JOINT WORKSESSION COUNCIL & EDA
SSP City Hall

Please be advised that the regular meeting location is City Hall Training Room located at 125 3rd Ave. N., South St. Paul, but pursuant to Minn. Stat. 13D.021, under the current emergency declaration due to the COVID-19 health pandemic, some or all of the council members may participate in remote locations using WebEx. Please be advised that City Hall is closed to the public, therefore, any member of the public wishing to monitor the meeting may do so electronically by logging in as follows:

WebEx Meeting
For the Public

Join by phone: 1-312-535-8110
Access Code: 289 160 005

Monday, April 13, 2020
7:00 pm

AGENDA:

1. Discussion on Workplan for Concord Street Mixed-Use Districts and Hardman Triangle Plan Implementation

2. Lease Amendment – 135 Grand Avenue East (EDA)

3. Review of Native Planting Ordinance

4. Discuss Tobacco 21 Ordinance Revisions

5. COVID-19 Update

6. Council Comments & Questions

7. Concord Street Acquisition Process/Offers of Just Compensation – Closed Session
AGENDA ITEM: Discussion on Workplan for Concord Street Mixed-Use Districts and Hardman Triangle Plan Implementation

DESIRED OUTCOMES:

- Review history of the mixed-use zoning districts along Concord Street
- Discuss Differences between the Hardman Triangle Plan and existing mixed-use zoning districts
- Discuss Infrastructure considerations pertaining to Hardman Triangle Plan
- Discuss proposed workplan
  - Discuss staff recommendations for implementing the Hardman Triangle Plan.
  - Discuss options for Concord Street North
  - Discuss options for Concord Street South
- Staff is asking the City Council to call for a joint workshop with the Planning Commission to review the implementation of the Hardman Triangle plan.

BACKGROUND

The Hardman Triangle is a triangular-shaped block bounded by Grand Avenue, Hardman Ave N, and Concord Street N. The block, which still contains several heavy-industrial and animal processing businesses dating back to the stockyard era, has long been guided for redevelopment. The redevelopment plans have changed several times over the decades and the only part of the block that has ever been successfully redeveloped is the eastern section (3 parcels) which was redeveloped as light industrial in the 1980’s and 1990’s.

The planning for this area has historically been piecemeal without a strong cohesive vision. The City Council recently decided that it is time to develop a fresh master strategy for redevelopment of the block. To that end, the Council imposed a 1-year moratorium on all new uses and building expansions in the Hardman Triangle in May 2019. They then commissioned a land use and market study designed to present the City with a cohesive vision for redevelopment of the triangle.

The City Council reviewed the draft Hardman Triangle plan at their March 23rd meeting. The draft plan calls for the redevelopment of most of the Triangle (all but the eastern portion that was already redeveloped) into a mixed-use walkable commercial/residential area. Council indicated to Staff that they would like to move towards formally adopting the plan and making updates to the zoning code to implement the plan’s vision. Additionally, they would like Staff to facilitate a review of the entire Concord Street corridor between the northern border of the City and Interstate 494 to determine whether any additional changes should be implemented while the City’s mixed-use district code is under review.
The purpose of this worksession item is to discuss the status of the existing mixed-use zoning districts along Concord Street and how the Hardman Triangle plan can best be incorporated into that framework. Staff is hoping to get Council feedback on a proposed workplan.

HISTORY OF THE MIXED-USE ZONING DISTRICTS ALONG CONCORD STREET

Concord-Gateway Mixed Use (CGMU) Zoning District

The City undertook a significant planning effort in 2002-2003 to create a redevelopment framework for Concord Exchange, the street that was once the community’s historic downtown. The City hired a team of consultants to create a small area plan and there was a substantial amount of public engagement and thoughtful design work and architectural analysis that took place over the course of roughly one year.

The City ultimately adopted the small area plan, called the Concord/Grand Gateway Streetscape and Redevelopment Plan, which called for turning Concord Exchange back into a walkable downtown-style “main street” with a mix of commercial and residential uses. The City then created a new zoning district for Concord Exchange called the Concord-Gateway Mixed-Use (CGMU) zoning district. The zoning district contains a list of uses that were considered appropriate for a downtown area AND contains site and building design requirements that mandate that new buildings be constructed in the style of a “main-street” downtown area. New buildings are supposed to be located close to the sidewalk, for instance, and have architectural features that make it pleasant for a pedestrian to look around while strolling down the street and engaging in commerce. Parking lot placement and landscaping are handled in such a way as to keep the street from being overwhelmed by the visual impact of surface parking lots. The CGMU zoning district has two subdistricts. The main downtown district is located near the intersection of Grand and Concord Exchange and extends all the way north to the liquor store and south to Bridgepoint Drive. A second subdistrict, which is still intended to be pedestrian friendly but also allows car-oriented uses (including auto sales and auto rental), is located at the southern end of Concord Exchange, the portion that is south of Bridgepoint Drive.

At this point in time, there appears to be significant developer interest in the Concord Exchange area. Staff believes that the zoning district’s architectural standards are in relatively “good shape” but the list of permitted and conditional uses could likely use some improvement. Some work was already done on the ‘use’ standards earlier in 2020 and additional ordinance amendments related to ‘uses’ are currently being studied and evaluated by City Staff.

North Concord Mixed-Use Zoning District

In March of 2004, City leaders imposed a 6-month moratorium on all new development activity along North Concord Street and the part of Concord Exchange north of Grand Avenue. These were primarily areas that were zoned “GB-General Business” which allows both commercial and industrial uses. Council had concerns regarding land use in the corridor (especially the proliferation of used car sales lots) as well as concerns regarding the quality of any new development that might occur due to the absence of strong architectural controls. The moratorium was intended to give the City time to study the corridor and make appropriate zoning changes to adequately control development.
The City did not undertake a full planning/zoning study during the moratorium. Per archival staff memos, City Staff was directed to work with “an ad-hoc committee of South St. Paul citizens and business owners” in order to find a zoning solution to address Council’s concerns. The solution that was selected was to:

- Treat the entirety of Concord Street North as an extension of “main street” and have almost all of the same requirements as in the Concord Gateway Mixed-Use (CGMU) downtown area.

- Create another mixed-use zoning district, the North Concord Mixed Use district (NCMU) which would have rules that are almost identical to the existing CGMU district rules.
  - All of the site design and architectural standards are almost identical to the CGMU district standards.
  - There are 2 significant differences in the use standards
    - “Construction Contractors (with no exterior storage)” are allowed in the NCMU district while they are prohibited in the CGMU districts.
    - The NCMU district does not allow any car sales or car rentals. These uses are also prohibited in the main downtown “CGMU-1” subdistrict BUT they are allowed with CUP’s in the CGMU-2 ‘car-oriented’ subdistrict located south of Bridgepoint Drive.

- All of the existing uses along Concord Street North which are not allowed in the NCMU district became “grandfathered” lawful nonconforming uses. In accordance with State Statute, they are permitted to be “maintained, repaired, improved, and replaced” but cannot be expanded in any way.
  - This includes all of the car sales lots. They cannot be expanded and no new car sales operations may be allowed along Concord Street North.

- The City has a rule in all of its commercial and mixed-use zoning districts that existing houses and other residential uses are considered “conforming” even if they aren’t a permitted use. This allows the owners to continue to build additions and expand their homes, something that would not normally be allowed for a “grandfathered” use.

There has not been any new development on Concord Street North in the years since the NCMU zoning was adopted beyond the repurposing of existing buildings and minor additions to existing businesses (such as outdoor dining at Bugg’s Place). In hindsight, the planning/zoning approach that was selected had some fairly significant shortcomings and likely was not the right fit for the street. Concord Street North (the roadway itself) was not configured in a way that would support “main street” style walkable mixed-use development. Many parts of the street lack sidewalks, the street is overly wide, and the street design is very utilitarian without any flourishes (street trees, pavers, public art, benches, etc.) that would attract traditional commercial/residential “main-street” mixed-use development.

In the years since the NCMU zoning rules were first adopted, the Planning Commission has made several requests for additional study and revisions to the NCMU zoning rules to set more
realistic standards. Their most recent formal request was in January 2013 when they passed a motion (7-0) to request that the City Council look into funding to do a study. Making improvements to the NCMU zoning district has not been a high priority and, as of 2020, no study has been completed.

Interestingly, Concord Street North is now slated to receive a full reconstruct with design enhancements that will make it a much more appealing setting for developers seeking to do mixed-use projects. It remains unclear whether the existing standards are completely the “right fit” but a mixed-use vision of some sort will definitely be more achievable once the road has been rebuilt. Other cities have had success with ‘fun and funky’ mixed-use districts that include a mixture of commercial, residential, and light industrial uses with more relaxed design standards than what one would find in a “main street” downtown area. That may potentially be something that could be explored along North Concord?

**SOUTH CONCORD STREET**

**NORTH OF 494**

At their March 23 worksession, Council specifically asked Staff to explore potential options for zoning actions to aid in redevelopment along Concord Street South between Grand Avenue and Interstate 494. Staff would note that all of the zoning which is already in place in that area is 100% in alignment with the City’s comprehensive plan. The comprehensive plan calls for the majority of this corridor to be “light industrial” except for some commercial areas right along Concord Street. The areas guided for “light industrial” were all rezoned light industrial in 2019. The areas guided for commercial are all zoned “General Business.” The commercially zoned areas near 494 have been historically been guided towards redevelopment as “regional” commerce. There has been a small amount of regional commercial development in recent years such as the new Subaru dealership.

