ORDINANCE NO. _____

CITY OF ST. LOUIS PARK
HENNEPIN COUNTY, MINNESOTA

AN ORDINANCE AMENDING ST. LOUIS PARK CITY CODE CHAPTER 8 – BUSINESS AND LICENSES, SUBDIVISION X. TOBACCO PRODUCTS AND TOBACCO RELATED DEVICES, SECTION 8-374 REGULATIONS ADOPTED AND SECTION 8-378 VIOLATIONS; PENALTY TO BAN SALES OF CERTAIN ELECTRONIC DELIVERY DEVICES

THE CITY OF ST. LOUIS PARK DOES ORDAIN:

SECTION 1. Findings.

(a) As of October 22, 2019, the United States Centers for Disease Control and Prevention (CDC) reports 1,604 cases of e-cigarette, or vaping, product use associated lung injury (EVALI) from 49 states (all except Alaska), the District of Columbia, and one United States territory.

(b) As of October 22, 2019, the CDC reports 34 confirmed EVALI related deaths in 24 states. More deaths are under investigation.

(c) As of October 22, 2019, the CDC reports three confirmed EVALI related deaths in Minnesota.

(d) CDC reports that as of October 22, 2019 the age range for EVALI patients ranges from 13 years to 75 years with a median age of 24 years.

(e) EVALI case counts continue to increase and new cases are being reported.

(f) All EVALI patients reported a history of using e-cigarette, or vaping products.

(g) Tetrahydrocannabinol (THC) was present in most of the samples tested by FDA as of October 22, 2019, and most EVALI patients reported a history of using THC containing products. CDC reports that the latest national and state findings suggest e-cigarette, or vaping products containing THC, particularly those obtained off the street or from informal sources (e.g. friends, family members, illicit dealers), are linked to most of the EVALI cases and play a major role in the outbreak. However, as of October 22, 2019, the Food and Drug Administration (FDA) and CDC had not identified the cause or causes of the reported lung injuries, and the only commonality among all cases is that patients report the use of e-cigarette, or vaping products. CDC reports no one compound or ingredient had emerged as the cause of EVALI and there may be more than one cause of EVALI. The cause of EVALI remains unknown.
As of October 22, 2019, CDC recommends that since the specific compound(s) or ingredient(s) causing lung injury are not yet known, the only sure way avoid EVALI while the investigation continues is to refrain from use of all e-cigarette, or vaping, products.

According to the Minnesota Department of Health (MDH) 2019 statistics 26.4% of 11th graders, 16.3% of 9th graders, and 11.1% of 8th graders, report current use of electronic cigarettes.

Virtually all electronic cigarettes that are sold today entered the market after 2007, but have not been reviewed by the FDA to determine if they are appropriate for the public health. In 2017, the FDA issued Guidance that purports to give electronic cigarette manufactures until August 8, 2022 to submit their application for premarket review. The Guidance further purports to allow unapproved products to stay on the market indefinitely, until such time as FDA complies with its statutory duty to conduct a premarket review to determine whether a new tobacco product poses a risk to public health.

By the time electronic cigarette manufactures will be required to submit their premarket review applications, electronic cigarettes will have been on the market for fifteen years without any FDA analysis of their safety and alleged benefit. In light of the immediate health threat posed by EVALI, the City of St. Louis Park is not content to wait for FDA action to address its residents what appears from the evidence to be a major health crisis that is going unattended.

SECTION 2. City Code Chapter 8 – Business and Licenses, Subdivision X. Tobacco Products and Tobacco Related Devices, Section 8-374 Regulations Adopted is amended by adding the underlined language as follows:

Sec. 8-374. Regulations Adopted.

(a) It shall be a violation of this subdivision for any person to sell or offer to sell any tobacco, tobacco-related device, electronic delivery device, nicotine or lobelia delivery product:

(1) To any person under the age of 21 years.

(2) By means of any type of vending machine.

(3) By means of self-service merchandising 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-related device, electronic delivery device, nicotine or lobelia delivery product. All such products shall be stored behind a counter or other area not freely accessible to customers.

