

CITY OF STACY  
CHISAGO COUNTY, MINNESOTA

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

AN ORDINANCE AMENDING CHAPTER 111: CIGARETTE SALES OF THE CITY CODE

THE CITY COUNCIL OF THE CITY OF STACY ORDAINS:

**SECTION 1. ENACTMENT.** Stacy City Code Chapter 111: Cigarette Sales is amended by deleting the ~~strikethrough~~ language and adding the underlined language as follows:

CHAPTER 111: CIGARETTE SALES

~~Section 111.01 License required~~

~~§ 111.01 LICENSE REQUIRED.~~

~~The city hereby adopts by reference the County of Chisago ordinance for licensing and enforcement relating to the sale, possession, and use of tobacco, tobacco products, and tobacco related devices in the city.~~

**§111.01 Purpose.** Because the City of Stacy recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess, and use tobacco, tobacco products, and tobacco related devices, and such sales, possession, and use are violations of both State and Federal laws, this ordinance shall be intended to regulate the sale, possession, and use of tobacco, tobacco products, 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, and tobacco related devices, and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to smoke as stated in Minn. Stat. §144.391.

**§111.02 Definitions and Interpretations.** Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The masculine shall include the feminine and neuter, and vice-versa. The term "shall" mean mandatory and the term "may" means permissive. The following terms shall have the definitions given to them:

Tobacco or Tobacco Products. "Tobacco" or "Tobacco products" shall mean 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 U.S. 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. "Tobacco-related devices" shall mean any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. TOBACCO-RELATED DEVICE includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. TOBACCO-RELATED DEVICES may or may not contain tobacco.

Self-Service Merchandising. "Self-Service Merchandising" shall mean open displays of tobacco, tobacco products, or tobacco-related devices in any manner where any person shall have access to the tobacco, tobacco products, or tobacco-related devices without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, or tobacco-related device between the customer and the licensee or employee. Self-service merchandising shall not include vending machines.

Vending Machine. "Vending Machine" shall mean any mechanical, electric or electronic, or other type of device that 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.

Individually packaged. "Individually packaged" shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include, but not be limited to, single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this subdivision shall not be considered individually packaged.

Licensed Products. "Licensed Products" is the term that collectively refers to tobacco, tobacco products, tobacco-related device, or electronic delivery device.

Loosies. "Loosies" shall mean the common term used to refer to a single or individually packaged cigars or cigarettes, or any other licensed product that has been removed from its intended retail packaging and offered for sale. LOOSIES does not include individual cigars with a retail price, after any discounts are applied and before any sales taxes are imposed, of at least \$4.00 per cigar.

Minor. "Minor" shall mean any natural person who has not yet reached the age of twenty-one (21) years.

Retail Establishment. "Retail Establishment" shall mean any place of business where tobacco, tobacco products, or tobacco-related devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, tobacco products shops, convenience stores, gasoline service stations, bars, and restaurants.

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

Sale. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Compliance Checks. "Compliance Checks" shall mean the system the City uses to investigate and ensure that those authorized to sell tobacco, tobacco products, and tobacco-related devices are following and complying with the requirements of this ordinance. COMPLIANCE CHECKS shall involve the use of persons under the age of 21 as authorized by this ordinance. COMPLIANCE CHECKS shall also mean the use of persons under the age of 21 who attempt to purchase tobacco, tobacco products, or tobacco-related devices for educational, research, and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws and regulations relating to tobacco, tobacco products, and tobacco-related devices.

Child Resistant Packaging. "CHILD-RESISTANT PACKAGING" means 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.

Cigar. "CIGAR" means any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

Electronic Delivery Device. "ELECTRONIC DELIVERY DEVICE" means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, 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 U.S. Food and Drug Administration for sale as a tobacco-cessation product, as a tobacco-cessation product, or for other medical purposes, and is marketed and sold for such an approved purpose.

**§111.03. License Required.** No person shall sell or offer to sell any tobacco, tobacco products, or tobacco-related device without first having obtained a license to do so from the City.

