

**CITY OF FOREST LAKE
WASHINGTON COUNTY, MINNESOTA
ORDINANCE NO. 691**

**AN ORDINANCE AMENDING TITLE XI, CHAPTER 118 REGARDING
TOBACCO REGULATIONS**

THE CITY COUNCIL OF THE CITY OF FOREST LAKE ORDAINS AS FOLLOWS:

Section One. Title XI, Chapter 118, Amendment: Title XI, Chapter 118 of the Forest Lake City Code is hereby amended as follows. The underlined text shows the proposed additions to the City Code and the ~~struck-out~~ text shows the deleted wording:

§ 118.01 PURPOSE AND INTENT.

Because the City recognizes that:

Tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance is intended to regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, and to protect youth and young adults against the serious effects associated with use and initiation.

The use of tobacco products has devastating health and economic consequences. Tobacco use is the foremost preventable cause of premature death in America. It causes half a million deaths annually and has been responsible for 20.8 million premature deaths in the U.S. over the past 50 years since the first Surgeon General's report on smoking in 1964. This leads to more than \$300 billion in health care and lost worker productivity costs each year. In Minnesota, smoking was responsible for \$3.19 billion in excess medical expenditures and the deaths of 6,312 individuals in 2014.

Youth and young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users. An estimated 5.6 million youth aged 0 to 17 are projected to die prematurely from a tobacco-related illness if prevalence rates do not change. National data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use. Electronic delivery device use among youth has recently tripled. Young minds are particularly susceptible to the addictive properties of nicotine. As a result, approximately 3 out of 4 teen smokers end up smoking into adulthood.

This Chapter is intended to regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to protect the public, especially youth and young adults, 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 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 the U.S. Surgeon General reports, “E-cigarette Use Among Youth and Young Adults” (2016), “The Health Consequences of Smoking—50 Years of Progress” (2014) and “Preventing Tobacco Use Among Youth and Young Adults” (2012); a BlueCross BlueShield of Minnesota report, “Health Care Costs and Smoking in Minnesota: The Bottom Line” (2017); the Institute of Medicine in their study, “Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products” (2015); the Centers for Disease Control and Prevention in their studies, “Tobacco Use Among Middle and High School Students—United States, 2011–2015,” and “Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997”; and of the following scholars in these scientific journals: Xin Xu et al., Annual Healthcare Spending Attributable to Cigarette Smoking: An Update, Am. J. Prev. Med. 48(3): 326-33 (Mar. 2015); Giovino GA, “Epidemiology of Tobacco Use in the United States,” Oncogene (2002) 21, 7326-40; Khuder SA, et al., “Age at Smoking Onset and its Effect on Smoking Cessation,” Addictive Behavior 24(5):673-7, September-October 1999; D’Avanzo B, et al., “Age at Starting Smoking and Number of Cigarettes Smoked,” Annals of Epidemiology 4(6):455-59, November 1994; Chen, J & Millar, WJ, “Age of Smoking Initiation: Implications for Quitting,” Health Reports 9(4):39-46, Spring 1998; and 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.

~~Because the city recognizes that many persons under the age of 18 years may purchase or otherwise obtain, possess and use tobacco, tobacco products, nicotine, and tobacco related devices, and such sales, possession and use are violations of both state and federal laws, and because smoking has been shown to be the cause of several severe health problems which subsequently place a financial burden on all levels of government, this chapter is intended to regulate the sale, possession and use of tobacco, tobacco products, nicotine, and tobacco related 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, nicotine, and tobacco related devices and to further the official public policy of the state to prevent young people from starting to smoke as stated in M.S. § 144.391.~~

§ 118.02 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, as in effect on January 1, 2015.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell licensed products tobacco, tobacco products, nicotine, and tobacco related devices are following and complying with the requirements of this chapter. ***COMPLIANCE CHECKS*** may involve the use of ~~minors~~ persons under 21 years of age as authorized by this chapter. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate federal, state, or local laws and regulations related to licensed products.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

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, 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 5 or more single packs or other containers as described in this chapter 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% of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes a retractable divider, garage door, or other physical barrier, whether temporary or permanent.

LICENSE. A license issued under this chapter for the sale of licensed products.

LICENSED PRODUCTS. Any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery device.

LOOSIES. The common terms used to refer to a single or individually packaged cigarette or any other licensed product that has been removed from its intended retail packaging and offered for sale. The term “loosies” does not include individual cigars with a retail price, before any sales tax, 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 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. Any product containing nicotine. Nicotine does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

NICOTINE OR LOBELIA DELIVERY DEVICE. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco 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 other medical purposes, and is being marketed and sold solely for that approved purpose.

