

Brainerd City Code

Section 1135 – Tobacco, Tobacco Products, and Tobacco Related Products

1135.01 Purpose. The City hereby adopts the Minnesota legislature’s finding, as stated in Minn. Stat. § 144.391, that: (1) smoking causes premature death, disability, and chronic disease, including cancer and heart disease, and lung disease; (2) smoking related diseases result in excess medical care costs; and (3) smoking initiation occurs primarily in adolescence. The City also adopts the legislature’s desire to prevent young people from starting to smoke, to encourage and assist smokers to quit, and to promote clean indoor air. The City recognizes that the sale of tobacco-related products to persons under the age of 21 violates both state and federal law. Because the City recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products and that such sales, possession, and use are violations of State and Federal laws; and pursuant to the mandates contained in state and federal law this ordinance 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 and state mandates, and to protect the public against the serious effects associated with the use of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products. The purpose of this ordinance is to reduce the appeal to youth and young adults and reduce the likelihood that youth and young adults will become users of tobacco-related products later in life, thereby promoting health, safety, and welfare.

1135.03 Definitions and Interpretations. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term “shall” means mandatory and the term “may” means permissive. The following terms shall have the definitions given to them.

Subd. 1. Tobacco or Tobacco Products. “Tobacco” means cigarettes and 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 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 excludes any drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

Subd. 2. Tobacco Related Devices. “Tobacco Related Devices” means cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of aerosol or vapor of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

Subd. 3. Self-Service Merchandising. “Self-Service Merchandising” means open displays of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products in any manner where any person shall have access to the tobacco, tobacco products, tobacco related devices electronic delivery devices, and nicotine or lobelia delivery 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 tobacco, tobacco product, tobacco related device, electronic delivery devices, or nicotine or lobelia delivery products between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Subd. 4. Vending Machine. “Vending Machine” shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco products, tobacco related device, electronic delivery devices, or nicotine or lobelia delivery products. A device by which licensee or licensee’s employee must insert the payment in order to operate the machine is not a vending machines for the purpose of this definition.

Subd. 5. Loosies. “Loosies” shall mean the common term used to refer to a single or individually packaged cigarette.

Subd. 7. Retail Establishment. “Retail Establishment” shall mean any place of business where tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

Subd. 8. Moveable Place of Business. “Moveable Place of Business” shall refer to any retail business whose physical location is not permanent, including, but not limited to, any retail business that is operated from a kiosk, other transportable structure, or motorized or nonmotorized vehicle.

Subd. 9. Sale. A “sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 10. Compliance Checks. “Compliance Checks” shall mean the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products are following and complying with the requirements of this ordinance. Compliance Checks may involve the use of persons under the age of 21 as authorized by this ordinance. Compliance checks shall also mean the use of person under the age of 21 who attempt to purchase tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or Local laws and regulations relating to tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products.

Subd. 11. Electronic Delivery Device. “Electronic Delivery Device” means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic,

intended for human consumption through inhalation of aerosol or vapor from the product. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device excludes drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

Subd. 12. Child-Resistant Packaging. "Child-Resistant Packaging" is packaging that meets the definition as set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, when tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

Subd. 13. Nicotine or Lobelia Delivery Products. "Nicotine or Lobelia Delivery Products" are 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, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

1305.05 License. No person shall sell or offer to sell any tobacco, tobacco products, tobacco related device, electronic delivery devices, or nicotine or lobelia delivery products without first having obtained a license to do so from the city.

Subd. 1. Application. An application for a license to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery 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 Administrator shall forward the application to the City Council for action at its next regularly scheduled council meeting. If the City Administrator shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

Subd. 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 Council shall approve the license, the City Administrator shall issue the license to the applicant. If the Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the Council's decision.

Subd. 3. Term. All licenses issued under this Ordinance shall be valid beginning on the date of issuance and shall expire on December 31 of each year.

Subd. 4. Revocation or Suspension. Any license issued under this ordinance may be revoked or suspended as provided in the Violations and Penalties Sections herein.

Subd. 5. Transfers. All licenses issued under this Section 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 is allowed.

