

ORDINANCE NO. \_\_\_\_\_

**CITY OF ST. LOUIS PARK  
HENNEPIN COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING CHAPTER 8 OF THE  
ST. LOUIS PARK CITY CODE RELATING TO TOBACCO**

**THE CITY OF ST. LOUIS PARK DOES ORDAIN:**

**SECTION 1.** Section 8-1 of the City Code shall be amended by adding the following definition:

*Flavored product* means any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product that contains a taste or smell, other than the taste or smell of tobacco or menthol, that is distinguishable by an ordinary customer either prior to or during the consumption of the tobacco product, electronic delivery device, or nicotine or lobelia delivery product, including, but not limited to, any taste or smell relating to chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, fruit, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer of a tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such product or device, that the product or device has or produces a taste or smell other than tobacco or menthol shall constitute presumptive evidence that the product or device is a flavored tobacco product.

*Nicotine or lobelia delivery product* means any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such product, that is not a tobacco product or an electronic delivery device, as defined in this section. Nicotine or lobelia delivery product does not include any product that has been approved or otherwise certified for legal sale 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 approved purpose.

**SECTION 2.** Section 8-372 of the City Code shall be amended by deleting the strikethrough language and adding the underlined language as follows:

**Sec. 8-372. License required.**

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

(b) No license shall be issued for the sale of tobacco, tobacco-related device, ~~or~~ electronic delivery device, or nicotine or lobelia delivery product at any place other than the applicant's place of business; nor shall any single license be issued at more than one place of business.

(c) Complete applications shall be reviewed by the city for verification and investigation of the facts set forth in the application, including criminal background investigation of the applicant. The city may order and conduct such additional investigation as deemed necessary.

(d) The city shall make the determination whether to approve or deny the license. Any denial shall be communicated to the applicant in writing, specifying the reasons for denial. The applicant may appeal the denial in accordance with the procedure specified in section 8-36.

(e) Complete applications for issuance of annual licenses shall be submitted to the city at least thirty (30) days prior to the expiration of the license. The determination regarding approval or denial of the license renewal shall be communicated to the applicant in writing, specifying the reasons if the application is denied. The applicant may appeal the denial in accordance with the procedure specified in section 8-36.

**SECTION 3.** Section 8-373 of the City Code shall be amended by deleting the strikethrough language and adding the underlined language as follows:

**Sec. 8-373. Denial of license.**

The following will be grounds for denying the issuance or renewal of a license under this subdivision, and 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 of any violation of federal, state or local law, ordinance or other regulation relating to tobacco, tobacco-related devices, ~~or~~ electronic delivery devices, nicotine or lobelia delivery products or drug paraphernalia.
- (3) The applicant has had a license to sell tobacco, tobacco-related devices, ~~or~~ electronic delivery devices or nicotine or lobelia delivery products revoked.
- (4) The applicant fails to provide any information required on the license application, or provides false or misleading information on such license application.
- (5) The applicant is prohibited by federal, state or other local law, ordinance or other regulation from holding a license under this subdivision.

**SECTION 4.** Section 8-374 of the City Code shall be amended by deleting the strikethrough language and 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, ~~or~~ electronic delivery device or 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, ~~or~~ electronic delivery device or 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 or nicotine or lobelia delivery products within an establishment selling any tobacco, tobacco product, ~~or~~ tobacco related devices, electronic delivery devices or 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.

**SECTION 5.** Section 8-375 of the City Code shall be amended by deleting the strikethrough language and adding the underlined language as follows:

**Sec. 8-375. Responsibility for sales.**

Actions of their employees in regard to the sale of tobacco, tobacco-related devices, ~~or~~ electronic delivery devices, or nicotine or lobelia delivery products by an employee shall be considered a sale by the licensed owner.

**SECTION 6.** Section 8-376 of the City Code shall be amended by deleting the strikethrough language and adding the underlined language as follows:

**Sec. 376. Compliance checks and inspections.**

All premises licensed under this subdivision shall be open to inspection by the city during regular business hours. From time to time the city may conduct compliance checks by engaging ~~minors~~ persons over 15 years of age but under 21 years of age to enter the licensed premises to attempt to purchase tobacco, tobacco-related devices, ~~or~~ electronic delivery devices; ~~or nicotine or lobelia delivery products.~~

**SECTION 7.** Section 8-377 of the City Code shall be amended by deleting the strikethrough language and adding the underlined language as follows:

**Sec. 8-377 Illegal acts.**

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

- (1) Illegal procurement. It shall be a violation of this subdivision for any person to purchase or attempt to purchase, or otherwise obtain, any tobacco, tobacco-related devices, ~~or~~ electronic delivery device or nicotine or lobelia delivery product on behalf of a person under the age of 21 years. It shall also be a violation of this subdivision for any person to sell or otherwise provide such products to any person under the age of 21 years. It shall be a violation of this subdivision for any person to coerce or attempt to coerce a person under the age of 21 years to illegally purchase or otherwise obtain or use tobacco, tobacco-related device, ~~or~~ electronic delivery device, or nicotine or lobelia delivery product.
- (2) Use of false identification. It shall be a violation of this subdivision for any person under the age of 21 years to attempt to disguise their true age by use of a false form of identification, whether 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 8.** Section 8-378 of the City Code shall be amended by deleting the strikethrough language and 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, ~~or~~ electronic delivery device or 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, ~~or~~ electronic delivery device, or 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) Petty misdemeanor for anyone under the age of 21 years to sell, furnish or give away any tobacco, tobacco-related device, ~~or~~ 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.
- (c) *Presumed penalties for Violations:* The presumed penalties for violations are as follows (unless specified, numbers below indicate consecutive business days' suspension):

<i>Type of Violation</i>	<b>1st Violation</b>	<b>2nd Violation within 36 months</b>	<b>3rd Violation within 36 months</b>	<b>4th Violation within 36 months</b>
1. Commission of a felony related to the licensed activity.	Revocation	N/A	N/A	N/A
2. Sale of tobacco, tobacco-related device, <del>or</del> <u>electronic delivery device or nicotine or lobelia delivery product</u> while license is under suspension.	Revocation	N/A	N/A	N/A
3. Sale of tobacco, tobacco-related device, <del>or</del> <u>electronic delivery device, or nicotine or lobelia delivery product</u> to underage person.	\$500	\$1,000 and 1 day	\$2,000 and 30 days	Revocation
4. Refusal to allow government inspectors or police admission to inspect premises.	5 days	15 days	Revocation	N/A

5. Illegal gambling on premises.	3 days	6 days	18 days	Revocation
6. Failure to attend mandatory education training.	\$250	\$750 and 1 day	\$2,000 and 3 days	Revocation
7. <u>Prohibited sale or offer for sale of flavored products.</u>	<u>\$500</u>	<u>\$1,000 and 1 day</u>	<u>\$2,000 and 30 days</u>	<u>Revocation</u>
8. <u>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.</u>	<u>\$500</u>	<u>\$1,000 and and 1 day</u>	<u>\$2,000 and 30 days</u>	<u>Revocation</u>

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 May 1, 2018.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by the City Council of the City of St. Louis Park.

Public Hearing	November 20, 2017
First Reading	November 20, 2017
Second Reading	December 4, 2017
Date of Publication	December 14, 2017
Date Ordinance takes effect	May 1, 2018

Reviewed for Administration

Adopted by City Council

\_\_\_\_\_  
Thomas K. Harmening, City Manager

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Jake Spano, Mayor

Attest:

Approved as to Form and Execution:

\_\_\_\_\_  
Melissa Kennedy, City Clerk

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Soren Mattick, City Attorney