**SOUTH OF 494**

The comprehensive plan does steer the majority of the land along Concord Street South that is south of I-494 towards redevelopment as “mixed-use.” The City undertook a planning/zoning study of Concord Street South back in 2012 to evaluate whether the creation of a mixed-use zoning district here was appropriate. The study concluded that there would be very significant challenges with redeveloping South Concord as a traditional mixed-use district but did put forward a potential redevelopment plan. The plan called for eliminating all of the industrial businesses that are south of I-494 including Twin Cities Hide and Tanning and Kinder Morgan Dakota Bulk Terminal. It called for the City to buy up large amounts of land and to reconfigure all of the streets in the area for increased connectivity and improved aesthetics.

The City ultimately decided not to adopt the plan or make any changes to the zoning along Concord Street South in the area south of I-494. However, the area remains guided for “mixed-use” in the comprehensive plan which creates complications every time a new business wants to open up. The business proposal usually either goes against the comprehensive plan or goes against the existing zoning rules. Under state law, the City is not allowed to do any rezoning that does not align with the comprehensive plan so nothing along Concord Street can be rezoned.
unless it is rezoned to a mixed-use district. At some point, the City needs to decide whether Concord Street South is going to be a mixed-use corridor or not. If it is, a plan should be developed and a rezoning should occur. If not, the comprehensive plan should be changed to reflect the City’s actual vision for the street so appropriate rezoning can take place. Since 2012, the City has allowed numerous expansions of the Twin Cities Hide and Tanning operation and Kinder Morgan Dakota Bulk Terminal (with many millions of dollars in private investment) so it seems pretty clear that the intention is not to phase out these businesses and have the City buy the properties. This suggests that the 2012 mixed-use plan is likely no longer viable and a different mixed-use plan would need to be prepared if the City Council still wishes to see commercial/residential mixed-use development along this corridor in the future.

**HOW IS THE HARDMAN TRIANGLE PLAN DIFFERENT THAN EXISTING CGMU ZONING?**

The Hardman Triangle Plan calls for the creation of a walkable mixed-use commercial/residential zoning district. The plan talks about encouraging residential development in mid-rise buildings with some 1st floor retail. This is similar to the “walkable main-street” vision for the areas across the street on Concord Exchange but is not identical. The Hardman Triangle block is likely to be developed primarily as standalone residential buildings with just a small amount of retail. The residential density will provide support for the commercial uses across the street on Concord Exchange (Concord Street will be pleasant and easy to cross after it is narrowed and reconstructed).

The Hardman Triangle Plan does call for slightly different architectural standards than what is currently in place in the CGMU district. It calls for being more accommodating of contemporary architecture, for requiring a minimum setback for any residential-only buildings that do not have 1st floor commercial, and for actively promoting certain advanced site features such as vegetated roofs and artful stormwater management.

In terms of “uses,” it is likely that many of the same uses that are considered appropriate in the CGMU district would also be appropriate for the Hardman Triangle. One “use” that probably should not be accommodated, however, is small apartments. The CGMU districts allow apartment buildings with as few as four (4) units. It would undermine the Hardman Triangle redevelopment goals to have the site punctuated with small apartment buildings that broke up the block’s buildable area. It will also need to be decided whether the City wants to encourage/allow any standalone 1-story commercial buildings on the Hardman Triangle block or whether the City is taking the stance that all commercial uses need to be part of multi-story buildings with offices or residential on upper floors. Finally, the City will need to review all of the commercial uses that are allowed in the other mixed-use districts to determine which uses should be allowed on the Hardman Triangle block.

**INFRASTRUCTURE CONSIDERATIONS**

The Hardman Triangle plan calls for breaking up the existing 15-acre block with new streets to create smaller, more pedestrian-scale blocks. Some thought should be given to planning for this future infrastructure if it is viewed as being integral to the plan. Does the City plan to proactively build any streets in support of development or does the City want to wait for active development and build the new streets piecemeal as development occurs? The presence of the new and improved street system could be attractive to developers but there would be an upfront cost.
STAFF’S PROPOSED WORKPLAN

Staff is proposing a workplan for addressing the outstanding challenges regarding Concord Street. Each of these tasks is quite large and they most likely can not be addressed simultaneously if the goal is to undertake the projects with “in-house” planning staff. Staff has broken up the tasks into four projects:

1. Hardman Triangle (Priority #1)

- **Staff would propose a joint workshop with the Planning Commission and the City Council to discuss relevant architectural and land use issues and give Staff clear direction for preparing a draft ordinance to implement the Hardman Triangle plan.**
  
  - The City Council and Planning Commission will both be asked to review the 2003 Concord-Gateway Redevelopment Plan, CGMU zoning rules, and the 2020 Hardman Triangle plan prior to the workshop.

- Create a new zoning district for the Hardman Triangle (it could either be a standalone zoning district or a new Concord Gateway Mixed-Use ‘CGMU’ subdistrict)

- Strive to keep things relatively cohesive between the CGMU and Hardman Triangle. *Zoning Codes are more developer-friendly when there is consistency and continuity between districts. The Hardman Triangle will have at least slightly different architectural standards and use restrictions than the existing CGMU districts.*

- The Planning Commission and City Council will need to evaluate whether some of the design aspects discussed in the Hardman Triangle plan should be hard “requirements” (meaning that it takes a variance to waive the design requirement for any project) or merely “recommendations.”

2. North Concord Mixed-Use Zoning District (Priority #2)

- **Staff would propose a future joint workshop between the City Council and Planning Commission to get “on the same page” about what the goals are for this district.**

- This zoning district should be updated so that it is more tailored to the context of the street rather than just being a clone of the CGMU downtown-area zoning districts. It is unlikely that Concord Street North will ever look like a downtown main street but there is potential for mixed-use development here once the road is reconfigured with sidewalks and bike lanes.

- It is possible to make “band aid fixes” to this district without additional study but a small area plan with a defined vision would be necessary in order for any thoughtful comprehensive changes to be made to the district. A small area plan could either be done “in-house” as time allows or with the help of a consultant.
• Staff believes it would be wise to look at other models for mixed-use districts besides the “downtown main street” model. As previously stated, Staff believes that a “fun and funky” commercial/light industrial/residential mixed-use district with more laid-back design standards could function well in this corridor.

• Some areas that are currently zoned North Concord Mixed Use (NCMU) should possibly be rezoned to CGMU or a different zoning district. Staff would specifically encourage a review of the properties that are not even on Concord Street such as the properties up the bluff near City Hall.

3. SOUTH CONCORD STREET SOUTH OF 494 (PRIORITY #3)

• Staff would propose a future standalone workshop discussion with the City Council to discuss the future of this part of the corridor. This is primarily a policy discussion so the Planning Commission does not need to be involved right away.

• The City Council will need to decide whether it is truly the goal to create a mixed-use district here. If that is the goal, additional planning will have to be done to determine whether this goal is realistic. If it is not the goal, the City will need to adjust its comprehensive plan and zoning map to set more realistic goals or development will continue to be stifled along Concord Street South.

4. SOUTH CONCORD STREET BETWEEN GRAND AVENUE AND 494 (PRIORITY #4)

• Staff would propose a future standalone workshop discussion with the City Council to discuss the future of this area if Council feels that the existing vision needs to be reevaluated.

• As previously stated, the area’s zoning currently 100% aligns with the comprehensive plan which steers this area for light industrial with regional commercial uses directly along Concord. If the City Council has a different vision for this part of Concord Street, additional visioning and workshopping will need to take place to determine what changes need to be made to the comprehensive plan and zoning map/code.

ATTACHMENTS

A. ZONING MAP
B. DRAFT 2040 COMPREHENSIVE PLAN LAND USE MAP
C. HARDMAN TRIANGLE REDEVELOPMENT CONCEPT PLAN
D. SOUTH CONCORD MIXED-USE CONCEPT PLAN (2012- NOT ADOPTED)
E. EXISTING CONCORD GATEWAY MIXED-USE ZONING STANDARDS
ATTACHMENT B
DRAFT 2040 COMPREHENSIVE PLAN LAND USE MAP

Figure 4.2: Future Land Use

Future Land Use Map
City of South St Paul Planning Department
https://www.southstpaul.org/

The Future Land Use map is a representation of various maps and ordinances that make up the City of South St Paul Land Use code. Percentage of Acreage is calculated from county parcel data. Results are representational and not to be used for purposes other than Land Use. For detail information pertaining to a specific property or Land Use district, please contact the City of South St Paul Planning Department at http://www.southstpaul.org/

DRAFT DECEMBER 2019
LAND USE 4-65
ATTACHMENT C
HARDMAN TRIANGLE REDEVELOPMENT CONCEPT PLAN
Plan - Overall

The redevelopment plan for Hardman Triangle subdivides the single 12 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.

Active uses. New development will en Concord Street will create a new and improved gateway to the City from 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 end 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.

<table>
<thead>
<tr>
<th>Redeveloped Development Field</th>
<th>Unit</th>
<th>Uses</th>
<th>Residential</th>
<th>Non-Residential</th>
</tr>
</thead>
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<tr>
<td>Block A</td>
<td>260</td>
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<td>141</td>
<td></td>
</tr>
<tr>
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<td>Block C</td>
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<td>Block D</td>
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<td>Block E</td>
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<td>150/80</td>
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</tr>
<tr>
<td>Block F</td>
<td>75</td>
<td>100</td>
<td>150/80</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td>725</td>
<td>415</td>
<td>150/80</td>
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</tbody>
</table>

March 6, 2020
ATTACHMENT E
EXISTING CONCORD-GATEWAY MIXED USE DISTRICT ZONING STANDARDS

Sec. 118-125. - CGMU, Concord Gateway mixed-use district.

