantine or a health care professional advises they do so, and they are not receiving paid leave equivalent to their normal rate of pay. This would also apply to emergency response volunteers (see Q2 for definition) who are also employed in a covered position.

Q2: If an employee or emergency response volunteer contracts COVID-19, does workers’ compensation coverage respond?

A2: If an employee or emergency response volunteer contracts COVID-19 as the result of an exposure at work, the city should file a First Report of Injury and submit it to the Trust. The Trust will evaluate the claim and determine whether it’s compensable under state law.

Emergency response volunteers are included in the city’s workers’ compensation coverage, as long as they are registered with and under the direction and control of the city. Paid on-call emergency volunteers (such as paid on-call firefighters, paid on-call ambulance attendants, and paid on-call first responders) are treated the same as other emergency response volunteers (including volunteer firefighters, volunteer ambulance attendants, volunteer first responders, law enforcement assistance volunteers, emergency management volunteers, disaster assistance volunteers, and civil defense volunteers). If these individuals are injured or contract COVID-19, whether it’s while responding to a COVID-19 emergency or not, workers’ compensation would respond.

Q3: What happens if the Trust determines an employee or emergency response volunteer contracted COVID-19 while working?

A3: The individual will be eligible for workers’ compensation benefits if they are a non-emergency employee, emergency employee (including police, firefighters, emergency medical technicians, and ambulance), or emergency response volunteer (see Q2 for definition). All these
individuals would be eligible for necessary, reasonable, and related workers’ compensation medical benefits and lost time benefits.

Regarding emergency response volunteers, if they’re unable to work in their normal occupation because they contracted COVID-19 while volunteering for the city, indemnity benefits (or lost time benefits or wage replacement) are calculated as follows: If the volunteer only receives an expense reimbursement from the city, indemnity benefits are based on the greater of their regular employment earnings or an imputed full-time wage for a similar position. If the volunteer receives a wage from the city, benefits are based on the total wage plus the volunteer’s regular employment earnings.

Q4: If our city enlists the help of other types of volunteers to assist with a COVID-19 emergency, are they covered if they are injured or contract COVID-19 while working?

A4: Other volunteers – those not defined as emergency response volunteers (see Q2 for definition) – that are injured while performing services for the city are protected under the volunteer accident coverage provided to all members of the Trust’s workers’ compensation program. While benefits are more limited, some protection for city volunteers is available on a no-fault basis. The city should file the Volunteer Accident Form and submit it to the Trust.

Q5: If a city shuts down a city building due to COVID-19 voluntarily or involuntarily, does the Trust provide coverage for loss of revenue?

A5: “Loss of revenue” coverage is not available when a city building is closed for this reason. This type of coverage only applies when there is the necessary suspension of operations caused by direct physical loss or damage to covered property.

Q6: If a city incurs costs to remediate COVID-19 that’s been detected in a city building, is there any coverage?

A6: This claim is generally not covered. There is coverage for organic pathogen cleanup expenses necessary to prevent the spread of an outbreak, but the organic pathogen needs to be either: 1) A disease for which federal isolation and quarantine is authorized by an Executive Order; or 2) Defined by the US Department of Health and Human Services as a communicable disease of public health significance. COVID-19 is not currently on either list, but the Trust continues to monitor.

Q7: Is there coverage for expenses related to the proactive sanitation of city buildings or vehicles?

A7: The Trust does not provide reimbursement for these kinds of expenses.

Q8: If a city is forced to cancel an event, is there coverage for lost expenses or revenue?

A8: The Trust doesn’t provide event cancellation coverage, but insurance may be available through another insurance provider. This coverage usually needs to be purchased well in advance of the event.

Q9: If a city enlists the help of volunteers to assist with a COVID-19 emergency, are they covered if they get sued?
A9. Volunteers are covered under the city’s liability coverage as long as they are acting on behalf of the city and subject to the city’s direction and control.

Q10: What if a city incurs costs related to the COVID-19 that it can’t afford?

A10: The Trust offers extraordinary expense coverage for unforeseeable events that are unanticipated, necessary to protect public health and safety or fulfill legal obligations and not otherwise covered. Amounts advanced must be paid back within five years. There are guidelines, restrictions, and details for this coverage. Please contact us for details.