

**ORDINANCE NO. 862**

STATE OF MINNESOTA  
COUNTY OF RAMSEY  
CITY OF NEW BRIGHTON

**AN ORDINANCE REPEALING CHAPTER 15, ARTICLE 4 OF THE CITY CODE RELATING TO TOBACCO REGULATIONS AND REPLACING IT WITH A NEW CHAPTER REGULATING THE POSSESSION, SALE AND CONSUMPTION OF TOBACCO AND TOBACCO RELATED DEVICES AND PRODUCTS WITHIN THE CITY OF NEW BRIGHTON, MINNESOTA**

THE CITY COUNCIL OF THE CITY OF NEW BRIGHTON ORDAINS as follows:

Section 1. Chapter 15, Article 4 of the New Brighton City Code is repealed in its entirety.

Section 2. The New Brighton City Code is amended to add the following new Chapter 15, Article 4 as follows:

**Article 4. Tobacco**

**Sec. 15-55. Purpose and Findings.**

- (1) The City of New Brighton recognizes that tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this article is intended to regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, and to protect minors and young adults against the serious effects associated with use and initiation.
- (2) The City also recognizes that the use of tobacco products has devastating health and economic consequences. Tobacco use is the foremost preventable cause of premature death in America. It causes half a million deaths annually and has been responsible for 20.8 million premature deaths in the U.S. over the past 50 years since the first Surgeon General's report on smoking in 1964. This leads to more than \$300 billion in health care and lost worker productivity costs each year. In Minnesota, smoking was responsible for \$3.19 billion in excess medical expenditures and the deaths of 6,312 individuals in 2014.
- (3) The City further recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users. An estimated 5.6 million youth aged 0 to 17 are projected to die prematurely from a tobacco-related illness if prevalence rates do not change. National data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use. Electronic delivery device use among minors has recently tripled and is shown to be on the rise among youth. Young minds are particularly susceptible to the addictive

properties of nicotine. As a result, approximately 3 out of 4 teen smokers end up smoking into adulthood.

- (4) In 2015, the Institute of Medicine concluded that raising the minimum legal sales age for tobacco products nationwide will reduce tobacco initiation, particularly among adolescents aged 15 to 17, improve health across the lifespan, and save lives; and that raising the minimum legal sales age for tobacco products nationwide to 21 would, over time, lead to a 12 percent decrease in smoking prevalence. The Institute of Medicine also predicts that raising the minimum legal sales age for tobacco products nationwide to 21 would result in 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, and would result in near immediate reductions in preterm birth, low birth weight, and sudden infant death syndrome.
- (5) Cigar and pipe smokers are more than twice as likely to have decreased lung function compared to non-smokers. Cigar and pipe smokers who also smoke cigarettes may triple their risk of decreased lung function.
- (6) Scientific evidence on the toxicity of secondhand tobacco smoke is both overwhelming and indisputable. The complex mixture of gases and particles that make up secondhand smoke (also known as environmental tobacco smoke) contains at least 250 chemicals known to be lethal, including more than 50 that can cause cancer. Medical authorities from around the world have concluded that secondhand smoke exposure causes heart disease, stroke, respiratory disease and lung cancer, has immediate adverse effects on the cardiovascular system, and causes sudden infant death syndrome, acute respiratory infections, ear infections, and asthma attacks in children.
- (7) Tobacco industry documents and marketing and public health research reveal that tobacco companies have used fruit, candy, and alcohol flavors as a way to target youth and young adults. The presence of flavors such as menthol in tobacco products can make it more difficult for youth, young adults, and adult tobacco users to quit.
- (8) In making these findings, the City Council accepts the conclusions and recommendations of the U.S. Surgeon General reports, “E-cigarette Use Among Youth and Young Adults” (2016), “The Health Consequences of Smoking—50 Years of Progress” (2014) and “Preventing Tobacco Use Among Youth and Young Adults” (2012); a BlueCross BlueShield of Minnesota report, “Health Care Costs and Smoking in Minnesota: The Bottom Line” (2017); the Institute of Medicine in their study, “Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products” (2015); the Centers for Disease Control and Prevention in their studies, “Tobacco Use Among Middle and High School Students—United States, 2011– 2015,” and “Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997”; and of the following scholars in these scientific journals: Xin Xu et al., Annual Healthcare Spending Attributable to Cigarette Smoking: An Update, *Am. J. Prev. Med.* 48(3): 326-33 (Mar. 2015); Giovino GA, “Epidemiology of Tobacco Use in the United States,” *Oncogene* (2002) 21, 7326-40; Khuder SA, et al., “Age at Smoking Onset and its