RETAIL ESTABLISHMENT. Any place of business where ~~licensed products tobacco,~~ tobacco products, nicotine, or tobacco related devices are available for sale to the general public. **RETAIL ESTABLISHMENTS** shall include, but not be limited to, grocery stores, convenience stores, drug stores, restaurants, tobacco products shops and bars.

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 products 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 of the product between the clerk and the customer. ~~of tobacco, tobacco products or tobacco related devices packaged in packages of 4 or fewer individually wrapped containers which are accessible to the public without the intervention of an employee. Self-service merchandising shall not include vending machines.~~

SAMPLING. The lighting of tobacco, tobacco products, or tobacco-related devices in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before purchase.

TOBACCO or TOBACCO PRODUCTS. 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; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco or tobacco related products 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.

TOBACCO PRODUCTS SHOP: A retail establishment that has an entrance door opening directly to the outside and that derives more than 90 percent of its gross revenue from the sale of licensed products and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

TOBACCO RELATED DEVICES. 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, smoking or other consumption, whether by inhalation, ingestion, or any other method of consumption of tobacco or tobacco products.

VENDING MACHINE. Any mechanical, electric or electronic or other type of device which dispenses tobacco, tobacco products or tobacco related 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 product or tobacco related device.

§ 118.03 LICENSE.

No person shall sell or offer to sell any ~~tobacco, tobacco products, nicotine, or tobacco related device~~ licensed products at a retail establishment without first having obtained a license to do so from the city

(A) Applications.

(1) An application for a license to sell ~~tobacco, tobacco products, nicotine, or tobacco related devices~~ licensed 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 names of the business for which the license is sought, the specific location of the retail establishment, and any additional information the city deems necessary. All new license applications shall include a detailed company management structure and information regarding training for new and existing employees regarding the prevention of sales of licensed products to persons under 21 years of age. No license shall be granted to an applicant under twenty-one years of age. Incomplete applications shall be returned to the applicant with notice of the information required to complete the application.

(2) Upon receipt of a completed application for a new ~~tobacco~~ license, the City Clerk shall forward the application to the Police Department for a background investigation and recommendation. ~~Upon successful completion of a background check, new license applications that do not meet the criteria outlined in § 118.03(1) shall be submitted to Council for action at its next regularly scheduled Council meeting.~~ If the Clerk shall determine that an application is incomplete, application shall be returned to the applicant with notice of the information necessary to make the application complete.

(B) Action. Upon receipt of a completed application together with the applicable license fee and a completed background investigation, the City Clerk shall forward the application

to the City Council for action at a regularly scheduled Council meeting. The Council may either approve or deny the license, or it may delay action for such reasonable period of time as is necessary to complete any investigation of the application or the applicant it deems necessary. If the Council approves the license, the Clerk 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.

(C) *License fee.* The applicant shall submit the license fee required by the city's fee schedule at time of submission of application. No license shall be issued or renewed unless the appropriate license fee is paid in full.

(D) *Investigations.*

(1) For all new applicants, a background investigation will be conducted on the applicant listed on the application. If more than one † background investigation is required, the applicant shall pay a background investigation fee for each background investigation conducted. For renewal applications, in lieu of a full background investigation, city staff shall complete a compliance review prior to issuance of a renewal license. For applicants who have an existing ~~to be a~~ license who want to add an additional location at any time other than annual renewal, a background investigation will be required.

(2) For applicants who are applying for a license for more than one † location, only one † background investigation and background investigation fee shall be required.

(E) *Term.* ~~The licensing term is for 1 year, beginning on January 1 of the year and terminating on December 31 of the same year.~~ All licenses shall expire on January 31 of each year.

(F) *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in § 118.1398.

(G) *Moveable place of business.* No license shall be issued to a movable place of business. Only fixed location businesses shall be eligible to be licensed under this section.

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

(I) *Renewals.* At least 30 days before a license expires, an application for renewal shall be filed with the City Clerk. ~~Such renewal application may be approved administratively by city staff if there is no change to the ownership of the licensee, and there have been no reported violations of the license or written complaints filed with the city regarding the operation of the premises or business for which the license has been granted in the last year. All other renewal applications shall be brought to the City Council for a hearing. No licensee has a right to have a license renewed.~~

(J) *Changes in ownership.* A license is non-transferable. If there is a change in the ownership of the retail establishment, a new license is required and the applicant shall be required to submit to a background investigation as a new applicant. A license shall only be valid for the premises for which it is issued, and any change in location of the premises shall require reapplication by the applicant for a license for the new premises.

