

ORDINANCE NO. 179

AN ORDINANCE REGULATING THE POSSESSION, SALE AND CONSUMPTION OF TOBACCO AND RELATED DEVICES AND PRODUCTS WITHIN THE CITY OF GLYNDON MINNESOTA

THE CITY COUNCIL OF THE CITY OF GLYNDON, MINNESOTA DOES ORDAIN:

SECTION 1. PURPOSE AND INTENT.

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products, and the sales, possession, and use are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts, 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 because 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 ordinance shall be intended to regulate the sale, possession and use 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 minors against the serious effects associated with the illegal use of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in [Minn. Stat. § 144.391](#), as it may be amended from time to time. In making these findings, the City Council accepts the conclusions and recommendations of Center for Disease Control in their study "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997," and of the following medical professionals in these medical journals: 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, copies of which are adopted by reference.

SECTION 2. DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall 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](#).

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 ordinance. **COMPLIANCE CHECKS** shall involve the use of minors as authorized by this ordinance.

COMPLIANCE CHECKS shall also mean the use of minors who attempt to purchase licensed 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 licensed products.

ELECTRONIC DELIVERY DEVICES. 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 aerosol or vapor from the product.

ELECTRONIC DELIVERY DEVICES 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. The term includes any such devices, whether they are manufactured, distributed, marketed or sold as e-cigarettes, e-cigars, e-pipes, or under any other product name or descriptor.

INDIVIDUALLY PACKAGED. The practice of selling any licensed product wrapped individually for sale. **INDIVIDUALLY PACKAGED** products shall include but are not be limited to single cigarette 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.

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 (0.011 gauge with an 18 by 16 mesh count) window screen is not considered a wall.

LICENSED PRODUCTS. The term that collectively refers to tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products.

LOOSIES. The common term used to refer to a single or individually packaged cigar or cigarette, or any other licensed product that has been removed from its intended retail packaging and sold individually. **LOOSIES** does not include individual cigars with a retail price, after any discounts are before any sales taxes are imposed, of more than \$ 2.00 per cigar.

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

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 PRODUCTS. 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 PRODUCTS** 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, harm reduction, 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 shall include but not be 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 MERCHANDISING. Open displays of licensed products in any manner where any person shall have access to the licensed products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the licensed product between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange between the clerk and the customer.

SMOKING. Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product, or inhaling or exhaling aerosol or vapor from an electronic delivery device. ***SMOKING*** includes being in possession of a lighted or heated cigar, cigarette, pipe, or any other tobacco or plant product intended for inhalation, or an electronic delivery device that is turned on or otherwise activated.

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 DEVICES. Any pipe, rolling papers, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. ***TOBACCO-RELATED DEVICES*** 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 which dispenses licensed products upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the licensed product.

SECTION 3. LICENSE.

(A) License required. No person shall sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product without first having obtained a license to do so from the city.

(B) Application. An application for a license to sell shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk 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.

(C) Action. The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Clerk shall issue the license to the applicant. If the City 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 City Council's decision.

(D) Term. All licenses issued shall be valid for one calendar year from the date of issue.

(E) Revocation or suspension. Any license issued may be revoked or suspended as provided in Section 13.

(F) Transfers. All licenses issued shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid.

(G) 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.

(H) Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

(I) 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 30 days but no more than 60 days before the expiration of the current license.

(J) Issuance as privilege and not a right. The issuance of a license issued under this section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

(M) Proximity to youth-oriented facilities. No license shall be granted to any person for any location that is within 1,000 feet of a school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been licensed to sell such licensed products in that location for at least one year before the date this section was enacted into law. For the purpose of this section, a youth-oriented facility is defined to include any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21.

(N) Proximity to other retailers. No license shall be granted to any person for any location that is within 1,000 feet of any other establishment holding a license to sell licensed products, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the nearest existing licensee, unless that person has been in the business of selling such products in that location for at least one year before the date this section was enacted into law.

(P) Smoking prohibited. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment licensed under this ordinance. Smoking for the purposes of sampling licensed products is prohibited.

SECTION 4. FEES.

No license shall be issued under this ordinance until the appropriate license fee is paid in full. The fee shall be established by the city's fee schedule and may be amended from time to time.

SECTION 5. BASIS FOR DENIAL OF LICENSE.