(4) 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, tobacco-related devices or electronic delivery devices.
(5) By any other means or to any other person prohibited by federal, state or other local laws, ordinances or other regulations.

(6) That meets the definition of flavored product.

(b) Tobacco, sampling of tobacco, electronic delivery devices, nicotine or lobelia delivery products within an establishment selling any tobacco, tobacco product, tobacco related devices, electronic delivery devices, nicotine or lobelia delivery product is prohibited.

c) No person shall sell, offer to sell, or distribute liquid, whether or not such liquid contains nicotine that is intended for human consumption and use in an electronic delivery device that is not contained in child-resistant packaging as that term is defined in Code of Federal Regulations, title 16, section 1700.15 (b)(1), as in effect on January 1, 2015. A licensee that fails to comply with this subpart is subject to administrative penalty pursuant to Minn. Stat. § 461.12, subd. 2.

(d) No person shall sell, offer to sell or distribute an electronic delivery device that:

(1) Is a “new tobacco product” as defined in 21 U.S.C. § 387j(a)(1) as may be amended from time to time,

(2) Requires FDA premarket review under 21 U.S.C § 387j, and

(3) Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.

SECTION 3. City Code Chapter 8 – Business and Licenses, Subdivision X. Tobacco Products and Tobacco Related Devices, Section 8-378 Violations; penalty is amended by adding the underlined language as follows:

Sec. 8-378. Violation; penalty.

(a) Generally. Any violation of this subdivision shall be grounds to revoke or suspend a license under this subdivision.

(b) Criminal penalty. As set forth in M.S.A. ch. 609, it shall be a:

(1) Misdemeanor for anyone to sell tobacco, a tobacco-related device, electronic delivery device, nicotine or lobelia delivery product to a person under the age of 21 years for the first violation. Whoever violates this subdivision a subsequent time within five years of a previous conviction under this subdivision is guilty of a gross misdemeanor.

(2) Misdemeanor to furnish tobacco, a tobacco-related device, electronic delivery device, nicotine or lobelia delivery product to a person under the age of 21 years. Whoever violates this paragraph a subsequent time is guilty of a gross misdemeanor.
(3) Misdemeanor for anyone to sell or offer to sell a flavored product in violation of section 8-374(a)(6).

(4) Misdemeanor for anyone to sell, offer to sell or distribute liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device that is not contained in child-resistant packaging as that term is defined in Code of Federal Regulations, title 16, section 1700.15 (b)(1), as in effect on January 1, 2015.

(5) Petty misdemeanor for anyone under the age of 21 years to sell, furnish or give away any tobacco, tobacco-related device, electronic delivery device, nicotine or lobelia delivery product. This subsection shall not apply to a person age 18-20 years while working as an employee of a business holding a license granted pursuant to this subdivision.

(6) Misdemeanor for anyone to sell an electronic delivery device in violation of section 8-374 (d).

(c) Presumed penalties for Violations: The presumed penalties for violations are as follows (unless specified, numbers below indicate consecutive business days’ suspension):

<table>
<thead>
<tr>
<th>Type of Violation</th>
<th>1st Violation</th>
<th>2nd Violation within 36 months</th>
<th>3rd Violation within 36 months</th>
<th>4th Violation within 36 months</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Commission of a felony related to the licensed activity.</td>
<td>Revocation</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>2. Sale of tobacco, tobacco-related device, electronic delivery device, nicotine or lobelia delivery product while license is under suspension.</td>
<td>Revocation</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>3. Sale of tobacco, tobacco-related device, electronic delivery device, nicotine or lobelia delivery product to underage person.</td>
<td>$500</td>
<td>$1,000 and 1 day</td>
<td>$2,000 and 30 days</td>
<td>Revocation</td>
</tr>
<tr>
<td>4. Refusal to allow government inspectors or police admission to inspect premises.</td>
<td>5 days</td>
<td>15 days</td>
<td>Revocation</td>
<td>N/A</td>
</tr>
<tr>
<td>5. Illegal gambling on premises.</td>
<td>3 days</td>
<td>6 days</td>
<td>18 days</td>
<td>Revocation</td>
</tr>
<tr>
<td>6. Failure to attend mandatory education training.</td>
<td>$250</td>
<td>$750 and 1 day</td>
<td>$2,000 and 3 days</td>
<td>Revocation</td>
</tr>
</tbody>
</table>
7. Prohibited sale or offer for sale of flavored products.