(a) **Purpose.** The purpose of the Concord Gateway mixed-use (CGMU) district is to provide an area for compact, mixed-use development made mutually compatible through a combination of careful planning, urban design and coordinated public and private investment. The mixture of land uses within the district is essential to establishing the level of vitality and intensity needed to support retail and service uses. The placement of building edges and the treatment of building, parking, landscaping, and pedestrian spaces is essential to creating the pedestrian-friendly environment envisioned for the CGMU. The standards in this section are intended to implement and effectuate the principles and relationships established in the city's Concord Gateway Framework Plan, a copy of which is on file in the office of the city clerk, which will be carried out through specific standards related to site planning, signage, architecture, building materials, and landscaping. The CGMU is divided into two subdistricts, CGMU-1 and CGMU-2, as depicted on the official zoning map.

(b) **Permitted uses.** Within either the CGMU-1 or CGMU-2 subdistricts, no structure or land may be used except for one or more of the following uses, provided such use is less than 10,000 square feet in gross floor area:

1. Accessory store, apparel.
2. Altering, pressing and repair of wearing apparel.
3. Appliance store.
4. Art gallery.
5. Bakery.
6. Banks and other financial institutions without drive-through facilities.
7. Barbershop.
8. Beauty shop.
10. Cafe, cafeteria, restaurant, or delicatessen, without drive-through facilities.
11. Camera store.
12. Candy, nut or confectionery store.
13. Church.
14. Club or lodge, private.
15. Copy service or printing service.
16. Department store.
17. Flower shop.
18. Furniture store.
19. Gift, novelty, or souvenir store.
20. Grocery store.
21. Hardware store.
22. Hotel or motel.
24. Laundromat or dry cleaning.
25. Library.
26. Locksmith.
(27) Luggage store.
(28) Machines, business sales and service.
(29) Magazine stand or newsstand.
(30) Massage therapy (licensed pursuant to article XII of chapter 18 of the City Code).
(31) Meat market for retail sale to the public.
(32) Medical or dental office or clinic (for humans only).
(33) Museum.
(34) Musical instrument and musical recordings store.
(35) Notions store.
(36) Office.
(37) Optician.
(38) Painting, wallpaper and decorating store for retail sales and service.
(39) Pet store.
(40) Repair and servicing of items the sale of which is permitted in this district.
(41) Residential multifamily dwelling units, if within a structure containing at least four units.
(42) School, public or private.
(43) Shoe store.
(44) A small wireless facility, as defined in section 54-402, that is located in the right-of-way, as long as all provisions of sections 54-400—54-429 have been met.
(45) Sporting goods store.
(46) Stationery store.
(47) Tanning salon.
(48) Tobacco store.
(49) Toy store.
(50) Variety store.
(51) Video sales and rental.

(c) Accessory uses. Within the CGMU-1 or CGMU-2 subdistricts, the following uses shall be permitted accessory uses:

(1) Off-street parking of automobiles for patrons or employees of a permitted use.
(2) Off-street loading areas as regulated herein.
(3) Signs, fences, and decorative landscape features as regulated herein.
(4) Customary uses incidental to the principal use as determined by the city council.

(d) Conditional uses, CGMU-1. Within the CGMU-1 subdistricts, no structure or land may be used for any of the following uses except by conditional use permit:

(1) On-sale and off-sale liquor establishments as regulated by this Code.
(2) Amusement or entertainment, as defined and regulated by this Code.
(3) Drive-through facilities for a permitted use, if provisions for vehicle stacking, vehicle maneuvering, outdoor speaker devices, appearance and lighting of outdoor menu boards, and other related matters can be shown to be in keeping with the intent and character of the CGMU district and compatible with surrounding uses.
(4) Residential dwelling units within the same building as nonresidential uses, if provisions for parking, security, noise, odors, and other related issues affecting the residential units can be shown to be handled adequately and in keeping with the best interests of the residents.

(5) Theaters.

(6) Parking ramps or parking garages.

(7) Buildings in excess of 50 feet in height, if such buildings will not block significant views from existing uses or views to significant features within the CGMU district, and if such buildings can be shown to be in keeping with the intent and character of the CGMU district and compatible with surrounding uses.

(8) Any permitted use or any other conditional use, if 10,000 square feet or more in gross floor area, if such use can be shown to be in keeping with the intent and character of the CGMU district and compatible with surrounding uses.

(9) Other uses determined by the city council to be similar in purpose and character to other permitted or conditional uses in this district.

(e) Conditional uses, CGMU-2. Within the CGMU-2 subdistricts, no structure or land may be used for the following uses, except by conditional use permit:

1. Any conditional use allowed in the CGMU-1 subdistrict.
2. Automobile and truck service uses.
3. Equipment and vehicle rental.
4. Gasoline service stations, auto repair, sales, and storage.
5. Automobile car wash.

(f) Lot area, lot width, and yard requirements. The following standards apply to both the CGMU-1 and CGMU-2 subdistricts.

1. Principal structure setback standards shall be as follows:

<table>
<thead>
<tr>
<th></th>
<th>Build-to line (0—10 feet)</th>
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</thead>
<tbody>
<tr>
<td>Front yard:</td>
<td></td>
</tr>
<tr>
<td>Side yard/interior:</td>
<td>0 feet minimum</td>
</tr>
<tr>
<td>Side yard/corner:</td>
<td>Build-to line (0—10 feet)</td>
</tr>
<tr>
<td>Rear yard:</td>
<td>20 feet minimum</td>
</tr>
</tbody>
</table>

2. Accessory structure setback standards shall be as follows:

<table>
<thead>
<tr>
<th></th>
<th>20 feet minimum</th>
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<tbody>
<tr>
<td>Front yard:</td>
<td></td>
</tr>
<tr>
<td>Side yard:</td>
<td>0 feet minimum</td>
</tr>
<tr>
<td>Side yard (street):</td>
<td>20 feet minimum</td>
</tr>
<tr>
<td>Rear yard:</td>
<td>5 feet minimum</td>
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</tbody>
</table>

3. Parking setback standards shall be as follows:

<table>
<thead>
<tr>
<th></th>
<th>5 feet minimum</th>
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</thead>
<tbody>
<tr>
<td>Front yard:</td>
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</tbody>
</table>
### Side Yard Setbacks

<table>
<thead>
<tr>
<th>Side yard:</th>
<th>5 feet minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Side yard (street):</td>
<td>5 feet minimum</td>
</tr>
<tr>
<td>Rear yard:</td>
<td>5 feet minimum</td>
</tr>
</tbody>
</table>

(4) In the CGMU district in the front yard, a build-to-line is established which provides a minimum and maximum front setback for buildings and other structures, from the right-of-way or property line. The minimum front building setback shall be zero feet, and the maximum shall be ten feet from the right-of-way or property line, for all properties on streets within the CGMU-1 subdistrict.

(5) For parking, different minimum setbacks apply, but there is no maximum.

(6) For all properties within the CGMU district, the required setbacks to Concord Street shall follow the rear yard setbacks above.

(7) In the CGMU-1 subdistrict, at least 60 percent of the street frontage of any lot shall be occupied by building facades meeting the build-to-line. Other portions of a building beyond the 60 percent may be set back farther than required by the build-to-line.

(8) In the CGMU-2 subdistrict, at least 40 percent of the street frontage of any lot shall be occupied by building facades meeting the build-to-line. Other portions of a building beyond the 40 percent may be set back farther than required by the build-to-line. The length of the building facade shall be measured as the maximum width of the building projected to the front lot line on lines perpendicular to the front lot line.

(9) On lots with more than one street frontage, the build-to-line shall apply on each side fronting a street.

(10) The build-to-line may be met either with an enclosed building or an arcade constructed with a permanent roof of the same materials as the remainder of the building.

(11) At least the first and second floor must meet the build-to-line. Arcades at street level and terracing of building facades above the second floor are encouraged.

(12) At a minimum, the first 50 feet of the lot frontage on either side of a street intersection must be occupied by buildings meeting the build-to-line. Parking or other space open to the sky is not allowed within this first 50 feet.

(13) Wherever a surface parking area faces a street frontage, such frontage shall be screened with a decorative wall, railing, hedge, or a combination of these elements to a minimum height of two and one-half feet and a maximum height of three and one-half feet above the level of the parking lot at the build-to-line.

(14) New parking structures (including garages) shall maintain a setback equal to the setbacks required in this section for other structures, except that where such parking structure is adjacent to other parking in a side or rear yard condition, the parking structure may have a zero setback. Where a new parking structure is adjacent to an existing use in a side or rear yard condition, the parking structure must maintain at least a ten-foot setback.

(15) Drive-through or drive-in lanes are not allowed within the build-to-line or in front of any building; they must be located to the side or rear of a building.

(16) “Building height” means the vertical distance from the average elevation of the adjoining ground level or the established grade, whichever is lower, to:

   a. The top of the cornice of a flat roof;
   b. The top of a mansard roof;
   c. A point directly above the highest wall of a shed roof;
   d. The uppermost point of a round or other arch-type roof; or
e. The mean distance from the eave line to the peak of the highest gable on a pitched or hip roof.