(A) Grounds for denying the issuance or renewal of a license include but are not limited to the following:

- (1) The applicant is under the age of eighteen (18) years.
- (2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.
- (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding twelve (12) months of the date of application.
- (4) The applicant fails to provide any information required on the application, or provides false or misleading information.
- (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.

(B) However, 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.

(C) 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 ordinance.

SECTION 6. PROHIBITED SALES.

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

- (1) To any person under the age of eighteen (18) years.
- (2) By means of any type of vending machine.
- (3) By means of loosies as defined in Section 2.
- (4) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful Manufacturing process. It is not the intention of this provision to ban the sale of lawfully

Manufactured cigarettes or other products subject to this ordinance.

(5) 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.

(B) *Self-service sales.* It shall be unlawful for any person licensed under this ordinance to allow the sale of licensed products by any means where by the customer may have access to those 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 licensed product between the licensee or his or her clerk and the customer. All licensed products shall either 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 ordinance is adopted shall comply with this section within 90 days of the effective date of this ordinance.

(C) *Liquid packaging.* It shall be a violation of this ordinance for any person to sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

SECTION 7. RESPONSIBILITY.

Any person licensed under this ordinance shall be responsible for the actions of their employees in regard to the sale of licensed products on the licensed premises, and the sale of 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 8. COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises shall be open to inspection by law enforcement 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 the licensed premise to attempt to purchase licensed products. Minors used for the purpose of compliance checks shall be supervised by law enforcement or other designated personnel. Minors used for compliance checks shall not be guilty of illegal possession when those items are obtained as a 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, or training purposes, or required for the enforcement of a particular state or federal law.

SECTION 9. OTHER ILLEGAL ACTS.

Unless otherwise provided, the following acts shall be a violation of this ordinance:

(A) *Illegal sales.* It shall be a violation of this ordinance for any person to sell or otherwise provide any licensed product to any minor.

(B) *Illegal possession.* It shall be a violation of this ordinance for any minor to have in his or her possession any licensed product. This shall not apply to minors lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this ordinance for any minor to smoke, chew, sniff or otherwise use any licensed product.

(D) *Illegal procurement.* It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any licensed product, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain those 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 licensed product. This shall not apply to minors lawfully involved in a compliance check.

(E) *Use of false identification.* It shall be a violation of this ordinance 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 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.

SECTION 10. EXCEPTIONS AND DEFENSES.

Nothing in this ordinance shall prevent the providing of licensed products to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

SECTION 11. VIOLATIONS AND PENALTY.

(A) *Violations.*

(1) *Notice.* A person violating this ordinance may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) *Hearings.*

(a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the citation and delivered to the city clerk or other designated city

officer. Failure to request a hearing within ten (10) business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The city clerk or other designated city officer shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

(3) **Hearing Officer.** The City Council shall designate a hearing officer. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) **Decision.** A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division (B) of this section, shall be recorded in writing, a copy of which shall be provided to the city and the accused violator by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the city and the acquitted accused violator by in person delivery or mail as soon as practicable. The decision of the hearing officer is final.

(5) **Costs.** If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000 shall be paid by the person requesting the hearing.

(6) **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 (10) business days.

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

(B) Administrative penalties.

(1) **Licensees.** Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of

- a. \$250 for a first violation;
- b. \$500 for a second offense at the same licensed premises within a 24-month period;
- and
- c. \$750 for a third or subsequent offense at the same location within a 24-month period.
- d. In addition, upon a third violation, the license shall be suspended for not less than 365 consecutive days.
- e. Upon a fourth violation, the license shall be revoked.

(2) **Other individuals.** Other individuals, other than minors regulated by division (B)(3) of this section, found to be in violation of this ordinance shall be charged an administrative fine of \$250.

(2) **Minors.** Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase licensed products shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or remanded to the principal of their school for discipline that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by the City Council

upon consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may be established by ordinance and may be amended from time to time.

- (4) **Statutory penalties.** If the administrative penalties authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from those established in this section, then the higher penalties shall prevail.

(C) **Misdemeanor prosecution.** Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

SECTION 12. SEVERABILITY.

If any section or provision of this ordinance is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

SECTION 13. EFFECTIVE DATE.

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

Passed by the Council this 12 day of January, 2016.

Cecil Johnson
Mayor

Attested:

Monica J. Anderson
City Clerk

Introduction – September 23, 2015

1st Reading – December 9, 2015

2nd Reading – December 21, 2015

3rd Reading – January 13, 2016 and Adopted by Council Motion

Publication in the Clay County Union – January 25, 2016