



COUNCIL WORK SESSION

Tuesday, March 17, 2015

6:30 p.m.

Coon Rapids City Center

Conference Room 1

Call to Order

Pursuant to Minnesota Statute 13D.04, subd. 2, the City Council will meet in work session to discuss the following:

1. Discuss Tobacco Ordinance Revisions

Other Business

Adjourn



City Council Work Session

1.

Meeting Date: 03/17/2015

Subject: Discuss Tobacco Ordinance Revisions

From: Joan Lenzmeier, City Clerk

INTRODUCTION

Council is asked to discuss and consider revisions to the Tobacco Code.

DISCUSSION

Back in 2014, at the February 5 Council Work Session, staff and Council discussed possible tobacco ordinance amendments. At that time the consensus was to move forward with proposed ordinance amendments to include electronic cigarettes in the City's tobacco licensing requirements and prohibit indoor smoking in licensed tobacco retailers (this would address hookah lounges and vaping lounges).

As you may remember, electronic cigarettes was also a topic of discussion at the legislature during 2014 necessitating a delay while state laws were finalized regarding electronic cigarettes, etc. before bringing forward an ordinance amendment.

The Ordinance prepared for your consideration addresses electronic delivery devices, prohibits indoor smoking (addressing hookah lounges and vaping lounges) and includes language regarding new managers to assist with clarity in the tobacco licensing process.

RECOMMENDATION

Discuss and provide direction to staff on this proposed Ordinance.

Attachments

Tobacco Ordinance

ORDINANCE NO.

**AN ORDINANCE REVISING TOBACCO TO INCLUDE
ELECTRONIC DELIVERY DEVICES AND ADDING SMOKING
PROHIBITED IN TOBACCO RETAIL ESTABLISHMENTS
AND NEW MANAGER AND THEREBY AMENDING REVISED
CITY CODE – 1982 SECTION 5-901, 5-902, 5-903, 5-910, 5-911,
5-912, 5-913, 5-914, 5-915, 5-916, 5-917, 5-920 AND
ADDING 5-922 AND 5-923**

The City of Coon Rapids does ordain:

Section 1. Revised City Code – 1982 Sections 5-901 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-901 Purpose. The City of Coon Rapids recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, [~~and~~] tobacco related devices, and electronic delivery devices and that such sales, possession, and use are in violation of both State and Federal laws. The City finds that studies have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and that smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; therefore this Chapter is intended to regulate the sale, possession, and use of tobacco, tobacco products, [~~and~~] tobacco related devices, and electronic delivery devices for the purpose of enforcing and furthering existing laws to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, [~~and~~] tobacco related devices, and electronic delivery devices and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minnesota Statutes, Section 144.391.

Section 2. Revised City Code – 1982 Sections 5-902 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-902 Definitions. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The following terms shall have the definitions given to them:

(1) Tobacco or Tobacco Products. “Tobacco” or “Tobacco Products” shall mean any substance or item containing tobacco leaf, including but not limited to, cigarettes; cigars; little cigars; pipe tobacco; snuff; snuff flour; fine cut or other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, cavendish; shorts; plug and twist tobacco; dipping tobacco; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing, or smoking. Any products 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.[Revised 10/19/10, Ordinance 2050] Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco

cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

(2) Tobacco Related Devices. “Tobacco Related Devices” shall mean any tobacco product as well as a pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

(3) Self-service Merchandising. “Self-service Merchandising” shall mean open displays of tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices in any manner where any person shall have access to the tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices 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, ~~[or]~~ tobacco related device, or electronic delivery devices between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

(4) Vending Machine. “Vending Machine” shall mean any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices 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, ~~[or]~~ tobacco related device[-], or electronic delivery devices.

(5) Individually Packaged. “Individually Packaged” shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single cigars, 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 subdivision shall not be considered individually packaged.

(6) Loosies. “Loosies” shall mean the common term to refer to a single or individually packaged cigarette.

(7) Minor. “Minor” shall mean any natural person who has not yet reached the age of 18 years.

(8) Retail Establishment. “Retail Establishment” shall mean any place of business where tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

(9) Movable Place of Business. “Movable Place of Business” shall refer to any form of business operated out of a truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address storefront or other permanent type of structure authorized for sales transactions.

(10) Sale. A “Sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

(11) Compliance Checks. “Compliance Checks” shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products, ~~[and]~~ tobacco related devices, and electronic delivery devices are following and complying with the requirements of this Chapter. Compliance checks shall involve the use of minors as authorized by this Chapter. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices 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, ~~[and]~~ tobacco related devices[-], and electronic delivery devices.

(12) Electronic Delivery Device. “Electronic Delivery Device” shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human

consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

(13) Smoking. "Smoking" shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product, or inhaling or exhaling vapor from any electronic delivery device. Smoking shall include carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

(14) 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.

Section 3. Revised City Code – 1982 Sections 5-903 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-903 License. No person shall sell, offer for sale, keep for sale, or otherwise dispose of, directly or indirectly, any tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices without first obtaining a license to do so from the City.

(1) Exceptions.