Subd. 6. 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 Section.

Subd. 7. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise

Subd. 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.

1135.07 Fees. No license shall be issued under this Section until the appropriate license fee shall be paid in full. The fee for a license issued pursuant to this Section is fixed by Chapter 10 of the City Code.

1135.09 Basis for Denial of License.

Subd. 1. The following shall be grounds for denying the issuance or renewal of a license under this Section.

- A) The applicant is under 21 years of age.
- B) The applicant has been convicted within the past five years of a Federal, State, or Local law, ordinance/code 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 twelve 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, code, or other regulation, from holding such a license.

Subd. 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.

Subd. 3. 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. The City will provide the license holder with a notice of revocation, along with information on the right to appeal.

1135.11 Prohibited Sales and Offers.

Subd. 1. Persons under 21. No person shall sell, offer to sell, or otherwise provide any tobacco, tobacco products, tobacco related device electronic delivery devices, or nicotine or lobelia delivery products to any person under the age of twenty-one (21) years.

A) *Age verification*. Licensee 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 or older does not constitute a defense or violation of this subdivision.

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 tobacco, tobacco products, tobacco related device electronic delivery devices, or nicotine or lobelia delivery products are offered for sale. The required signage must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

Subd. 2. Self-Service Sales. No person shall sell, offer to sell, or otherwise provide any tobacco or tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products in open displays which are accessible to the public without the intervention of a store employee that includes a physical exchange of the tobacco products, tobacco devices, electronic delivery devices, or nicotine or lobelia delivery products. This shall not apply to retail establishments which derive at least 90 percent of their revenue from tobacco and tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products and where the retailer ensures that no person younger than 21 years of age is present or permitted to enter at any time.

Subd. 3. Controlled Substances. No person shall sell, offer to sell, or otherwise provide any tobacco, tobacco products, tobacco related device electronic delivery devices, or nicotine or lobelia delivery products containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine or other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.

Subd. 4. Sampling. No person shall distribute any tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia products free of charge.

Subd. 5. Loosies. No person shall distribute any tobacco, tobacco related devices, electronic delivery devices, or nicotine or lobelia products by means of loosies.

Subd. 6. Vending Machines. No person shall allow the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products by the means of a vending machine. This subdivision does not apply to vending machines in facilities that cannot be entered at any time by persons under the age of 21 years.

Subd. 7. Liquid Packaging. The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device that is not contained in packaging that is child-resistant is prohibited. All licensees under this chapter must ensure that any liquid intended for human consumption and use in an electronic delivery device is sold in child-

resistant packaging. A licensee that fails to comply with this section is subject to administrative penalties as defined in Section 1135.21, subd. 1.

Subd. 8. Kiosk Sales. No person shall sell tobacco, tobacco related devices, or electronic delivery devices as defined in Minn. Stat. § 609.685. subd. 1, or nicotine or lobelia delivery products as described in section 609.6855 from a moveable place of business as defined in Section 1135.03, subd. 8.

Subd. 9. Other Prohibitions. No person shall sell, offer to sell, or otherwise provide any tobacco, tobacco product, tobacco related device, electronic delivery device, or nicotine or lobelia delivery product by any other means, to any other person, or in any other manner or form prohibited by Federal, State, or other Local law.

1135.13 Responsibility. All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery product on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the City from also subjecting the employee to whatever penalties are appropriate under this Ordinance, State or Federal law, or other applicable law or regulation.

1135.15 Compliance Checks and Inspections. All licensed premises shall be open to inspection by the Brainerd Police Department or other authorized City official during regular business hours. From time to time, but at least once per year, the City shall conduct compliance checks by engaging persons over the age 17 years but less than 21 years, with the written consent of their parents or guardians if under the age of 18 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products. Persons who are used for the purpose of compliance checks shall be supervised by City designated law enforcement officers or other designated City personnel. Persons under 21 years of age who are used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products when such items are obtained as a part of the compliance check. No person under 21 years of age who is used in compliance checks shall attempt to use a false identification misrepresenting the person's age, and all persons lawfully engaged in a compliance check shall answer all questions about the person's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is 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.