(17) The maximum height of buildings in the CGMU district shall be 50 feet, except as allowed by conditional use permit. The minimum height shall be 24 feet in the CGMU-1 subdistrict and 16 feet in the CGMU-2 subdistrict.

(g) Parking.

(1) Parking for residential units in the CGMU district shall be provided on site, and shall be calculated as required under article VII of this chapter. The residential parking spaces shall be specifically reserved for the use of residents and visitors only, separate from any commercial, office, or other uses on site or nearby, and shall not be counted as part of any shared parking or joint parking arrangement. Parking in driveways at the rear of townhomes may be counted towards the requirements of this regulation if it does not interfere with other traffic movement.

(2) Parking for nonresidential uses shall be as required under article VII of this chapter. If present, on-street parking directly in front of a given building or lot shall count toward fulfilling the total parking requirement.

(3) On-grade parking is prohibited in the front yard directly in front of a building. Parking shall be provided to the side or rear of buildings in midblock areas.

(4) In the CGMU-1 subdistrict where parking fronts a public street, the maximum parking lot width shall be 65 feet measured at the lot frontage.

(5) In the CGMU-2 subdistrict where parking fronts a public street, the maximum parking lot width shall be 130 feet, measured at the lot frontage.

(6) Parking shall be prohibited within 50 feet of the intersection of any public streets within the CGMU district.

(h) Building and architectural provisions.

(1) All buildings shall be designed to accomplish the goals and policies of the comprehensive plan and the framework plan. Building materials shall be attractive in appearance, durable with a permanent finish, and of a quality that is consistent with the standards and intent of the framework plan. Where appropriate, buildings shall carry over materials and colors of adjacent buildings, with the exception of prohibited materials.

(2) All buildings shall include the following elements:
   a. Accent materials, which shall be wrapped around walls that are visible from a public street or open space;
   b. Buildings containing office and retail uses shall maintain 40 percent minimum window coverage on each first floor front that faces a street or public open space;
   c. Complimentary major material colors;
   d. A combination of vertical and horizontal pattern designs in the building facade.

(3) Any exterior building wall adjacent to or visible from a public street, public open space, or abutting property may not exceed 50 feet in length without significant visual relief consisting of one or more of the following:
   a. The facade shall be divided architecturally by means of significantly different materials or textures;
   b. Horizontal offsets of at least four feet in depth;
   c. Vertical offsets in the roofline of at least four feet; or
   d. Fenestration at the first floor level that is recessed horizontally at least one foot into the facade.
(4) Building facades shall be divided into similar bays of roughly equal width between 20 and 40 feet in width.

(5) Exterior building materials shall be classified primary, secondary, or accent materials. Primary materials shall cover at least 60 percent of the facade of a building. Secondary materials may cover no more than 30 percent of the facade. Accent materials may include door and window frames, lintels, cornices, and other minor elements, and may cover no more than ten percent of the facade. Allowable materials are as follows:
   a. Primary exterior building materials may be brick, stone, or glass. Bronze-tinted or mirror glass are prohibited as exterior materials.
   b. Secondary exterior building materials may be decorative block or integrally-colored stucco.
   c. Synthetic stucco may be permitted as a secondary material on upper floors only.
   d. Accent materials may be wood or metal if appropriately integrated into the overall building design and not situated in areas that will be subject to physical or environmental damage.
   e. All primary and secondary materials shall be integrally colored.
   f. Decorative block shall be colored only by means of a pigment integral to the block material, not applied to the surface.
   g. All primary and secondary materials shall be earth tones, compatible with and complimentary to the natural stone and brick of existing historic buildings in the district.
   h. Sheet metal, corrugated metal, asbestos, iron, shakes, and plain flat concrete block (whether painted or integrally colored or not) are not acceptable as exterior wall materials on buildings within the Concord Gateway district.

(6) All mechanical equipment, whether roof-mounted or ground-mounted, shall be completely screened from ground-level view of adjacent properties and public streets, or designed to be compatible with the architectural treatment of the principal building.

(7) All exterior trash enclosures or other accessory structures shall be constructed of the same materials and colors as the principal building.

(8) Consistent interior window treatments are required for windows that are visible from a public street or open space in offices and multiple residential complexes.

(9) All buildings containing nonresidential uses on the ground floor shall meet the following standards:
   a. The building shall have entrances to a street or public open space spaced no more than 100 feet apart.
   b. Entrances shall be oriented conveniently to the street frontage and to on-street and off-street parking serving the use.

(10) All buildings containing residential uses on the ground floor shall have a first floor elevation at least two and one-half feet above the adjacent street level in the front yard.

(11) All trash, recyclable materials, and equipment for handling them, including compactors, shall be totally screened from eye-level view from public streets and adjacent properties, whether in the front, side or rear, either by being stored within the principal structure or stored within an accessory structure enclosed by a roof and readily served through swinging doors or an overhead door on tracks.

(12) Loading docks shall not be located in the front yard and shall be completely screened from eye-level view of public streets and public open spaces by means of landscaping which is at least 80 percent opaque year-round within two years after planting, or by a screen wall of the same materials and colors as the principal building.

(13) All landscaping shall comply with the following provisions:
a. All land area not occupied by buildings, parking, driveways, sidewalks, or other hard surface shall be sodded or mulched and landscaped with city-approved ground cover, flowers, shrubbery and trees.

b. At least ten percent of the total land area within the perimeter of private parking and driveway areas shall be landscaped. Landscaped areas provided within the build-to line may be credited toward this ten percent landscaping requirement on a square-foot-for-square-foot basis, for up to half of the ten percent requirement, or five percent.

c. Parking lot landscaped islands shall be a minimum of 150 square feet in area and include at least one overstory or evergreen tree meeting the requirements of this article.

d. Where parking abuts the site perimeter there shall be provided at least one overstory tree per 25 feet of site perimeter.

e. At least one overstory tree shall be provided for every 500 square feet of landscaped area on the entire site.

f. The landscape plan shall include a full complement of overstory, ornamental and evergreen trees, shrubbery, and ground covers that are hardy and appropriate for the locations in which they are planted, and which provide year-round color and interest.

g. Plant selection shall be as follows:

1. The following trees may not be used to satisfy the landscaping requirement of this section:

<table>
<thead>
<tr>
<th>Species</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acer negundo</td>
<td>Box elder</td>
</tr>
<tr>
<td>Acer saccharinum</td>
<td>Silver maple</td>
</tr>
<tr>
<td>Catalpa speciosa</td>
<td>Northern catalpa</td>
</tr>
<tr>
<td>Elagnus</td>
<td>Russian olive</td>
</tr>
<tr>
<td>Ginkgo Biloba</td>
<td>F. Ginkgo (female prohibited, male permitted)</td>
</tr>
<tr>
<td>Morus alba</td>
<td>Mulberry</td>
</tr>
<tr>
<td>Populus deltoides</td>
<td>Cottonwood</td>
</tr>
<tr>
<td>Populus species</td>
<td>Poplars</td>
</tr>
</tbody>
</table>

2. The following trees may be used to satisfy the landscaping requirement of this section, but only in areas that are reasonably protected from winter wind conditions:

<table>
<thead>
<tr>
<th>Species</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Picea pungens glauca</td>
<td>Colorado blue spruce</td>
</tr>
<tr>
<td>Pinus alba</td>
<td>White pine</td>
</tr>
<tr>
<td>Pinus resinosa</td>
<td>Red pine</td>
</tr>
</tbody>
</table>

3. The following trees may be used to satisfy the landscaping requirement of this section, but only in areas that are not on or immediately adjacent to a public street boulevard:

<table>
<thead>
<tr>
<th>Species</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tilia cordata</td>
<td>Little leaf linden</td>
</tr>
<tr>
<td>Fraxinus mandshurica mancana</td>
<td>Mancana ash</td>
</tr>
</tbody>
</table>
(14) Reserved.

(15) Lighting in the CGMU district shall be subject to the following:

a. All exterior lighting in the CGMU district shall be downcast cutoff type fixtures and shall follow the styles and types identified in the framework manual. No light source may be more than 16 feet above the ground, except by conditional use permit for buildings more than 20 feet in height.

b. The applicant for any building project shall provide a photometric lighting diagram prepared by a qualified professional showing light levels, in footcandles, from all exterior artificial lighting for all points on and within ten feet of the site.

c. Lighting levels in exterior parking areas shall average one-half footcandle with a minimum of one-tenth footcandle in all locations.

d. Lighting levels in interior parking areas shall average two footcandles, with a minimum of one-half footcandle in all locations.

e. Lighting levels shall not exceed one-half footcandle at the abutting property line or right-of-way line, and no direct glare from lighting on site shall extend onto the public street, public open space or neighboring properties.

(i) Nonconforming uses. Nonconforming buildings and sites can be maintained through repair and maintenance. Nonconforming buildings and sites that are damaged 50 percent or less of their market value may be rebuilt. Nonconforming buildings and sites may be expanded up to ten percent of their floor area or assessed value, provided the expansion is consistent with the zoning that existed prior to the effective date of the ordinance from which this section is derived. Expansion of nonconforming buildings or sites between ten percent and 50 percent of their floor area or assessed value will be required to come into reasonable partial compliance with the provisions of this section as determined by the development review committee. Expansion of nonconforming buildings or sites or rebuilding of sites or buildings damaged by more than 50 percent of market value is not allowed unless the entire building and site is brought into compliance with this section.