**§111.04 Licensing Process.**

- (A) **Application.** An application for a license to sell tobacco, tobacco products, or tobacco-related devices 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 clerks' department shall forward the application to the Stacy City Council for action at its next regularly scheduled meeting. If the clerk's department determines that an application is incomplete, the clerk shall return the application to the applicant with notice of the information necessary to make the application complete. If the City Council approves the application a license shall be issued by the clerks' department, after payment in full of the license fee.
- (B) **Action.** The City Council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council approves the license, the clerks' department 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 decision.
- (C) **License Fee; Term; Date.** The fee for a license will be set annually during the City Fee Schedule review. This fee shall be used to investigate the applicant's application, and to fund compliance checks. If the city issues or renews a license based upon misrepresentations made in the application, the city may revoke the license upon discovery of the misrepresentation. All licenses issued under this ordinance shall be valid until April 30 after issue and shall be renewable for successive one-year periods to run from May 1 to April 30.
- (D) **Revocation or Suspension.** Any license issued under this ordinance may be revoked or suspended as provided in section 111.13 Violations and Penalties.
- (E) **Transfers.** All licenses issued under this ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- (F) **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 under this

ordinance.

**(G) Vending Machine Sales Prohibited.** No person shall sell tobacco products, electronic delivery devices, or nicotine or lobelia delivery products from vending machines. This subdivision does not apply to vending machines in facilities that cannot be entered at any time by persons younger than 21 years of age.

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

**(J) 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 thirty days but no more than sixty days before the expiration of the current license.

**(K) Issuance as a Privilege and Not a Right.** The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.

**(L) Pharmacies Ineligible for Licensure.** No existing license will be eligible for renewal to any pharmacy, including any retail establishment that operates or contains an on-site pharmacy, and no pharmacy or retail establishment that operates an on-site pharmacy will be granted a new license.

**(M) Smoking Prohibited.** Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance.

**(N) Samples Prohibited.** No person shall distribute samples of any licensed product free of charge or at nominal cost.

**(O) Training.** Licensees must ensure that all employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the city at the time of renewal, or whenever requested to do so during the license term.

**§111.05 Fees.** No license shall be issued under this ordinance until the appropriate license fee

shall be paid in full. The fee for a license under this ordinance shall be established in the city's fee schedule. This fee shall not be prorated for initial licenses granted after May 1 and prior to April 30.

**§111.06 Basis for Denial of License.** The following shall be grounds for denying the issuance or renewal of a license, include, but aren't limited to the following:

- (A) The applicant is under the age of 21 years.
- (B) 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.
- (C) The applicant has had a license to sell tobacco, tobacco products, or tobacco-related devices revoked within the preceding 24 months of the date of application.
- (D) The applicant fails to provide any information required on the application or provides false or misleading information.
- (E) The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license.
- (F) The business for which the license is requested is a moveable place of business. Only fixed location retail establishments are eligible to be licensed.

**§111.07 Prohibited Sales.** It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product, or tobacco-related device:

- (A) To any person under the age of 21 years.
  - (1) Age Verification. Licensees must verify by means of government issued photographic identification that the purchaser is at least 21 years of age.
  - (2) Signage. Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale.
- (B) By means of any type of vending machine, except as may otherwise be provided in this ordinance.
- (C) By means of self-service methods where the customer may have access to those items without having to request the item from the licensee or the licensee's employee and where there is not a physical exchange of the licensed product from the licensee or the licensee's employee to the customer. All licensed products must be stored behind the sales counter, in another area not freely accessible by customers, or in a case or other storage unit not left open and accessible to the

general public.

(D) By means of loosies as defined in §111.02 of this ordinance.

(E) Containing opium, morphine, jimsonweed, belladonna, 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.

(F) 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.

#### **§111.08 Vending Machines.**

It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by the means of a vending machine unless minors are at all times prohibited from entering the licensed establishment.

#### **§111.09 Self-Service Sales.**

(A) It shall be unlawful for a licensee under this ordinance to allow the sale of tobacco, tobacco products, or tobacco related devices by any means where by the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the items between the licensee or his or her clerk and the customer. All such items shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public.