(a) This Section does not apply to the wholesale of tobacco, tobacco products, or tobacco related devices provided sales are not made to the general public.

(b) This Section does not apply to retail establishments that may incidentally sell articles which could meet the definition of tobacco related devices, but which establishments do not sell tobacco or tobacco products and the articles sold are not intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco products.

(2) Application. An application for a license shall be made to the City Clerk in writing on a form provided by the City. The application shall include the following:

(a) Applicant's full name and date of birth.

(b) Applicant's residence address and telephone number.

(c) Applicant's business address and telephone number.

(d) Name of applicant's business.

(e) Location of applicant's business.

(f) Kind of business being conducted or to be conducted.

(g) Whether the applicant has been convicted within the last five years of violating any Federal, State, or local laws relating to the sale of tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices and if so where and when.

(h) Whether the applicant has, within the preceding 24 months, had a license to sell tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices suspended or revoked by any jurisdiction, and, if so, where and when.[Revised 3/1/05, Ordinance 1871]

(i) Such other information as required by the City.

(3) Issuance of License. New licenses and license renewals shall be issued or denied by the City Clerk in accordance with the provisions of Section 5-102, except that the Clerk shall have an initial review period of up to 30 business days in which to issue or deny a license.[Revised 3/1/05, Ordinance 1871]

(4) Appeal. Any person aggrieved by the action of the City Clerk in issuing or denying a new or renewal license may appeal that decision to the City Council by submitting a written appeal request, stating the grounds for the appeal, to the City Clerk within 10 calendar days following the Clerk's decision. The Clerk shall submit a properly submitted appeal to the City Council in accordance with the provisions of Section 5-104. A license issued by the Clerk shall remain in effect until the City Council has acted on the matter. The Council may affirm or overturn the action of the Clerk. In the event the Council overturns the action of the Clerk and denies the application, the previously issued license shall be immediately null and void.[Revised 3/1/05, Ordinance 1871]

Section 4. Revised City Code – 1982 Sections 5-910 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-910 Basis for Denial of License. The following shall be grounds for denying the issuance or renewal of a license under this Chapter; however, except as may otherwise be provided by law, the existence of any particular grounds for denial does not require that the City 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:

- (1) The applicant is under the age of 18 years.
- (2) The applicant has been convicted within the past five years of a violation of a Federal, State, or local law, ordinance provision or other regulation relating to tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices.
- (3) The applicant has had a license to sell tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices revoked within the preceding 12 months of the date of application.
- (4) The applicant fails to provide any information 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.

Section 5. Revised City Code – 1982 Sections 5-911 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-911 Prohibited Sales. It shall be a violation of this Chapter for any person to sell or offer to sell any tobacco, tobacco products, ~~[or]~~ tobacco related device, or electronic delivery devices:

- (1) To any person under the age of 18 years.
- (2) By means of any type of vending machine.
- (3) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premises in order to receive the tobacco, tobacco product, ~~[or]~~ tobacco related device, or electronic delivery devices and whereby there is not a physical exchange of the tobacco, tobacco product, ~~[or]~~ tobacco related device, or electronic delivery devices between the licensee or the licensee's employee and the customer.
- (4) By means of loosies.
- (5) Containing opium, morphine, jimsonweed, 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.
- (6) 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.

Section 6. Revised City Code – 1982 Sections 5-912 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-912 Vending Machines. It shall be unlawful for any person, whether or not licensed under this Chapter, to allow the sale of tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices by means of a vending machine.

Section 7. Revised City Code – 1982 Sections 5-913 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-913 Self-service Sales. It shall be unlawful for a licensee under this Chapter to allow the sale of tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, ~~[or]~~ the tobacco related devices, or electronic delivery devices between the licensee or his or her clerk and the customer. All tobacco, tobacco products, ~~[and]~~ tobacco related devices, and electronic delivery devices shall either be stored behind a counter or other area not freely accessible to customers or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices at the time this Chapter is adopted shall comply with this Section within 90 days. This Section does not apply to stores that generate at least 90 percent of their revenues from the sale of tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices, provided that minors are, at all times, prohibited from entering the stores.

Section 8. Revised City Code – 1982 Sections 5-914 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-914 Responsibility. All licensees under this Chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, ~~[or]~~ tobacco related devices, or electronic delivery devices 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 clerk to whatever penalties are appropriate under this Chapter, State or Federal law, or other applicable law or regulation.

Section 9. Revised City Code – 1982 Sections 5-915 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-915 Compliance Checks and Inspections. All licensed premises shall be open to inspection by the City Police 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, with the written consent of their parents or guardians, minors over the age of 15 years, but less than 18 years, to enter each licensed premises to attempt to purchase tobacco, tobacco products, ~~[or]~~ tobacco related devices[-], or electronic delivery devices. Minors used for the purpose of compliance checks shall be supervised by City designated law enforcement officers

or other designated City personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, ~~[€]~~ tobacco related devices, or electronic delivery devices when such items are obtained as part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor'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, training purposes or required for enforcement of a particular State or Federal law.

