

**Chapter 175
Ordinance #316-ORD
CIGARETTES/TOBACCO PRODUCTS**

AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF CHISAGO CITY BY REPLACING CHAPTER 175, CIGARETTES/TOBACCO PRODUCTS, WITH A NEW CHAPTER 175, CIGARETTES/TOBACCO PRODUCTS, PROVIDING FOR THE REGULATION OF THE SALE, POSSESSION AND USE OF TOBACCO, TOBACCO PRODUCTS AND TOBACCO RELATED DEVICES WITHIN THE CITY, AND TO PROHIBIT THE ILLEGAL SALE, POSSESSION AND USE OF SUCH ITEMS TO AND BY UNDERAGED PERSONS.

PURPOSE

BECAUSE THE CITY RECOGNIZES THAT MANY PERSONS UNDER THE AGE OF TWENTY ONE PURCHASE OR OTHERWISE OBTAIN, POSSESS AND USE TOBACCO, TOBACCO PRODUCTS AND TOBACCO RELATED DEVICES, AND BECAUSE STUDIES HAVE SHOWN THAT MOST SMOKERS BEGIN SMOKING BEFORE THEY HAVE REACHED THE AGE OF TWENTY ONE AND THAT THOSE PERSONS WHO REACH THE AGE OF WITHOUT HAVING STARTED SMOKING ARE SIGNIFICANTLY LESS LIKELY TO BEGIN SMOKING; AND BECAUSE SMOKING HAS BEEN SHOWN TO BE THE CAUSE OF SEVERAL SERIOUS HEALTH PROBLEMS WHICH SUBSEQUENTLY PLACE A FINANCIAL BURDEN ON ALL LEVELS OF GOVERNMENT; THE CITY COUNCIL ADOPTS THE FOLLOWING ORDINANCE 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 UNDERAGED PERSONS 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 PROVIDED IN MN STATUTE 144.391.

The City Council of the City of Chisago City hereby ordains as follows:

Chapter 175 of the City Code of the City of Chisago City is hereby deleted in its entirety and the following new Chapter 175 is adopted in its place.

175.01 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” The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.

A. Tobacco or Tobacco Products. “Tobacco” or Tobacco products” shall mean any substance or item containing tobacco leaf, including, but not limited to: cigarettes’ cigars’ pipe tobacco; snuff; fine cut or other chewing tobacco; cheroot; stogies; perique, granulated, plug cut, crimp but, ready-rubbed, and other smoking tobacco; snuff flowers; cavendish; shorts, plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco leaf prepared in such manner as to be suitable for chewing, sniffing or smoking.

B. Tobacco Related Devices. “Tobacco related devices” shall mean any tobacco product as well as a pipe, rolling papers, other device used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.

C. Self-Service Merchandising. “Self-Service Merchandising” shall mean open displays of tobacco, tobacco products, tobacco related devices, or electronic delivery devices in any way where any person shall have access to the product without the assistance or intervention an employee of the premise maintaining the self-service merchandising. Self-service merchandising shall not include vending machines.

D. Vending Machine. “Vending Machine” shall mean 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, tobacco related device, or electronic delivery devices.

E. 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 cigars, 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 paragraph shall not be considered individually packaged.

F. Loosies. “Loosies” shall mean the common terms used to refer to a single or individually packaged cigarette.

G. Underaged person. “Underaged person” shall mean any natural person who has not yet reached the age of twenty-one (21) years.

H. Retail Establishment. “Retail Establishment” shall mean any place of business where tobacco, tobacco products, tobacco related devices, electronic delivery devices are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, restaurants and similar establishments.

I. Sale. A “Sale” shall mean any transfer of goods for money, trade, barter or other consideration.

J. 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 Chapter. “Compliance Checks” shall also mean a system approved by the City Council used by an educational or research institution to study the sale of tobacco in retail establishments.

K. Applicant. An applicant is any person, entity, or organization that applies for a license to sell tobacco, tobacco products, or electronic delivery devices. If the applicant is a business organization such as a corporation, limited liability company, or partnership, an “applicant” includes all persons who are officers, partners, shareholders, and/or partners of said organization.

L. Electronic Delivery Devices. “Electronic Delivery Devices” shall mean any product containing or delivering nicotine, lobelia or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. ELECTRONIC DELIVERY DEVICE includes any component part of such a product, whether or not sold separately.

175.02 LICENSE. 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.

A. Application. An application for a license to sell tobacco, tobacco products, tobacco related devices, or electronic delivery devices shall be made in writing on a form provided by the city and executed by the proposed licensee. The application shall contain the full name of the applicant, the applicant(s)’ residential and business address(s), date(s) of birth and telephone number(s), the name(s) of the business for which the license is sought and any additional information the city deems necessary.

If the applicant is a corporation, limited liability company, association, or partnership, the application shall contain the names, residential addresses, date(s) of birth, and telephone numbers of all officers, directors, and partners of the organization. Upon receipt of a completed application, the city clerk shall forward the application to the city council for action at its next regularly scheduled council meeting. If the clerk shall determine that an application is incomplete, the application shall be returned to the applicant with notice of the information necessary to make the application complete.

B. Action. The 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 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. Term. All licenses issued under this Chapter shall be valid for the current calendar year in which the license is issued.