(B) This Section shall not apply to retail stores which derive at least 90 percent of their revenue from tobacco and tobacco- related products and which cannot be entered at any time by persons younger than 21 years of age.

**§111.10 Responsibility.** All licensees under this ordinance shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, 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 section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, State or Federal law, or other applicable law or regulation.

**§111.11 Compliance Checks and Inspections.** All licensed premises shall be open to inspection by law enforcement or other authorized city officials 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 17 years but less than 21 years, to enter the licensed premise to attempt to purchase tobacco, tobacco products, or tobacco related devices. Minors used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of the unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco products, or tobacco-related devices when such items are obtained or attempted to be 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.

**§111.12 Other Illegal Acts.** Unless otherwise provided, the following acts shall be a violation of this ordinance.

- (A) It shall be a violation of this ordinance for any person to sell or otherwise provide any tobacco, tobacco product, or tobacco-related device to any minor.
- (B) It shall be a violation of this ordinance for any minor to have in his or her possession any tobacco, tobacco product, or tobacco-related device. This subdivision shall not apply to minors lawfully involved in a compliance check.
- (C) It shall be a violation of this ordinance for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, or tobacco-related device.
- (D) It shall be a violation of this ordinance for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, or tobacco-related device, and it shall be a violation of this ordinance for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, or tobacco-related device. This subdivision shall not apply to minors lawfully involved in a compliance check.
- (E) 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.

**§111.13 Violations and Penalties.**

- (A) Notice. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation and how and where a hearing may be requested, including a contact address and phone number.



(B) Hearings.

- (1) 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 10 business days of the issuance of the citation and delivered to the city clerks' department. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the persons' right to a hearing.
- (2) The clerks' department will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.
- (3) Hearing Officer. The City Council will designate a hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.
- (4) Decision. A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will 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, subject to an appeal as described in (B)(6) of this section.
- (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 must be paid by the person requesting the hearing.
- (6) Appeals. Appeals of any decision made by the hearing officer must be filed in Chisago County District Court within 10 business days of the date of the decision.
- (7) Misdemeanor Prosecution. Nothing in this Section shall prohibit the city from pursuing misdemeanor prosecution for any alleged violation of this ordinance. If the county elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.
- (8) Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

**§111.14 Administrative Penalties.**

(A) Licensees. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, will be subject to an administrative penalty as follows:

- (1) First Violation. The City Council may impose an administrative fine not to exceed \$250 and/or license suspension for a period not to exceed 10 days.
- (2) Second Violation within a 24 month period. The City Council may impose an administrative fine not to exceed \$500 and/or license suspension for a period not to exceed 20 days.
- (3) Third Violation within a 24 month period. The City Council may impose an administrative fine not to exceed \$750 and/or a license suspension for a period not to

exceed 30 days.

(4) Fourth Violation within a 24 month period. The City Council may impose an administrative fine not to exceed \$1,000 and/or a 1 year license suspension and/or revocation.

(B) Other Individuals. Any person who sells any tobacco product to someone under 21 is subject to an administrative penalty; and any minor who attempts to purchase a tobacco product is subject to an administrative penalty. The City Council may impose administrative penalties as follows:

- 1) First Violation. The City Council may impose a civil fine not to exceed \$50.
- 2) Second Violation within 24 months. The City Council may impose a civil fine not to exceed \$100.
- 3) Third Violation within 36 months. The City Council may impose a civil fine not to exceed \$1,000.

(C) Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco related devices, shall be dealt with in the juvenile court system, which may include the juvenile diversion program.

(D) Misdemeanor. Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance by a person 21 years of age or older.

**§111.15 Exceptions and Defenses.** Nothing in this ordinance shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. 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.

**111.16 Severability and Savings Clause.** If any section or portion of this ordinance shall be found unconstitutional or otherwise invalid, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this ordinance.

**SECTION 2. EFFECTIVE DATE.** This ordinance becomes effective on the date of its publication, or upon 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.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024, by the City Council of Stacy, Minnesota.

\_\_\_\_\_  
Mark Utecht, Mayor

ATTEST:

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Tanya Smolke, City Clerk

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