1135.17 Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this ordinance.

Subd. 1. Illegal Possession. It shall be a violation of this ordinance for any person under the age of 21 to have in his or her possession any tobacco, tobacco product, tobacco related device electronic delivery device, or nicotine or lobelia delivery product. This subdivision shall not apply to persons under the age of 21 lawfully involved in a compliance check.

Subd. 2. Illegal Use. It shall be a violation of this ordinance for any person under the age of 21 to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, tobacco related device electronic delivery device, or nicotine or lobelia delivery product.

Subd. 3. Prohibited Furnishment or Procurement. It shall be a violation of this ordinance for any person under 21 years of age to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco related device, electronic delivery devices, or nicotine or lobelia delivery products and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a person under 21 years of age. It shall further be a violation for any person to coerce or attempt to coerce a person under 21 years of age to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco related device electronic delivery devices, or nicotine or lobelia delivery products. This subdivision shall not apply to persons under 21 years of age who are lawfully involved in a compliance check.

Subd. 4. Use of False Identification. It shall be a violation of this ordinance for any person under 21 years of age to attempt to disguise his or her 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.

1135.19 Violations.

Subd. 1. Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation from the City that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation, and how and where a hearing may be requested, including a contact address and phone number.

Subd. 2. Hearings. Upon issuance of a citation, a person accused of violating this Section may request in writing a hearing on the matter. Hearing requests must be made within ten 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 ten business days of the issuance of the citation will terminate the person's right to a hearing. If a person accused of violating this Section submits a timely request for a hearing, the City Clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and location will be mailed or delivered to the accused violator at least ten business days prior to the hearing.

Subd. 3. Hearing Officer. The City Council shall serve as the hearing officer.

Subd. 4. Decision. If the hearing officer determines that a violation of this Section did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 1135.21 of this Section, shall be recorded in writing, a copy of which shall be provided to the accused violator. 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

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

Subd. 6. Misdemeanor Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Section by a person 21 years of age or older. If the City elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

Subd. 7. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

1135.21 Administrative Penalties.

Subd. 1. Licensees. Should any licensee be found to have violated this ordinance, or whose employee shall have violated this ordinance, the licensee shall be charged an administrative fine of \$300 for a first violation; \$600 for a second offense at the same licensed premises within a 36 month period; and \$1,000 for a third or subsequent offense at the same location within a 36 month period. In addition, after the third offense within a 36 month period, the license shall be suspended for not less than 30 consecutive days. Upon a fourth violation within a 36 month period, the license will be revoked.

Subd. 2. Other Individuals and Employees. Employees of licensees and other individuals, other than persons under the age of 21 regulated by Subdivision 3 of this Subsection, found to be in violation of this ordinance shall be charged an administrative fine of \$50

Subd. 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 interested persons, as applicable, including but not limited to court personnel, educators, parents, guardians, and persons under the age of 21 years 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.

Subd. 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.

1135.23 Exceptions and Defenses. Nothing in this Section shall prevent the providing of tobacco, tobacco products, tobacco related devices to a person under 21 years of age as a part of a lawfully recognized religious, spiritual, or cultural ceremony. It is an affirmative defense to the charge of selling tobacco, tobacco-related products, electronic delivery devices, or nicotine or lobelia delivery products to a person under 21 years of age for a person to have reasonably relied on proof of age as described by state law.

1135.25 Severability and Savings Clause. If any section or portion of this Section shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as invalidation or affect the validity and enforceability of any other section or provision of this Section

1135.26 Signage. All licensees shall post and display in plain view of the general public on the licensed premise, a sign supplied by the City, which shall provide public notice that selling tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to any person under the age of 21 is illegal and subject to penalties. The sign shall also provide notice that all persons responsible for selling these products must verify, by means of photographic identification containing the bearer's date of birth, the age of any person under 30 years of age. The sign shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase these products. Said signs shall be issued to the licensee along with their license.

(Amended Ord. 1035 – 1997, Ord. 1422 – 2014, Ord 1528- 2022)