

CITY OF MOUNTAIN LAKE, MN

ORDINANCE #4-20

AN ORDINANCE OF THE CITY OF MOUNTAIN LAKE REPEALING AND REPLACING CHAPTER 6 SECTION 31 TOBACCO REGULATIONS

The City Council of the City of Mountain Lake ordains that *Section 6.31, Tobacco Regulations*, be repealed in its entirety and replaced as follows:

SECTION 6.31. TOBACCO.

Subdivision 1. Purpose. Because the city recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates federal law; 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 state 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 people who smoke begin smoking before they have reached the age of 18 years, and only a very small percentage of people 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.

Subdivision 2. Definitions and Interpretations. 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:

1. “Child-Resistant Packaging” shall mean 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.

2. “Cigar” shall mean 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.
3. “Compliance Checks” shall mean the system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of persons under the age of 21 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.
4. “Electronic Delivery Device” shall mean 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.
5. “Indoor Area” shall mean 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.
6. “Licensed Products” shall mean the term that collectively refers to any tobacco or tobacco products, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.
7. “Loosies” shall mean 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.
8. “Moveable Place of Business” shall refer to any form of business operated out of a truck, kiosk, 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.
9. “Nicotine or Lobelia Delivery Product” shall mean 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.

10. "Retail Establishment" shall mean any place of business where licensed products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, tobacco products shops, convenience stores, gasoline service stations, restaurants, bars, and lounges.

11. "Sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

12. "Self-Service Display" shall mean open displays of licensed products in any manner where any person shall have access to the licensed products, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the licensed product between the customer and the licensee or employee. Self-service display shall not include vending machines.

13. "Smoking" shall mean 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.

14. "Tobacco" or "Tobacco Products" shall mean 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 or tobacco product 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.

15. "Tobacco-Related Devices" shall mean 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.

16. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed product.

Subdivision 3. License. No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city.

1. Application. An application for a license to sell licensed products shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled council meeting. If the City Clerk shall determine that an application is incomplete, the application will be returned to the applicant with notice of the information necessary to make the application complete.
2. Action. The City Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the 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.
3. Term. All licenses issued under this ordinance shall be valid for one calendar year from the date of issue.
4. Revocations or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties section of this ordinance.
5. Transfers. All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.
6. Movable 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 ordinance.
7. Display. All licenses shall be posted and displayed at all times in plain view of the general public on the licensed premises.
8. Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty days but no more than sixty days before the expiration of the current license.
9. Issuance as privilege and not a right. The issuance of a license under this ordinance shall be considered a privilege and not an absolute right of the applicant and shall not entitle the license holder to an automatic renewal of the license.
10. Minimum clerk age. Individuals employed by a licensed retail establishment under this ordinance must be at least 18 years of age to sell licensed products.

11. 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.

Subdivision 4. Fees. No license shall be issued under this ordinance until the appropriate license fee shall be paid in full. The fee for a license under this ordinance shall be as determined by the city council in its fees schedule and as amended.

Subdivision 5. Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license under this ordinance:

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 twelve months of the date of application.
4. The applicant fails to provide any information required on the application, or provides false or misleading information.
5. The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.

Except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license

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

Subdivision 6. Prohibited Acts

1. In general. It shall be a violation of this ordinance for any person to sell or offer to sell any licensed product:

A. By means of any type of vending machine.

B. By means of loosies as defined in Subdivision 2 of this Section.

C. 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.

D. By any other means, to any other person, or in any other manner or form prohibited by Federal, State, or other local law, ordinance provision, or other regulation.

2. Legal age. It shall be a violation of this ordinance for any person to sell any licensed product to any person under the age of 21.

A. 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.

B. 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.

3. Self-service sales. It shall be unlawful for a licensee under this ordinance to allow the sale of licensed products by means of self-service display. All licensed products shall be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public. Any retailer selling licensed products at the time this ordinance is adopted shall comply with this section within ninety (90) days following the effective date of this ordinance.

4. Liquid Packaging. It shall be unlawful for any person to 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.

Subdivision 7. Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee or clerk to any civil penalties that the city deems to be appropriate under this Ordinance, State or Federal law, or other applicable law or regulation.

Subdivision 8. Compliance Checks and Inspections. All licensed premises shall be open to inspection by local law enforcement or other authorized city official during regular business hours. From time to time, but at least twice per year, the city shall conduct compliance checks. In accordance with state law, 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. No person used in

compliance checks shall attempt to use a false identification misrepresenting their age, and all persons lawfully engaged in a compliance check shall answer all questions about their age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which they are asked. Nothing in this Section shall prohibit compliance checks authorized by State or Federal laws for educational, research, or training purposes, or required for the enforcement of a particular State or Federal law.

Subdivision 9. Other Prohibited Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance.

1. **Prohibited Furnishing or Procurement.** It shall be 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 shall further be 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.
2. **Use of False Identification.** It shall be 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.

Subdivision 10. Violations.

1. **Notice.** Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.
2. **Hearings.** If a person accused of violating this ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. If a hearing is not requested by the accused violator within 15 (fifteen) days, the matter shall be submitted to a hearing officer for review to determine if a violation occurred and to determine the appropriate penalty.
3. **Hearing Officer.** A standing hearing panel consisting of three members shall be appointed by the City Council. The Mayor as the hearing officer shall appoint one of these panel members.
4. **Decision.** 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 under Subdivision 12 of this ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator by in-person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to 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 subdivision 10(5) of this Subdivision.

5. Appeals. Appeals of any decision made by the hearing officer shall be filed in the district court for the jurisdiction of the city in which the alleged violation occurred within 10 business days of the date of the decision.

6. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

Subdivision 11. Administrative Penalties.

1. Licenses. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of \$200 for a first violation; \$500 for a second offense at the same licensed premises within a twenty-four month period; and \$750 for a third or subsequent offense at the same location within a twenty-four month period or as the council determines in its fine schedule as amended from time to time. In addition, after the third offense, the license shall be suspended for not less than 30 consecutive days. Upon a fourth violation, the license shall be revoked.

2. Other Individuals. Individuals, other than persons under the age of 21 regulated by subdivision 11(3) of this Subdivision, found to be in violation of this ordinance shall be charged an administrative fine of \$50, or as the council determines in its fine schedule as amended from time to time.

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 shall 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. Misdemeanor. Nothing in this Section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance by a person 21 years of age or older.

Subdivision 12. Exceptions and Defenses. Nothing in this ordinance shall prevent the providing 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. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by State law.

Subdivision 13. Severability and Savings Clause. If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or affect the validity and enforceability of any other section or provision of this ordinance.

Subdivision 14. Effective Date. This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by [Minn. Stat. § 412.191, subd. 4](#), as it may be amended from time to time, which meets the requirements of [Minn. Stat. § 331A.01, subd. 10](#), as it may be amended from time to time.

Passed and approved this 4th day of May, 2020.

Mike Nelson, Mayor

Attest:

Michael Schulte, City Administrator