§ 118.04 LICENSE RESTRICTIONS.

A license shall be issued subject to the following restrictions.

(A) No license shall be issued to any applicant for the sale of ~~tobacco, tobacco products, nicotine, or tobacco related devices~~ licensed products at any place other than the applicant's established place of business.

(B) No license shall be issued for the sale of ~~tobacco, tobacco products, nicotine, or tobacco related devices~~ licensed products at a moveable place of business.

(C) No license shall be issued for the sale of ~~tobacco, tobacco products, nicotine, or tobacco related devices~~ licensed products at more than one place of business.

(D) No person shall sell or dispense any ~~tobacco, tobacco products, nicotine, or tobacco related devices~~ licensed products through the use of a vending machine except as provided in § 118.07.

(E) No licensed products ~~individually packaged tobacco product~~ shall be offered for sale by means of self-service merchandising.

(F) All licensed premises shall post in a prominent place the legal sales age and age verification requirements.

~~(FG)~~ Every licensee shall be responsible for the conduct of its employees while on the licensed premises and any sale or other disposition of ~~tobacco~~ licensed products by an employee to a person under 21 ~~18~~ years of age shall be considered an act of the licensee for purposes of imposing an administrative fine, license suspension or revocation.

(H) No new license shall be issued to a tobacco products shop located within five hundred feet (500) of a school or public park, as measured from the nearest property line of the property on which the school or public park is located to the property line of the property on which the tobacco products shop.

(I) Licensees shall comply with all applicable regulations of the State of Minnesota relating to the sale or dispensing of licensed products. If there is a conflict between the regulations of the State and the regulations of the City, the more restrictive regulations shall control.

(J) Any employee of a licensed retail establishment who sells licensed products at the licensed establishment shall complete an educational or training program regarding the sale of licensed products to underage purchasers before they may be allowed to sell licensed products at the licensed establishment. The educational or training program must include information regarding the following:

(1) Information regarding the laws pertaining to the sale of licensed products.

(2) The rules for identification checks.

(3) Responsibilities of establishments selling licensed products.

(4) Verification of age, forms of identification, and forms of false or misleading age identification.

The City will maintain a list of available educational or training programs. Licensees shall keep on file proof that all persons selling licensed products at the retail establishment have completed the educational or training program required by this section. Such proof shall be kept for at least three (3) years. Proof of a person's completion of the required educational or training program shall be presented to a police officer upon request no later than three (3) days after the request, excluding holidays and weekends. License holders shall submit all information required by the City regarding the completion of this education or training requirement along with the applicant's initial or renewal license application.

§ 118.05 BASIS FOR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

(A) The following shall be grounds for denying the issuance or renewal of a license or suspending or revoking any license issued under this chapter:

(1) The proposed use does not comply with the zoning ordinance.

(2) The proposed use does not comply with a health, building, maintenance, or other provision of the city code or state law.

(3) The applicant has failed to pay all of the appropriate fees related to the license, or is delinquent on any other city fees.

(4) The applicant has failed to provide all information required on the application or requested by City or has made fraudulent statements, misrepresentations, or false statements in the application or investigation for or in the course of the applicant's business.

(5) The applicant has been convicted of a crime or offense in the previous 5 years involving or related to the business that is licensed or the type of licensed activity and failed to show competent evidence of sufficient rehabilitation and present fitness to perform the duties of the business.

(6) The licensed activity is conducted in such a manner as to constitute a breach of the peace, a menace to the health, safety, and welfare of the public, or a disturbance of the peace or comfort to the residents of the city, upon recommendation of the Police Chief or appropriate city official.

(7) Expiration or cancellation of any required insurance or failure to notify the city within a reasonable time of changes in terms of the insurance or the carriers.

(8) The licensee has acted in an unauthorized manner or beyond the scope of the license granted.

(9) The applicant has had a license to sell licensed products issued by the city, state, or another government unit revoked within the preceding twelve (12) months of the date of application. applicant's license has been denied, revoked, or suspended by the city, the state, or another government unit.

(10) Failure to allow inspections of the licensed premises, for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(11) Failure to continuously comply with all conditions required as precedent to the approval of the license, all requirements of this Chapter, and all state or federal regulations related to the sales of licensed products.

(12) Real estate taxes, personal property taxes, or special assessments on the business premises or the real property where the business is located have become delinquent or are unpaid and the property owner and the applicant are the same person or entity, or have any common ownership between the property owner and the applicant where they are a different person or entity.