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<thead>
<tr>
<th></th>
<th>$500</th>
<th>$1,000 and 1 day</th>
<th>$2,000 and 30 days</th>
<th>Revocation</th>
</tr>
</thead>
</table>
8. Prohibited sale or offer for sale of liquid intended for human consumption in an electronic delivery device that is not contained in child resistant packaging.

|                         | $500  | $1,000 and 1 day | $2,000 and 30 days | Revocation |

The penalty for violations without a presumptive penalty shall be determined by the City Council. The imposition of the presumptive penalty shall be a written notice to the licensee and may be appealed through an administrative hearing process as set by the city manager. The city manager's decision may be appealed to the city council by filing a written appeal to the city clerk within ten days of receiving written notice of the city manager's decision.

(d) *Multiple violations*: At a licensee’s first appearance before the Council, the Council must act upon all of the violations that have been alleged in the notice sent to the licensee. The Council in that case must consider the presumptive penalty for each violation under the first appearance column in subsection (B) above. The occurrence of multiple violations is grounds for deviation from the presumed penalties in the Council’s discretion.

(e) *Subsequent violations*: Violations occurring after the notice of hearing has been mailed, but prior to the hearing, must be treated as a separate violation and dealt with as a second appearance before the Council, unless the City Manager and licensee agree in writing to add the violation to the first appearance. The same procedure applies to the second, third, or fourth appearance before the Council.

(f) *Subsequent appearances*: Upon a second, third, or fourth appearance before the Council by the same licensee, the Council must impose the presumptive penalty for the violation or violations giving rise to the subsequent appearance without regard to the particular violation or violations that were the subject of the first or prior appearance. However, the Council may consider the amount of time elapsed between appearances as a basis for deviating from the presumptive penalty imposed by this Section.

(g) *Computation of violations*: Multiple violations are computed by checking the time period of the three (3) years immediately prior to the date of the most current violation.

(h) *Other penalties*: Nothing in this Section shall restrict or limit the authority of the Council to suspend up to sixty (60) days, revoke the license, impose a civil fee not to exceed two thousand dollars ($2,000.00), to impose conditions, or take any other action in accordance with law; provided, that the license holder has been afforded an opportunity for a hearing in the manner provided in this Chapter.

(i) *Additional Requirements*. In addition to civil penalties, every licensee that has been found in violation of this Chapter must enter into and complete an education training program approved by the City’s Police Department.
(j) **Exceptions and defenses.** Nothing in this subdivision shall prevent the providing of tobacco, tobacco products or tobacco related devices to a person under the age of 21 as part of a bona fide religious, spiritual or cultural ceremony. It shall be an affirmative defense to a violation of this subdivision for a person to have reasonably relied upon proof of age as set forth by state law.

**SECTION 4.** This Ordinance shall take effect on February 1, 2020.

ADOPTED this _____ day of _______________, 2020, by the City Council of the City of St. Louis Park.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td>Public Hearing</td>
<td>December 16, 2019</td>
</tr>
<tr>
<td>First Reading</td>
<td>December 16, 2019</td>
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<tr>
<td>Second Reading</td>
<td>January 6, 2020</td>
</tr>
<tr>
<td>Date of Publication</td>
<td></td>
</tr>
<tr>
<td>Date Ordinance takes effect</td>
<td>February 1, 2020</td>
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Reviewed for Administration

Adopted by City Council

Thomas K. Harmening, City Manager

Jake Spano, Mayor

Attest:

Approved as to Form and Execution:

Melissa Kennedy, City Clerk

Soren Mattick, City Attorney