(j) Administration. Permitted uses in the CGMU-1 or CGMU-2 subdistricts must first be submitted to the city, in accordance with the site plan provisions of this chapter, which shall determine conformance of the proposed projects, with the intent and requirements of this section. All development plans are subject to city council review and approval. Conditional use permits shall be processed in accordance with section 118-40.

(k) Prohibited uses. The following uses of land or buildings in the CGMU are prohibited:

1. State-licensed residential care facilities;

2. Housing with services establishments registered under Minn. Stat. ch. 144D;

3. Within the CGMU-1 or CGMU-2 subdistricts, no structure or land may be used for small wireless facilities located outside of the right-of-way.

AGENDA ITEM: Lease Amendment – 135 Grand Avenue East

DESIRED MEETING OUTCOMES:

- Confirm consensus on proposed lease amendment and advance for formal approval

OVERVIEW:

In June 2019, the Economic Development Authority (EDA) acquired the property at 135 Grand Avenue East and assumed lessor rights via a lease agreement between the previous owner and the industrial tenant (MLCV 2020 Holdings). The lease agreement is set to terminate on June 30, 2020, and the tenant had been negotiating a lease at an industrial facility in a neighboring community. However, in light of the COVID-19 pandemic, the business has sought to defer their relocation for the time being as they concentrate on keeping their operations run as smoothly as possible through this disruption.

At its April 6, 2020 business meeting, the EDA reviewed an amended lease agreement that would have extend the end date of the lease through December 31, 2020 without changing any other provisions of the lease – including the lease rate. As staff pointed out at the April 6 WebEx meeting, the lease rate represents a significantly “below-market” lease rate. The EDA acknowledged this at the meeting, and rejected the proposed extension largely for the purpose of instituting a more market-appropriate lease rate beginning on July 1, 2020.

Rent Considerations

Industrial real estate (warehouse, production, distribution, and office) in the Southeast submarket continues to be a very strong asset class and, although the stay-at-home order is understandably introducing some short-term uncertainty, there is every confidence that demand for this type of space in the market will remain high for the foreseeable future. A scan of similarly situated properties in the market (40,000 – 70,000 SF, Class B/second-gen space) shows that asking rates for Warehouse/Production/Distribution is predominately in the $4.00/SF to $5.00/SF range (NNN) and asking rates for Office space within these facilities is predominately in the $9.00/SF to $11.00/SF range. CAM/Taxes (additional tenant paid expenses) in the market vary between $1.50/SF and $3.50/SF.

135 Grand Avenue is a 56,000 square foot (28,000 per floor) two-story building constructed in 1936 as a parking garage for the Swift Company, but which has been renovated (most recently in 2007) for general light industrial use. The building is divided with approximately 13,000 square feet of office space and the balance (43,000 square feet) production and warehouse space. The entire building is sprinklered and climate-controlled (with A/C on the first floor only) and although its configuration is not ideal for a modern creative production and distribution company, the building is in relatively good shape for its age.
Based upon our understanding of 135 Grand Avenue’s position in the broader industrial market, we feel that a reasonable “market” asking rent would be approximately $24,000/month NNN. The Tenant in this case pays all CAM expenses (utilities, security, maintenance) directly as well as special assessments and taxes (although the property became tax exempt in 2020, due to our ownership).

**Redevelopment Considerations**

As the EDA discussed on April 6, the pursuit of redevelopment within the Hardman Triangle area remains a priority, and perpetuating a legal non-conforming use at 135 Grand Avenue East seems to run counter to that important objective. Staff is sensitive to this consideration, but is of the opinion that a relatively short-term lease extension (twelve months or less) will in no way deter implementation of the desired redevelopment vision for the Hardman Triangle. Staff’s opinion is based upon the following core facts:

- The COVID-19 crisis, while it isn’t killing deals in progress, is certainly slowing the development pipeline for the time being. We have had ongoing discussion with a number of developers about the Hardman Triangle vision and, while interested in keeping an eye on it, there is no significant traction towards a tangible development project on the site at this time.

- In fairness, tepid development interest was the case regardless of COVID-19 – the more pressing, fundamental and persistent issues facing redevelopment of the Hardman Triangle are existing uses and site control. Even when COVID-19 concerns subside, the issue of existing adjacent uses to the sites we control will be the single-most substantial deterrent to a developer pursuing a mixed-use/residential project in this immediate project area.

- We were just informed that our application for grant funding through DEED’s Redevelopment Grant program was denied. Staff had targeted these funds for demolition of the existing building, for which we received a low price quote of approximately $250,000. If the tenant moves out in June, we will have an empty building to maintain until we demolish the structure. The next round of DEED funding is expected in August 2020, assuming DEED continues to operate the program. We are also working on applications to Dakota County (ELF Grant) and Dakota County CDA (RIG Grant) that will be submitted by May 1. These funds are being requested for assistance with acquisition and demolition costs at 135 and 139 Grand Avenue, but we likely won’t know if we’re successful until sometime this summer.

- Finally, strategically staff has identified TIF as a very likely vehicle for implementing the redevelopment vision for the Hardman Triangle. While we have not conducted a full-blown TIF analysis, we would want to be certain that demolition of the building at 135 Grand “too early” doesn’t jeopardize our ability to establish a Redevelopment TIF here.
Recommendation

In summary, staff’s opinion is that retaining 2020 as a tenant for a reasonably short amount of time – until we are a bit more ready with redevelopment of the site and broader district – is not a deterrent to the redevelopment objectives that we continue to focus on and pursue. In fact, every month that we retain them as a tenant, we are paying down our purchase price for the building (and thereby replenishing the Concord TIF district to pay for other redevelopment costs). Staff agrees that the lease rate that they have been paying is disproportionately advantageous to them and gives them incentive to stay as long as possible. Nonetheless, doubling their rent overnight (in the midst of a major and widespread economic interruption) seems like a bit of a harsh step.

In light of the circumstances introduced in this memo, staff recommends the following modified structure to the rent schedule:

<table>
<thead>
<tr>
<th>Term</th>
<th>Base Rent (per month)</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 1, 2020 – December 31, 2020</td>
<td>$18,500</td>
</tr>
<tr>
<td>January 1, 2021 – March 31, 2021 (mutual option)</td>
<td>$21,500</td>
</tr>
<tr>
<td>April 1, 2021 – June 30, 2021 (mutual option)</td>
<td>$24,500</td>
</tr>
</tbody>
</table>

Admittedly, the July 1 – December 31 base rent remains somewhat below-market. That said, it represents a significant increase (over 50%). We feel the proposal is a reasonable compromise that affords a long-time local business with sufficient time to weather the uncertain times and better prepare for their next move. Ultimately, we will integrate the EDA’s direction into a formal lease amendment if the consensus is that this proposed approach remains too favorable to the tenant.
Agenda Item: Native Plant Landscaping Ordinance

DESIRED MEETING OUTCOMES:
Discuss the proposed Native Plant Landscaping Ordinance.

OVERVIEW:
South St. Paul joined the GreenStep Cities program in April of 2016. To complete one of the best practices actions for the program, staff have crafted a native plant landscaping ordinance. Currently, the City Code appears to technically prohibit native plant landscaping on most properties. The main issue is that native plants are often taller than the allowable height for plants. Per Section 66-49 of the City Code, any grass, plants (aside from bushes, flowers, and trees) or weeds growing to a greater height than six inches are considered to be a nuisance. Nuisances must be removed by the owner or the City will remove the nuisance at the expense of the owner. In spite of this language, a number of properties in the city, both commercial and residential, do already have native plant landscape areas.

In 2015, the City Council passed Resolution 2015-181-“Endorsing the Protection of Pollinators and Enhancement of Pollinator Habitat” which states that the City is committed to promoting pollinator health through several measures including using pollinator-friendly plantings (aka native plantings) in public places such as City parks. The result is that native plants live in somewhat of a gray area where the City’s adopted policy is to promote them while at the same time the Code continues to technically prohibit them on private properties because they exceed 6 inches in height.

A number of communities in the Twin Cities area now have native planting ordinances which officially allow native plantings on private properties but with rules. The Cities of Eden Prairie, Minnetonka, Crystal, Coon Rapids, Eagan and Plymouth all have such ordinances. These ordinances typically lay out rules such as:

- Native plants are exempt from nuisance height rules listed for lawns.
- Noxious weeds are specifically defined and not permitted in native planting areas.
- Turfgrass is not allowed in native planting areas and the property owner must eliminate all of the turfgrass beforehand on the area where they intend to put the native plantings landscaping.
- Some cities require that the native vegetation be trimmed annually.
- Some cities require or encourage small informational signs near the native plantings to make it clear that the landscaping is deliberate and not just an unkempt yard.
- Some cities require setbacks for native planting areas. Some cities do not allow native plantings to go right up to the front property line and require some amount of space to be landscaped with standard turfgrass before the native plantings area begins.
- Some cities state in their ordinances that the City has the right to cut down a native vegetation if it is not being managed properly.
The proposed ordinance incorporates some of these best practices with some additional language that is tailored to the context of South St. Paul. Chapter 66, Article III of the City Code would be renamed from “Weeds” to “Weeds, Vegetation and Landscaping”. Language and definitions for “native plants landscape areas”, “native plants”, “turfgrass” and “weeds” are added as Section 66-49. Section 66-50 creates standards for native planting areas. Staff is proposing the following standards:

1. Requiring native plants to be managed and maintained to industry standards.

2. Prohibiting native plantings from being planted in traffic visibility triangle areas of corners lots or other areas where they would negatively affect sightlines and safety.