(13) Violation of any regulation or provision of the city code or zoning ordinance applicable to the activity for which the license has been granted, or any regulation or state law that may be applicable.

(14) The applicant or licensee has been found guilty of professional misconduct, either criminally or civilly.

(15) Based on the findings of a background investigation, granting a license would be a menace to the safety, health, morals and welfare of the public.

(16) The applicant or licensee is not of good moral character.

(17) The activity has been conducted without a license.

(18) ~~Other good cause. The applicant is under 21 years of age.~~

(19) Other good cause shown.

(B) 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. If a license is mistakenly issued or renewed it shall be revoked upon the discovery that the person was ineligible for the license under this chapter.

§ 118.06 PROHIBITED SALES.

It shall be unlawful for any person licensed under this chapter to sell, offer for sale, give away, furnish, or otherwise deliver ~~allow the sale of licensed products as follows: tobacco, tobacco products, nicotine, or tobacco-related devices:~~

(A) To any person under 21 years of age ~~the age of 18 years.~~

1. Age Verification. Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

2. Signage. Notice of the legal sales age and age verification requirements must be prominently posted at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the City, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

(B) By means of any type of vending machine, except as may otherwise be provided in this chapter;

(C) By means of self-service merchandising, as defined in § 118.02, whereby the customer is not required to make a verbal or written request to an employee of the licensed premises in order to receive the licensed product and whereby there is not a physical exchange of the licensed product between the licensee, or the licensee's employee, and the customer ~~tobacco, tobacco product or tobacco related device;~~

(D) By means of loosies, as defined in § 118.02;

(E) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other type of deleterious, hallucinogenic, or toxic or controlled substance except nicotine and not naturally found in tobacco or tobacco products;

(F) From a moveable place of business, such as but not limited to, any motorized vehicle, a kiosk, a trailer, a transportable shelter, or table, or any other movable structure;
or

(G) No person shall sell or offer for sale any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

(H) No person under the age of twenty-one shall sell or offer for sale any licensed products in a tobacco products shop.

(I) By any other means, or to any other person prohibited by federal, state or other local law, ordinance, provision or other regulation.

§ 118.07 VENDING MACHINES.

It shall be unlawful for any person under this chapter to allow the sale of licensed products ~~tobacco, tobacco products, nicotine, or tobacco related devices~~ by means of a vending machine unless the vending machine was used and in operation at a retail establishment licensed prior to January 1, 1997.

§ 118.08 ~~TOBACCO~~ DISPLAY, STORAGE, AND SAMPLING.

(A) All ~~individually packaged licensed products tobacco, tobacco products and tobacco related devices as defined in § 118.02~~ shall 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. It shall be unlawful for a licensee to allow the sale of licensed products by any means whereby the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby it is not a physical exchange of the licensed product between the licensee or their employee and the customer. Any retail establishment selling licensed products at the time this section is adopted shall comply with this section within 90 days following the effective date of this section. Any retailer selling tobacco, tobacco products, nicotine, or tobacco related devices at the time this chapter is adopted shall comply with this section with 90 days.

(B) The sampling of tobacco and tobacco- related devices is permitted within the indoor area of a ~~retail establishment~~ tobacco products shop only between the hours of 8:00 a.m. and 10:00 p.m.

§ 118.09 RESPONSIBILITY.

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of licensed products ~~tobacco, tobacco products, nicotine, or tobacco related 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 chapter shall be construed as prohibiting the city from also subjecting the employee to whatever penalties are appropriate under this chapter, state law or other applicable law or regulation for employees failing to comply with the provisions of this chapter or state statute.

§ 118.10 COMPLIANCE CHECKS AND INSPECTIONS.

All retail establishments shall be open to inspection by the Police Department or other delegated law enforcement officers or agencies during regular business hours. From time to time, but at least ~~once~~ twice per year, a law enforcement officer shall conduct compliance checks to ensure compliance with the provisions of this chapter. Compliance checks shall utilize, with the written consent of their parents or guardians, minors over the age of 15 years, as well as other individuals under 21 years of age, but less than 18 years, to enter the retail establishments to attempt to purchase licensed products ~~tobacco or tobacco related devices~~. Persons ~~Minors~~ used for the purpose of compliance checks shall be supervised by designated law enforcement officers. Persons ~~Minors~~ used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, or the unlawful possession of licensed products ~~tobacco, tobacco products, nicotine, or tobacco related devices~~ when such items are obtained as part of a compliance check. No person ~~minor~~ used in compliance checks shall attempt to use a false identification misrepresenting the person's ~~minor's~~ age, and all persons ~~minors~~ lawfully engaged in a compliance check shall truthfully answer all questions about the person's ~~minor's~~ age asked by the licensee or employee thereof and shall produce any identification, if any exists, for which he or she is asked. Nothing in this chapter shall prohibit other 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.

