

ORDINANCE NO. 2022-001

AN ORDINANCE OF THE CITY OF SHAKOPEE, MINNESOTA, AMENDING SECTIONS 110.055, 110.056 AND 110.059 OF THE SHAKOPEE CITY CODE PERTAINING TO THE REGULATION OF TOBACCO-RELATED PRODUCTS AND FLAVORED PRODUCTS

The City Council of Shakopee, Minnesota ordains:

Section 1. Section 110.055 of the Shakopee City Code is amended to read as follows:

110.055 Purpose

A. *Policy.*

- ~~1. The city recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess, and use electronic delivery devices, tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of both state and federal laws.~~
- ~~2. Studies have shown that most smokers begin smoking before they have reached the age of 21 years and that those persons who reach the age of 21 years without having started smoking are significantly less likely to begin smoking.~~
- ~~3. Smoking has been shown to be the cause of several serious health problems that place a financial burden on all levels of government.~~

~~B. This subchapter is intended to regulate the sale, possession, and use of electronic delivery devices, 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 use of electronic delivery devices, tobacco, tobacco products, and tobacco related devices; and to further the official public policy of the state in regard to preventing young people from starting to use electronic delivery devices, as stated in M.S. § 144.391, as it may be amended from time to time.~~

1. 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 both state and federal law; and because studies, which the City accepts and adopts, have shown that high school use of any commercial tobacco product has increased to 27.6% in Minnesota; and because nearly 90% of people who smoke 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 mint, fruit, candy, and alcohol flavors, especially with electronic delivery devices, 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 Section 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.

B. Basis for Findings.

1. 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); the Centers for Disease Control and Prevention in their studies, Tobacco Use Among Middle and High School Students — United States, 2011– 2015(2016), and Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997(1998); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. Health Reports, 9(4), 39-46; D’Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at starting smoking and number of cigarettes smoked. Annals of Epidemiology, 4(6), 455–459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L.S. (1999). Initiation of cigarette smoking and subsequent smoking behavior among U.S. high school students. Preventive Medicine, 29(5), 327–333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. Oncogene, 21(48), 7326–7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. Addictive Behaviors, 24(5), 673–677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack- Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. American Journal of Public Health, 107(5), 740–746; Minnesota Department of Health. (2020). Data Highlights from the 2019 Minnesota Youth Tobacco Survey. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). The Verdict Is In: Findings from United States v. Philip Morris, The Hazards of Smoking. University of California San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. American Journal of Preventive Medicine, 48(3), 326–333, copies of which are adopted by reference

C. Provisions of State Law Adopted

The provisions of Minnesota Statutes, Chapter 461, relating to the sales of tobacco, tobacco-related and electronic delivery devices; and nicotine and lobelia products are

adopted and made a part of this Section as if fully set forth. The provisions of Minn. Stat. Chap. 461 shall govern except where the provisions of this Section are more restrictive.

Section 2. Section 110.056 of the Shakopee City Code is amended to read as follows:

110.056 Definitions And Interpretations

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

COMPLIANCE CHECKS. The system used by the city or any other jurisdiction to investigate and ensure that those licensed to sell electronic delivery devices, tobacco, tobacco products, and tobacco-related devices are complying with the requirements of this subchapter or any state or federal law or regulation. **COMPLIANCE CHECKS** shall involve the use of persons under the age of 21 as authorized by this subchapter or state law. **COMPLIANCE CHECKS** shall also mean the use of persons under the age of 21 who attempt to purchase electronic delivery devices, tobacco, tobacco products, and tobacco-related devices for educational, research, and training purposes as authorized by state or federal law.

ELECTRONIC DELIVERY DEVICE. 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 but is not limited to devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other product name or descriptor. **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.

FLAVORED PRODUCT. Any licensed product that contains a taste or smell, other than the taste or smell of tobacco or menthol, 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, 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.

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, multi-packs, single bags or cans of loose tobacco in any form, and single cans or other packaging 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**.

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

LOOSIES. A single or individually packaged cigarette.

MINOR. Any natural person who has not yet reached the age of 18 years.

MOVEABLE PLACE OF BUSINESS. Any business operated out of a truck, van, automobile, cart, or other vehicle or transportable shelter and not at a fixed address, store front, or other permanent 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 nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

RETAIL ESTABLISHMENT. Any place of business in which tobacco, tobacco products, and tobacco-related devices are available for sale to the general public, including, but not be limited to, grocery stores, convenience stores, gas stations, 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 in which any person may have access to the tobacco, tobacco products, and tobacco-related devices without the assistance or intervention of the licensee or the licensee’s employee. The assistance or intervention must entail the actual physical exchange of the tobacco, tobacco product, or tobacco related device between the customer and the licensee or employee. **SELF-SERVICE MERCHANDISING** does not include vending machines.

TOBACCO or TOBACCO PRODUCTS. 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; 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. The term **TOBACCO** or **TOBACCO PRODUCTS** 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.

TOBACCO-RELATED DEVICES. Any rolling papers, Cigarette papers, wraps 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.

VENDING MACHINE. Any mechanical, electric, or electronic, or other type of device that dispenses tobacco, tobacco products, and tobacco-related devices upon the insertion of money, tokens, or other form of payment directly into the machine and includes any such device equipped with mechanical, electric, or electronic-locking devices.

Section 3. Section 110.059 of the Shakopee City Code is amended to read as follows:

110.059 Prohibited Sales

It shall be a violation of this subchapter for any person to furnish, sell, or offer to sell electronic delivery device, tobacco, tobacco products, and tobacco-related devices as follows:

- A. To any person under the age of 21;
- B. By means of a vending machine;
- C. By means of self-service merchandising;
- D. By means of loosies;
- E. Containing opium, morphine, jimson weed, belladonna, 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
- F. By any other means, to any other person, or in any other manner or form prohibited by federal, state, or local law, or other regulation.
- G. Flavored electronic delivery device. No person shall sell or offer for sale any electronic delivery device that constitutes a flavored product.

Section 4. Effective Date. This ordinance becomes effective on January 1, 2023.

Passed in regular session of the City Council of the City of Shakopee, Minnesota held on the _____ day of _____, 2022.

Mayor of the City of Shakopee

Attest:

Lori Hensen, City Clerk

Published in the Shakopee Valley News on the _____ day of _____, 2022.