Section 10. Revised City Code – 1982 Sections 5-916 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-916 Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this Chapter:

(1) Illegal Sales. It shall be a violation of this Chapter for any person to sell or otherwise provide any tobacco, tobacco product, ~~[€]~~ tobacco related device, or electronic delivery devices to any minor.

(2) Illegal Possession. It shall be a violation of this Chapter for any minor to have in his or her possession any tobacco, tobacco product, ~~[€]~~ tobacco related device~~[-]~~, or electronic delivery devices. This sub-section shall not apply to minors lawfully involved in a compliance check.

(3) Illegal Use. It shall be a violation of this Chapter for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, ~~[€]~~ tobacco related device~~[-]~~, or electronic delivery devices.

(4) Illegal Procurement. It shall be a violation of this Chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, ~~[€]~~ tobacco related device, or electronic delivery devices, and it shall be a violation of this Chapter for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, ~~[€]~~ tobacco related device~~[-]~~, or electronic delivery devices. This sub-section shall not apply to minors lawfully involved in a compliance check.

(5) Use of False Identification. It shall be a violation of this Chapter for any minor 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 in which the age of the person has been modified or tampered with, to represent an age older than the actual age of the person.

Section 11. Revised City Code – 1982 Sections 5-917 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-917 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 Chapter so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

(3) Hearing Officer. The City Manager shall from time to time designate a hearing officer.

(4) Decision. If the hearing officer determines that a violation of this Chapter did occur,

the decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under Section 5-918 of this Chapter, 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.

(5) Appeals. Appeals of any decision made by the hearing officer may be made to the City Council by filing a written request for an appeal with the hearing examiner within 10 days after the hearing examiner's decision. The hearing examiner shall place the appeal on the next Council agenda that is held at least 10 days following the receipt of the appeal request. Appeals from any decision of the City Council shall be filed in the District Court for the City in which the alleged violation occurred.

(6) Misdemeanor Prosecution. Nothing in this Section shall prohibit the City from seeking prosecution as a misdemeanor for any alleged violation of this Chapter. If the City elects to seek misdemeanor prosecution, no administrative penalties shall be imposed.

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

(8) Affirmative Defense. It is an affirmative defense to the charge of selling or otherwise providing tobacco, tobacco products, ~~[or] tobacco related devices,~~ or electronic delivery devices to a minor in violation of Section 5-916(1) that the licensee or individual selling or providing the tobacco, tobacco products, ~~[or] tobacco related device,~~ or electronic delivery devices relied in good faith upon proof of age as described in Minnesota Statutes, Section 340A.503, subd. 6.

Section 12. Revised City Code – 1982 Sections 5-920 is hereby amended as follows:

(deletions in brackets, additions double underlined)

5-920 Exceptions and Defenses. Nothing in this Chapter shall prevent the providing of tobacco ~~[, tobacco products, or tobacco related devices]~~ to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony.

Section 13. Revised City Code – 1982 Section 5-922 is hereby added as follows:

(deletions in brackets, additions double underlined)

5-921 Smoking prohibited in tobacco retail establishments. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a tobacco retailer license. Smoking for the purposes of sampling tobacco, tobacco products, tobacco related devices, or electronic delivery devices is prohibited. Notwithstanding the preceding, smoking may occur in a retail establishment if all of the following circumstances are met:

1. The smoking is by a customer or potential customer for the specific purpose of sampling electronic delivery devices or cigars;

2. The establishment has an entrance door opening directly to the outside;

3. The establishment is not a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license;

4. The establishment derives more than 90 percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories, and electronic delivery devices and the sale of other products is merely incidental;

5. The establishment has been in the business of selling such products in that location for at least six months prior to the enactment of this provision; and

6. The owner of the establishment has maintained a valid license and has abided by all applicable laws.

Section 14. Revised City Code – 1982 Section 5-923 is hereby added as follows:

(deletions in brackets, additions double underlined)

5-923 New Manager. When a licensee places a manager in charge of a business licensed pursuant to this Chapter, every change in manager at that business location will be subject to the following:

(1) Within 14 days the licensee must submit to the City Clerk an application for new manager on a form provided by the City.

(2) The application will include the appropriate information required under Section 5-903(2) and such other relevant information as the Clerk may require.

(3) The application must be accompanied by an investigation fee in an amount determined from time to time by ordinance of the City Council.

(4) Within 30 days of receipt of the application, the Clerk must approve or deny the application by written notice to the licensee. The notice must include specific reasons for any denial. Failure of the Clerk to act on an application within 30 days will constitute approval, provided, however, that for cause the Clerk may extend the review for a period not to exceed an additional 30 days by providing written notice of the extension, including reasons therefore, to the licensee before the end of the initial 30 day period.

(5) The decision of the Clerk may be appealed by the licensee or the manager in accordance with the provisions of Section 5-104.

(6) Hiring or retaining a manager after notice to the licensee that the manager does not comply with the requirements of Section 5-910 will constitute grounds for license suspension or revocation.

Introduced this ___ day of _____, 2015.

Adopted this ___ day of _____, 2015.

Jerry Koch, Mayor

ATTEST:

Joan Lenzmeier, City Clerk