3. Adding the ability for residents to educate their neighbors about their native landscaping areas through small informational signs.

4. Requiring that all turfgrass be removed from the planting area before native plants are installed.

5. Asserting that the City has the right to require removal of any native plant landscape area that has been installed in a drainage and utility easement or right-of-way, without cost to the City, if it becomes necessary.

6. Section 66-51 is modified to allow for native plantings to be exempt from the 6-inch height maximum for grass, plants and weeds.

Please note that Staff has not included any setback requirements in the draft ordinance as many communities do not include a setback requirement. Communities that do have a setback requirement generally have a front yard setback of 20 feet and a side and rear yard setback of 5 feet from the property lines (although the side and rear yard setbacks are often able to be waived for yards that have a privacy fence or situations where the neighbor wants to install a native plantings area too). There are a number of existing native landscape areas in town that do not have any property line setbacks so imposing a new setback requirement could cause issues for those landscape areas. Council can direct Staff to add setback requirements to the draft ordinance if there are concerns about the proposed rules, particularly if there is concern regarding native plantings overgrowing onto sidewalks or neighboring properties.
The City Council of the City of South St. Paul does ordain:

**SECTION 1. AMENDMENT.** South St. Paul City Code Chapter 66 Article III is hereby amended as follows:

**ARTICLE III. - WEEDS, VEGETATION AND LANDSCAPING.**

Section 66-49 - Definitions

For purposes of this chapter, the following words, term, and phrases shall have meanings herein ascribed to them.

*Native Plant Landscape Areas* means areas where native plants are being planted or have been planted in a well-defined and maintained border.

*Native Plants* mean grasses, including meadow vegetation, sedges (solid, triangular-stemmed plants resembling grasses), forbs (flowering broadleaf plants), trees, and shrubs, that are plant species native to or naturalized to the State of Minnesota, excluding prohibited exotic species defined by Minn. Stat., Chap/84D. Native plants do not include weeds or turfgrass.

*Turfgrass* means commercially available cultured grass varieties that are grown to create turf, including bluegrass, fescue, and ryegrass blends, commonly used in regularly cut lawnaresas.

*Weeds* means noxious plants as enumerated by the Minnesota Noxious Weed Law, M.S. 18.75, et. seq, in addition to the useless and troublesome plants as are commonly known as weeds to the general public. Weeds shall also be constructed to mean all rank vegetable growth which exhales unpleasant or noxious odors, and all high rank vegetable growth that may conceal filthy deposits.

**Sec 66-50- Native Plant Landscape Areas.**

A native plant landscape area is permitted if the property owner or agent demonstrates that all of the following conditions are met:
a) The area is properly managed and maintained according to current industry standards for the kind of vegetation being grown, to include seasonal cutting as appropriate.

b) Any existing turfgrass on the area is immediately eliminated prior to the introduction of the native plants. The native plant landscape area is to be planted through transplanting or seed by human or mechanical means.

c) Soil erosion is controlled while the ground is bare of plant growth that is sufficient to inhibit erosion.

d) The native plant landscape area shall not obscure, block or impede the traffic visibility triangle area; regulatory, warning or street identification signs; or street light illumination required to ensure the safe and efficient circulation or vehicles and pedestrians on streets, intersections, trails, pathways, and sidewalks.

e) The City may require the owner or occupant who has planted, or has allowed to be planted, native plants or other vegetation within a drainage or utility easement or a right-of-way of a City street to remove the native plants or other vegetation from the right-of-way or drainage and utility easement at no expense to the City. The City will not be responsible for damage to turfgrass and/or any landscaped area resulting from public works improvements or snow removal activities within the right-of-ways or drainage and utility easements.

Sec. 66-4951 - Weeds, grass, and plants.

(a) Nuisance defined; removal. Grass, plants, and weeds, whether noxious, as defined by law, or not, other than trees, bushes, flowers, native plant landscape areas that comply with this ordinance or other ornamental plants growing to a greater height than six inches or that have gone or are about to go to seed upon a lot or parcel of land outside the traveled portion of a street or alley in the city are a public nuisance. The owner and the occupant must abate or prevent such nuisance on such property and on land outside the traveled portion of the street or alley abutting on such property.

(b) Notice. When the owner or occupant permits a nuisance to exist in violation of subsection (a) of this section, the weed inspector will serve notice upon the owner of the property by regular mail or by personal service, ordering the owner or occupant to have the grass, plants, or weeds cut and removed within five days after receipt of the notice, and also stating that, in case of noncompliance, the work will be done by the city at the expense of the owner, and that if unpaid, the charge for such work will be made a special assessment against the property concerned. When no owner, occupant or agent of the owner or occupant can be found, the notice shall be posted on the property.
(c)  *City to remove.* If the owner or occupant fails to comply with the notice within five days after its receipt or posting, the city will cut and remove the grass, plants, or weeds. A record showing the cost of such work attributable to each separate lot and parcel will be made and delivered to the clerk.

(Code 1992, § 905.01; Ord. No. 1169, §§ 1—4, 10-17-2005; Ord. No. 1220, § 6, 10-5-2009; Ord. No. 1247, § 1, 8-15-2011)

Sec. 66-5052. - Payment of costs.

(a)  *Personal liability.* The owner of property for which the weeds have been removed by the city in accordance with this section is personally liable for the cost of such work. As soon as the work has been completed and the cost determined, the clerk will prepare a bill of service charges and mail it to the owner, and thereupon the amount is immediately due and payable at the office of the clerk.

(b)  *Assessment.* If the bill for service charges is not paid when due, the city may assess the costs as a public nuisance in accordance with chapter 34, article II.

(Code 1992, § 905.03; Ord. No. 1220, § 6, 10-5-2009)

**Editor's note**— Ord. No. 1220, § 6, adopted Oct. 5, 2009, changed the title of § 66-50 from "Assessment of costs" to "Payment of costs."

**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 ordinance creates definitions and performance standards for native planting areas in the city.

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

Approved:  

Published:  

Christy Wilcox, City Clerk
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 are 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.

Elyse Less from Tobacco-Free Alliance, a local nonprofit working to reduce the harms of tobacco through assessment, education, and advocacy, had contacted us 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.)

Based upon the information provided, the City Council asked that the Public Health Law Center prepare a draft that addresses their concerns with our ordinance. (A copy is attached.)
The City Attorney will also participate in the discussion to offer her perspective on the initial draft and the proposed revisions by PHLC.

The Council will then need to provide direction as to the approach they feel should be pursued.

ATTACHMENTS:

Proposed Ordinance Revision from City Attorney
Proposed Ordinance Revision from PHLC
WSP
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 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 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 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 licensee 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 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-People 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 minor.**

(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 person’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 minor 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
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:

- **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 it may be amended from time to time.

- **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/licensed products are following and complying with the requirements of this article. Compliance checks shall involve the use of minor persons between the ages of 18 and under the age of 21 as authorized by this article. Compliance checks shall also mean the use of persons between the ages of 18 and under the age of 21 (minors) who attempt to purchase tobacco, tobacco products or tobacco-related devices/licensed products for educational, research and training purposes as authorized by state and federal laws.

- **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, etc.
mods, tank systems, or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

**Individually packaged.** The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products 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.

**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 cigarettes, cigars, and any other licensed product that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor. 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 or lobelia delivery devices.** Any product containing or delivering nicotine or lobelia 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 licensed products 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.

**Commented [PHLC8]:** This definition is unnecessary and confusing in its description of what is considered individually packaged. The only place this term is used is in the definition of “loosies.” Instead, the definition of loosies could be clarified to cover all intended products that the City wants to cover. The sample language to define “loosies” should help clarify the products captured here.

**Commented [PHLC9]:** As noted above, the City may consider adding a new definition as an “umbrella” or catch-all term that includes all of the tobacco products covered in the ordinance (tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products). One umbrella term other jurisdictions have used is “licensed products.” This allows for simplification throughout the ordinance. Here and throughout the rest of the ordinance, instead of listing all covered products, the code need only reference “licensed products.”

**Commented [PHLC10]:** Federal law and the MSA prohibit the sale of single cigarettes (commonly referred to as “loosies”), but not other harmful commercial tobacco products often sold individually and for a low price. State and local governments can replicate and expand the federal provisions to close the loopholes that exist. This language includes and expands on the existing federal ban on the sale of single cigarettes known as “loosies” to include the sale of single cigars and other tobacco products (e.g., smokeless pouches and Juul pods) that have been removed from their intended packaging. So essentially, with this definition and the prohibition on the sale of loosies (included later in the ordinance) the sale of any tobacco product that has been removed from its original packaging is prohibited. As noted above, this revised definition allows for the removal of the definition and use of the term “individually packaged.”

**Commented [PHLC11]:** PHLC11: PHLC has revised our sample loosies definition and it does not rely on a price point. Including that price point effectively created a minimum price for the sale of single cigars. If that is the city’s intention, then the minimum price should be set in its own provision under the sales restrictions below as opposed to in the definition of loosies. I have inserted sample language with comment to establish a $2.00 minimum price for a single cigar below in Sec. 18-673 (d) if the City would like to continue that restriction.

**Commented [PHLC12]:** State law requires local jurisdictions to license specifically for the sale of “nicotine or lobelia delivery devices” so the definition was updated to reflect state law.
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 licensed products in any manner where any person shall have access to the tobacco, tobacco products or tobacco-related devices licensed products 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 licensed product 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. Tobacco-related devices may or may not contain tobacco.