Effect on Smoking Cessation,” Addictive Behavior 24(5):673-7, September-October 1999; D’Avanzo B, et al., “Age at Starting Smoking and Number of Cigarettes Smoked,” Annals of Epidemiology 4(6):455-59, November 1994; Chen, J & Millar, WJ, “Age of Smoking Initiation: Implications for Quitting,” Health Reports 9(4):39-46, Spring 1998; Everett SA, et al., “Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students,” Preventive Medicine, 29(5):327-33, November 1999; and Rodriguez J, Jiang R, Johnson WC, MacKenzie BA, Smith LJ, Barr RG; The Association of Pipe and Cigar Use With Cotinine Levels, Lung Function, and Airflow Obstruction: A Cross-sectional Study; Ann Intern Med. 2010;152:201–210 copies of which are adopted by reference.

- (9) The City determines that e-delivery products and e-liquids are particularly attractive to youth and that steps are needed to limit youth exposure and access to such products.
- (10) The City values youth and seeks their input in order to positively raise awareness and seek solutions to problems facing youth, such as tobacco industry targeting and youth tobacco use.
- (11) The City’s mission is to ensure an attractive, clean, safe, and inclusive community that enhances the quality of life for all people, and preventing youth tobacco use helps achieve these goals.
- (12) This Article is intended to regulate the sale of 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 effects associated with use and initiation, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minnesota Statutes, section 144.391.

### **Sec. 15-56. 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 article, 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 article. 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 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 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 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.

**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.

**Moveable place of business.** Any form of business 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 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 where licensed products are available for sale to the general public. The phrase includes but is not limited to grocery stores, 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 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, whether natural or synthetic, containing, made, or derived from nicotine, tobacco, marijuana, or other plant, 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 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 pipe, rolling papers, or other device intentionally designed or intended to be used in a manner that enables the chewing, sniffing, or smoking of tobacco or tobacco products, including electronic delivery devices. Tobacco-related device includes components of tobacco-related devices which may be marketed or sold separately.

**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.

#### **Sec. 15-57. License.**

(1) **License required.** A license shall be obtained before any person directly, indirectly or by means of any device shall keep for retail sale, sell at retail, or otherwise dispose of licensed products at any place in the City.

(2) **Application.** Application shall be made on a form as prescribed by the City and shall include:

- A. The full name and residential and business addresses and telephone numbers of the applicant, business owner if different from the applicant, and manager, if applicable.

- B. The location of the building and the part intended to be used by the applicant under the license.
- C. The kind of business conducted at the location.
- D. The name of the business for which the license is sought, and the name under which the business is being conducted.
- E. Any additional information requested by the City on the application form.

Upon receipt of a completed application, the City Clerk will forward the application to the police department. The police department will conduct an investigation and report the results to the City Clerk. The Clerk will then forward the application to the City Council for action at its next regularly scheduled City Council 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.

(3) **Action.** The City Council may either approve or deny the 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 license, the City Clerk will issue the license to the applicant. If the City Council denies the license, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.

(4) **Term.** All licenses issued are valid from April 1 to March 31.

(5) **Revocation or suspension.** Any license issued may be revoked or suspended following the procedure provided in Section 15-65.

(6) **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.

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

(8) **License displayed.** The license shall be conspicuously displayed at the licensed business location and shall be exhibited to any authorized person upon request.

(9) **Minimum clerk age.** Individuals employed by a person licensed under this article must be at least 18 years of age to sell licensed products.

(10) **Smoking prohibited.** Smoking is prohibited within the indoor area of any retail establishment licensed under this article.