§ 118.11 OTHER ILLEGAL ACTS.

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

(A) *Illegal sales.* It shall be unlawful for any person to sell or otherwise provide tobacco, tobacco products, nicotine, or tobacco related devices to any minor.

(B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in the minor's possession any tobacco, tobacco product, nicotine, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the city or who have only temporary possession during a legal sales transaction.

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, nicotine, or tobacco related device.

(D) *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 or tobacco related device. 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 be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, nicotine, or tobacco related device to any minor or to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, nicotine, or tobacco related device. This subdivision shall not apply to minors lawfully involved in a compliance check on behalf of the city.

(E) *Use of false identification.* It shall be a violation of this chapter for any minor to attempt to disguise the minor's 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 altered, to represent an age older than the actual age of the person.

§ 118.12 MINIMUM PENALTIES.

(A) Any violation of the restrictions attached to terms of a tobacco license or the provisions of this chapter shall be cause for an administrative financial penalty fine and/or suspension or revocation of the license. The following minimum penalties are deemed appropriate for a licensee's failure to comply with an applicable statute, rule, ordinance, or term of the license. However, the level and order of the penalties shall be at the sole discretion of the City Council, based on the nature of the infraction and the City Council may suspend or revoke a license for any violation of this chapter or any applicable law. When appropriate, the City Council may impose penalties exceeding those stated below or impose other conditions deemed appropriate. The following minimum penalties are established for violations of the terms of a license or the provisions of this chapter:

(1) The first violation shall result in an administrative ~~penalty fine~~ of ~~\$250~~ \$550 to the license holder, payable to the city and result in a 1 day license suspension. Failure to pay the administrative penalty fine within 30 days from the date of invoice shall result in an additional 2 day license suspension.

(2) A second violation within 24 months shall result in an administrative ~~penalty fine~~ of ~~\$550~~ \$750 payable to the city and result in a ~~5~~ 10 day license suspension. Failure to pay the administrative penalty fine within 30 days from the date of the invoice shall result in an additional 10 day license suspension.

(3) A third violation within 24 months, or for sales during a license suspension, shall result in a minimum administrative penalty of \$250 and license revocation.

(B) An individual who sells licensed products to a person under the age of 18 years shall be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing before the City Council. A decision that a violation has occurred must be in writing.

~~(B)~~ Licensees whose licenses have been revoked shall not be eligible for another tobacco ~~product~~ license for one year from the date of revocation. The City Council may attach reasonable conditions to the reinstatement of a suspended or revoked license.

§ 118.13 HEARINGS.

(A) Revocation or suspension or denial of a license shall be preceded by a hearing before the City Council. Notice of the hearing shall be provided to the license holder via certified mail or personal service at least 10 days prior to the hearing. The notice shall include the time and place of the hearing and shall state the nature of the charge against the licensee. A hearing for consideration of issuing, suspending, or revoking a license will be conducted before the City Council or its designee. At the hearing, the applicant or licensee has the right to be represented by counsel, the right to respond to the charges or information provided to the Council, and the right to present evidence through witnesses under oath. It is not necessary that criminal charges be brought in order to support a determination of a license violation, nor does the dismissal or acquittal of such a criminal charge operate as a bar to adverse license actions under this section.

(B) Following the hearing, the Council may deny, revoke, suspend, or not renew the license for the retail establishment or may grant or continue the license upon such terms and conditions as it deems reasonable and necessary to accomplish the purposes of this chapter. The decision by the City Council following a hearing is final.

(C) Enforcement actions provided in this section are not exclusive and the Council may take any action with respect to a license, employee, or retail establishment as is authorized by city code, state, or federal law.

§ 118.14 EXCEPTIONS AND DEFENSES.

Nothing in this chapter shall prevent the providing of licensed products ~~tobacco, tobacco products, nicotine, or tobacco-related device~~ to a person under 21 years of age ~~minor~~ as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.

§ 118.98 VIOLATIONS.

Any person found to be in violation of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished according to law.

Section Two. Effective Date. This Ordinance shall be in full force and effect upon its adoption and publication as provided by law.

Passed in regular session of the City Council on the 26 day of August, 2019.

CITY OF FOREST LAKE

By: 
Sam Husnik
Its: Acting Mayor

Attested:

By: 
Karin Derauf
Its: Deputy City Clerk

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