Vending machine. Any mechanical, electric or electronic self-service device that upon the insertion of money, tokens or other form of payment dispenses tobacco licensed products, and includes vending machines equipped with manual, electric or electronic locking devices.

Sec. 18-672. — Findings and Purpose.

In making these findings, the City Council 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 under the age of 21 violates federal law; 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 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.

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 licensed product to any person under the age of 18 21 years.

(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.

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

(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 licensed product and where there is not a physical exchange of the tobacco, tobacco...
product or tobacco-related device licensed product between the licensee or the licensee’s employee and the customer. All tobacco, tobacco-related products and tobacco-related devices licensed products shall be stored behind the 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.

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

(4) Containing opium, morphone, 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.

(c) Liquid packaging. No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

(d) Cigars. No person shall sell or offer to sell a single cigar with a sales price of at least $2.00 after any discounts are applied and before sales taxes are imposed.

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

It shall be unlawful for a licensee to allow the sale of tobacco, tobacco products or tobacco-related licensed products 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 licensed product between the licensee or the licensee’s employee and the customer. All tobacco, tobacco products and tobacco-related devices licensed products shall either be stored behind a counter or other area not freely accessible to customers or in a case or other storage unit not left open and accessible to the general public.

Sec. 18-6745. - 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 licensed products 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. 18-6756. - 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 twice per year, a law enforcement officer of the City shall conduct compliance checks to ensure compliance with the provisions of this article. In accordance with state law, the City will conduct at least one compliance check that involves the participation of one person between the ages of 15-17 and at least one compliance check that involves the participation of an officer with the written consent of their parent or guardian. Minor 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; licensed products. A written consent of parents or guardians is required for any person under the age of 18 to participate in a compliance check. Persons minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers. Minor persons used for 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 items obtained as a part of the compliance check. No minor person used in compliance checks shall attempt to use a false identification or misrepresent 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 items 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 items obtained as a part of the compliance check.

Sec. 18-6767. - Illegal Other prohibited 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 minor.

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

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

**Illegal purchase.** It shall be unlawful for any minor 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. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product or tobacco-related device.
Unless otherwise provided, the following acts shall be a violation of this article:

(4) Use of false identification. It shall be unlawful for any minor person under 21 to attempt to disguise the minor person’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. 18-6788. - 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. 18-6789. - Administrative penalties.

(a) If a licensee or employee of a licensee sells tobacco licensed products 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 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 21 and over 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.

(c) 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 penalties. If PUP penalties are removed, then the only way an underage person may violate this ordinance is by using a false ID or as an employee of a licensed retailer. For these violations, alternative penalties may be considered. (See new paragraph below.)
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.

Sec. 18-67980. - 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 minor 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 licensed product without first obtaining a license from the city.

(b) Application. An application for license to sell tobacco, tobacco products or tobacco-related devices licensed products 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 licensed products unless an applicant or license holder has a program for instructing all employees regarding the legal requirements pertaining to the sale of tobacco licensed 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 licensed 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 licensed products to persons under 21 years of age 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 licensed products 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 licensed products shall 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 21 years of age.
(2) The applicant or license holder has had a license to sell tobacco, tobacco products or tobacco-related devices licensed products 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.

DIVISION 3. - 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 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 Tobacco Control 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

Commented [PHLC34]: A severability clause is important because it ensures that if for any reason one provision of the ordinance were to be challenged in court and struck down the remainder of the ordinance would remain in effect.

Commented [PHLC35]: The correct citation for the federal tobacco 21 law is the Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act") which was amended by Congress and signed into law by Pres. Trump on Dec. 19, 2019.
CHAPTER 113: TOBACCO

Section

113.01 Purpose
113.02 Definitions
113.03 License required
113.04 Responsibility for acts of employees
113.05 Prohibited acts
113.06 Compliance checks and inspections
113.07 Other prohibited acts
113.08 License denial, suspension or revocation

§ 113.01 PURPOSE.

Because the city recognizes that many persons under the age of 21 years may purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, electronic delivery devices and nicotine or lobelia delivery products; and the sale of these products to minors under 18 years of age 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 chapter is intended to regulate the sale, possession and use of tobacco, tobacco products, tobacco-related devices, electronic delivery devices and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, electronic delivery devices and nicotine or lobelia delivery products, 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.

(2001 Code, § 1190.01) (Ord. 10-18, passed - -; Ord. 19-15, passed 10-14-2019)

§ 113.02 DEFINITIONS.

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

**COMPLIANCE CHECKS.** The system the Police Department uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this chapter and state law. COMPLIANCE CHECKS shall involve the use of persons under the age of 21 as authorized by state law who may attempt to purchase licensed products for educational, research and training purposes.

**ELECTRONIC DELIVERY DEVICE.** Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the inhalation of aerosol or vapor from the product, as defined by Minn. Stat. § 609.685 Subd. 1(c), or as it may be amended.

**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% 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.

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

**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 per cigar.

**MINOR.** Any person under 18 years of age.

**MOBILE PLACE OF BUSINESS.** Any form of business operated out of a truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or otherwise permanent type of structure.

**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 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 United States Food and Drug Administration for tobacco use cessation or for other medical purposes, and is being marketed and sold solely for that approved purpose.

**RETAIL ESTABLISHMENT.** Any place of business that is a permanent building or structure where licensed products are available
for sale to the public. RETAIL ESTABLISHMENTS includes, but is not limited to, grocery stores, bars, drug stores, convenience stores, gasoline service stations and restaurants.

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

SELF-SERVICE DISPLAY. Open displays of licensed products in any manner where a person has access to the licensed products without the assistance or intervention of the licensee or the licensee's employees. SELF-SERVICE DISPLAY does 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 with tobacco products. TOBACCO-RELATED DEVICE includes components of tobacco-related devices which may be marketed or sold separately.

VENDING MACHINE. Any mechanical, electric, electronic or other type of device that upon the insertion of money, tokens or other form of payment dispenses licensed products.


§ 113.03 LICENSE REQUIRED.

(A) General rule. No person shall sell or offer to sell any licensed product without first obtaining a license from the city pursuant to Chapter 110. Each retail establishment location shall require a separate license.

(B) Applications. In addition to the application information requirements of § 110.03, the applicant shall submit a copy of the educational materials the applicant uses to educate employees as part of its instructional program.

(C) License fee. The applicant shall submit the license fee pursuant to Chapter 110. The license fee shall be used to process applications and by the Police Department for education, training and enforcement of this chapter.

(D) Investigations.

(1) For all new and renewal applicants, a background investigation will be conducted on the applicant listed on the application, pursuant to § 110.03(C)(5). If more than one background investigation is required, the applicant shall pay a background investigation fee for each background investigation conducted. For applicants who have an existing tobacco license and want to add an additional location at any time other than annual renewal, a background investigation will be required.

(2) For applicants who are applying for a license for more than one location, only one background investigation and background investigation fee shall be required.

(E) License term. The license term begins on January 1 and terminates on December 31.

(F) Changes in ownership. A license is non-transferable. If there is a change in the ownership of the retail establishment, a new license is required and the applicant shall be required to submit to a background investigation as a new applicant.

(G) Instructional program. No person shall be issued a license or renewal license to sell licensed products unless an applicant or licensee has a program for instructing all employees regarding the legal requirements pertaining to the sale of licensed products at the retail establishment for which the license was issued. The instructional program shall include, but is not limited to, reviewing the law on the sale of licensed products, requiring employees to request identification from every customer who is under 27 years of age, providing information that the sale of licensed products to anyone under 21 is illegal, explaining what kind of proof of age is legally acceptable, and that a sale to a person below the legal sales age can subject the applicant or licensee and its employees to criminal and/or civil liability.

(H) Age verification device and digital security video. All license holders shall be required to install or possess age verification devices and digital security video at the licensed location. The Police Department shall confirm that the devices have been installed prior to approval of the license.

(I) Sampling. Sampling of licensed products shall not be permitted within the indoor area of any retail establishment.

(J) Moveable place of business. No license shall be issued to a movable place of business. Only fixed retail establishment locations shall be eligible to be licensed under this section.

(K) 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.

(L) Signage. Notice of the legal sales age and age verification requirements must be posted at each location where licensed products are offered for sale. The required signage, which shall 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.
§ 113.04 RESPONSIBILITY FOR ACTS OF EMPLOYEES.

All licensees shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed retail establishment premises, and the sale of any such item by an employee shall be considered a sale by the licensee for the purposes of this chapter.


§ 113.05 PROHIBITED ACTS.

(A) It shall be unlawful for any person to sell, offer for sale or allow the sale of licensed products:

(1) By the means of a vending machine;

(2) By means of loosies as defined in § 113.02;

(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;

(4) 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;

(5) From a movable place of business, such as, but not limited to, any motorized vehicle, a kiosk, a trailer, a transportable shelter or table or any other movable structure;

(6) By means of any self-service displays whereby the customer may have access to these items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the licensed product between the licensee or licensee's employee and the customer.

(B) Sale or distribution to person under 21 years old prohibited.

(1) No person shall sell or distribute licensed products to any person under 21 years old.

(2) Any person found to have sold or distributed any licensed products to a family member who is under 21 years old shall be deemed to be in violation of division (B)(1) above.