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

**Sec. 15-58. License Fee.**

The license fee shall be established by ordinance. No license fee shall be prorated for a period of less than a year. No license shall be issued until the required license fee has been paid.

**Sec. 15.59. Basis for Denial of License.**

- (1) Grounds for denying the issuance or renewal of a license include but are not limited to the following:
  - A. The applicant is under 21 years of age.
  - B. 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.
  - C. The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.
  - D. The applicant fails to provide any information required on the application, or provides false or misleading information.
  - E. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license, including but not limited to Minn. Stat. § 270C.72.
- (2) 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.
- (3) 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 article. Notice of the revocation will be given to the entity along with information on the right to appeal.

**Sec. 15-60. Prohibited Acts.**

- (1) **In general.** No person shall sell or offer to sell any licensed product:
  - A. By means of loosies as defined in Section 15-56.
  - B. By means of any type of vending machine.
  - 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 article.

- D. 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.

(2) **Legal age.** No person shall sell or give away licensed products to any person under twenty-one years of age.

- 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 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.** No person shall allow the sale of licensed products by any self-service displays whereby the customer may have access to those items without having to request the item from the licensee or 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. All licensed products must be stored behind the sales 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. Any retailer selling licensed products at the time this article is adopted must comply with this section within 90 days of the effective date of this article.

(4) **Flavored products.** No person shall sell or offer for sale any flavored products.

(5) **Liquid packaging.** No person shall sell or offer for sale 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, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

### **Section 15-61. 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 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 of a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

## **Sec. 15-65. Violations and Penalties.**

This Section prescribes administrative penalties for violation of this article. No penalty under this Section shall take effect until the licensee has received written notice of the alleged violation and has had an opportunity for a hearing before the City Council. The notice may be served personally or by mail. The decision of the City Council shall be provided in writing if a violation is determined to have occurred. Judicial appeal shall be as provided for by State law.

**(1) Licensees.** Any licensee found to have violated this article, or whose employee violated this article, 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, who are found to be in violation of this article may be charged an administrative fine of \$50.

**(3) Persons under the age of 21.** Persons under the age of 21 who violate this article 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.

(1) ***Initial Violation.*** If a licensee or their employee violates any provision of this Article, the licensee shall be charged an administrative penalty.

(2) ***Second Violation.*** If a licensee or their employee violates any provision of this Article twice at the same location within 24 months of the initial violation, the licensee shall be charged another administrative penalty.

(3) ***Third Violation.*** If a licensee or their employee violates any provision of this Article for a third time at the same location within 24 months of the initial violation, the licensee shall be charged another administrative penalty and the license shall be suspended for seven days.

(4) ***Violator.*** Any person who sells or gives away tobacco licensed products to a person under eighteen twenty-one years of age shall be charged an administrative penalty. This penalty shall be in addition to the penalty charged under Section 15-65 (1) through (3).

- (5) Nothing in this Article shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation.
- (6) In addition to misdemeanor prosecution and administrative penalties, violation of this Article is grounds for suspension, revocation, or non-renewal of a license.

**Sec. 15-66. Affirmative Defense.**

It shall be an affirmative defense to a charge of selling tobacco to a person under twenty-one years of age that the licensee or individual making the sale relied in good faith upon proof of age as evidenced by:

- (1) A valid driver's license or identification card issued by the State, another state, or a province of Canada which includes the photograph and date of birth of the licensed person; or
- (2) A valid military identification card issued by the United State Department of Defense; or
- (3) In the case of a foreign national from a country other than Canada, a valid passport.

**Sec. 15.67. Religious, Spiritual, or Cultural Ceremonies or Practices.**

Nothing in this article prevents the provision of tobacco or tobacco-related devices to any person, including a minor, as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

**Sec. 15-68. Severability.**

If any section or provision of this article 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.

**Secs. 15-69--15-73. Reserved.**

Section 3. Effective Date. This article shall take effect upon its adoption by the city council and its publication in the city's official newspaper.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the New Brighton City Council with a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ nays.

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Valerie Johnson, Mayor

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Dean R. Lotter, City Manager

**ATTEST:**

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Terri Spangrud, City Clerk

(Seal)