(3) It shall be unlawful for any person under the age of 21 years old to represent that he or she has attained the age of 21 years old for the purpose of purchasing, asking for in any way, or receiving licensed products, except in cases authorized by law, including as authorized by the department or law enforcement.

(4) It shall be unlawful for any person to give, lend, sell or otherwise provide any person under the age of 21 years old any falsified identification or identification of another person for the purpose of establishing the age of the individual as being 21 years old or older.

(5) Any person selling or distributing licensed products shall require proof of age from the prospective purchaser or recipient is 21 years old or older.

(6) Notice of the legal sales age and the age verification requirement shall be posted at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, shall be posted in a manner so that it is clearly visible to anyone who is considering or making a purchase.


§ 113.06 COMPLIANCE CHECKS AND INSPECTIONS.

(A) All licensed retail establishments shall be open to inspection by the Police Department or other delegated law enforcement officers or agencies during regular business hours.

(B) From time to time, but at least once per year, a law enforcement officer shall conduct unannounced compliance checks to ensure compliance with the provisions of this chapter.

(C) Compliance checks shall utilize persons over the age of 15 years, but less than 21 years, to enter the retail establishments to attempt to purchase licensed products. Prior written parental consent is required for any minor who participates in a compliance check.

(D) Persons used for the purpose of compliance checks shall be supervised by designated law enforcement officers.

(E) Nothing in this chapter 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.


§ 113.07 OTHER PROHIBITED ACTS.

Unless otherwise provided, the following acts shall be a violation of this chapter.

(A) Legal age It shall be unlawful for any person to sell or otherwise provide any licensed product to any person under the age of 21.
(B) **Illegal purchase on behalf of persons under 21.** It shall be unlawful for any person to purchase for, or otherwise obtain licensed products on behalf of a person under the age of 21. It shall further be a violation for any person to coerce or attempt to coerce a person under the age of 21 to illegally purchase or otherwise obtain or use any licensed product.

(C) **Use of false identification.** It shall be unlawful for any person under the age of 21 to attempt to disguise the person’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.

(D) No minor may furnish, sell or attempt to sell licensed products on behalf of a licensee unless written consent has been obtained from the minor’s parents. Such written consent must include a statement of the potential penalties that can be imposed under this section.


### § 113.08 LICENSE DENIAL, SUSPENSION OR REVOCATION.

(A) **Grounds for denial, suspension or revocation.** The City Council may deny, revoke or suspend a license for violating a provision of this chapter or for any of the reasons enumerated in § 110.12(A). In addition, the City Council shall impose a civil penalty for each violation.

(B) **Minimum penalties.** The following are deemed appropriate minimum penalties for a licensee’s failure to comply with an applicable statute, rule or ordinance relating to the license; however, the level and order of the penalties will be at the sole discretion of the City Council, based upon the nature of the infraction. When appropriate, the City Council may impose penalties exceeding those stated below or impose other conditions deemed appropriate:

<table>
<thead>
<tr>
<th>Violation</th>
<th>Licensee</th>
<th>Employee</th>
</tr>
</thead>
<tbody>
<tr>
<td>First violation</td>
<td>$75 fine and attend training by Police Department</td>
<td>$50 fine</td>
</tr>
<tr>
<td>Second violation within 24 months</td>
<td>$200 fine, plus 3-day suspension</td>
<td>$50 fine</td>
</tr>
<tr>
<td>Third violation within 24 months</td>
<td>$750 fine, plus 7-day suspension</td>
<td>$50 fine</td>
</tr>
<tr>
<td>Four or more violations within 24 months</td>
<td>$1,500 fine + revocation</td>
<td>$50 fine</td>
</tr>
</tbody>
</table>

(C) **Notice.** Notice must be provided pursuant to §110.12(D)(1).

(D) **Hearing.** A hearing will be conducted pursuant to §110.12(D). It is not necessary that criminal charges be brought in order to support a determination of a license violation nor does the dismissal or acquittal of such a criminal charge operate as a bar to adverse license actions under this chapter.

(E) **Final decision.** Following the hearing, the Council may deny, revoke, suspend or not renew the license for the retail establishments or may grant or continue the license upon such terms and conditions as it deems reasonable and necessary to accomplish the purposes of this chapter. The decision by the City Council following a hearing is final.

(F) **Non-exclusive remedy.** Enforcement actions provided in this chapter are not exclusive, and the Council may take any action with respect to a licensee, employee or the retail establishments as is authorized by the city code, state or federal law.

(G) **Re-application.** Upon revocation of a license, the owner must re-apply for a new license and comply with all the provisions of § 113.03.

(2001 Code, § 1190.15) (Ord. 10-18, passed - -)
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 therefor 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.
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 lobelia 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.
- Raising minimum age of tobacco sales to 21.
- 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.
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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[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.
The Association for Nonsmokers-Minnesota is dedicated to reducing the human and economic costs of tobacco use in Minnesota.

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St. Paul, MN 55114
651-646-3005 | www.ansrmn.org

Updated: March 2020
Sources may be found at www.ansrmn.org

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. 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.

MINNESOTA’S 72 TOBACCO 21 COMMUNITIES

"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
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.

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

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] 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 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.

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**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.

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**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.

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**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 twice per year, the city will conduct compliance checks. In accordance with state law, the city will conduct at least one compliance check that involves the participation of two persons: one person between the ages of 15 and 17 and one person between the ages of 18 and 20. The city will conduct at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between 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.

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**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.
(2) **Hearings.**

(a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 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.

(3) **Hearing Officer.** The City Council will designate a hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) **Decision.** A decision will be issued by the hearing officer within 10 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.

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

(6) **Appeals.** Appeals of any decision made by the hearing officer must be filed in [ ___________ ] County district court within 10 business days of the date of the decision.

(7) **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.
(B) **Administrative penalties.**

(1) **Licensees.** Any licensee found to have violated this ordinance, or whose employee violated this ordinance, will be charged an administrative fine of \[ $200 \] for a first violation; \[ $500 \] 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:
Provide update of City actions in response to the COVID-19 pandemic.

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. Governor Walz extended the stay-at-home order through May 4, 2020. In order to comply with this order, all City buildings will continue to remain closed to the public through May 4, 2020. City departments and staff have adjusted quite well to conducting business virtually and have worked through any issues or concerns that have arose.

2. Department Updates:
   - SSP Library – all other libraries within the Dakota County Library system are also closed to the public through May 4th. The DCL did implement curbside pickup and the SSP Library staff are sending all holds over to the Wentworth Library for patrons to pick-up. The Library staff is hosting many readings, book clubs, etc. virtually through ZOOM.
   - Parks & Recreation – the Recreation Supervisor’s are moving ahead with summer program planning, including conducting virtual interviews for summer seasonal staff so they are ready to go in the event the stay-at-home order is lifted. Virtual Fitness Classes are being held every day through ZOOM and participation numbers average around 12 per class.

Staff has received calls from user groups regarding use of the ballfields. Users are optimistically hoping they will be able to use them starting on May 15th. The Adult Softball League is also accepting registrations for summer leagues in hopes for summer play.

The bid opening for Kaposia Landing Phase 2 is scheduled for Tuesday, April 14th at 2:00 PM. Bids are being accepted by mail and will be accepted in person (with social distancing) on Tuesday prior to the bid opening.

Both ice sheets are out at the Doug Woog Arena. The maintenance staff will begin working on summer maintenance projects next week, including lots of painting – rink 2 floor, rink 1 bleachers, and locker room walls while maintaining good social distancing practices.
• Public Works – street sweeping is finishing up this week and filling of potholes is scheduled to begin next week. Winter clean-up and mowing of parks will begin soon. Public Works is also taking over mowing of the HRA lots for the summer. All staff will be reporting for work next week as maintenance activities are picking up.

• Airport – fuel sales are down, which is to be expected but there are still flights occurring. Pilots are practicing “social distancing” from above!

• Police Department – with the exception of the office staff working from home, it is business as usual. One issue that will need some further evaluation is the possible need to educate residents on social distancing and why it is necessary. There have been a few instances of groups gathering in public park spaces which draws concerns from area residents. Some cities have instituted COVID Ambassadors that monitor park activity and provide education on social distancing should they see a group gathering.

• Economic Development – staff is responding to inquiries and needs for service/questions from homeowners and businesses. They are also developing workplans for the projects and new policies.

3. Park Facilities – While the playgrounds are closed, the park open spaces and trails are available for use. Both the large and small dog parks are open for use. An annual pass is required. Passes can be purchased by mail by sending in the completed Off-Leash Dog Area Application, copy of the rabies vaccination and payment. Once that is completed, a pass will be mailed out.

4. Garden Plots. Public Works will monitor the soil conditions of the garden area and will till and prepare the plots when the ground is ready. We anticipate the Garden Plots will be open after May 4th (conclusion of “Stay at Home” order). Registrations for plots are being accepted by the Parks & Recreation staff.

5. Compost Site. Staff is meeting next week to discuss how to safely staff the compost site and what days/hours it will be available. We anticipate opening the compost site by the end of the month. The plan is to not charge for materials but to have someone present to ensure improper materials are not dumped there. In the meantime, Gertens is open and accepts yard, brush and tree waste.

6. Load Restrictions. Load restrictions will be lifted effective Monday, April 13th, so we will likely see a higher volume of truck traffic in town.

7. Property Taxes. Dakota County has mentioned they are considering delaying the collections of property taxes. If this occurs, there could be a delay of property tax remittances to the city. Staff will be monitoring this closely.