D. Revocation or Suspension. Any license issued under this Chapter may be revoked or suspended as provided in the Violations and Penalties Section of this Chapter.

E. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premises.

G. Renewals. The renewal of a license issued under this Chapter shall be processed in the same manner as the original application. The request for a renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license.

175.03 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, tobacco related devices, or electronic delivery devices 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, tobacco related devices, or electronic delivery devices at a moveable place of business.

C. No license shall be issued for the sale of tobacco, tobacco products, tobacco related devices, or electronic delivery devices at more than one place of business.

D. No person shall sell or dispense any tobacco, tobacco products, tobacco related devices, or electronic delivery devices through the use of a vending machine except as provided in Subd. 7.

E. No individually packaged tobacco product shall be offered for sale by means of self-service merchandising.

F. Every licensee shall be responsible for the conduct of its employees while on the licensed premises and any sale or other disposition of tobacco products in violation of this ordinance by an employee to a person under twenty-one (21) years of age shall be considered an act of the licensee for purposes of imposing an administrative fine, license suspension or revocation. Notwithstanding this provision, an employee of the licensee may also be fined as an individual for selling or disposing tobacco products to a person under twenty-one (21) years of age).

175.04 FEES. No license shall be issued under this Chapter until the appropriate license fee shall be paid in full. Fees shall be set from time to time by the City Council by resolution and may be amended from time to time. The annual license shall be effective for up to one year by approval of the City Council, expiring on December 31st of each year, upon which time it will be available for renewal. Application for renewal of said license shall be submitted on an annual basis prior to the expiration of said license.

175.05 BASIS FOR DENIAL OF LICENSE. The following shall be grounds for denying the issuance or renewal of a license under this Chapter:

- 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 tobacco, tobacco products, tobacco related devices, or electronic delivery devices.
- C. The applicant has had a license to sell tobacco, tobacco products, tobacco related devices, or electronic delivery devices revoked within the preceding twelve months of the date of the 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. 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 licensee was ineligible for the license under this Chapter.

175.06 PROHIBITED SALES AND TRANSACTIONS. It shall be a violation of this Chapter for any person to sell, offer to sell, give away, or deliver any tobacco product, tobacco related device, or electronic delivery devices:

- A. To any person under the age of twenty-one (21) years. Retailers must verify that purchasers are twenty-one (21) or older by requiring proof of age of the purchaser by checking: (1) a valid driver's license or identification card issued by Minnesota, another state, or a province of Canada; (2) a valid military identification card issued by the United States Department of Defense; of (3) in the case of a foreign national, from a nation other than Canada, by a valid passport. The retailer or his employee must so verify the age of any person he believes to be twenty-six (26) years of age or younger unless the exact age of such person is known to the retailer or his employee as a result of a previous verification of the age of such person as required hereunder.
- B. By means of any type of vending machine.
- C. By means of self-service merchandising as defined in 175.01 (d) of this Chapter 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 tobacco, tobacco product, tobacco related device, or electronic delivery devices.
- D. By means of loosies as defined in 175.01 (f) of this Chapter of 'kiddie packs'.
- 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. By distributing free samples of tobacco or tobacco products to any person.

G. By any other means, or to any other person prohibited by Federal, State or other local law, ordinance, provision or other regulation.

175.07 VENDING MACHINES. It shall be unlawful for any person licensed under this Chapter to allow the sale of tobacco, tobacco products, tobacco related devices, or electronic delivery devices by means of a vending machine.

175.08 TOBACCO DISPLAY AND STORAGE. All tobacco products and tobacco related devices as defined in part 175.01(a) and (b) 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.

175.09 LICENSEE RESPONSIBILITY. All licensees under this Chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco related devices, or electronic delivery 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 regulations.

175.10 COMPLIANCE CHECKS AND INSPECTIONS. The City Council may authorize or delegate to the city police department, other city officials, and educational or research organizations to conduct compliance checks and inspections. All licensed premises shall be open to inspection during regular business hours. Such compliance checks shall be made during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging underaged persons to enter the licensed premises to attempt to purchase tobacco, tobacco products or tobacco related devices. Underaged persons used for the purpose of compliance checks shall be not less than fifteen (15) nor more than seventeen (20) years of age and shall not be guilty of unlawful possession of tobacco, tobacco products or related devices when such items are obtained as part of the compliance check. No underaged person used in compliance checks shall attempt to use false identification misrepresenting the underaged person's age and all underaged persons lawfully engaged in a compliance check shall answer all questions about the underaged persons age asked by the licensee or his or her employee and shall produce any identification for which the underaged person is asked.

175.11 OTHER ILLEGAL ACTS. Unless otherwise provided, the following acts shall be a violation of this Chapter.

A. Illegal Possession. It shall be a violation of the Chapter for any underaged person to have in the underaged person's possession any tobacco, tobacco product or tobacco related device. This subdivision shall not apply to underaged persons lawfully involved in a compliance check on behalf of the city or an educational research organization or who have only temporary possession during a legal sales transaction.

B. Illegal Use. It shall be a violation of this Chapter for any underaged person to smoke, chew, sniff or otherwise use any tobacco, tobacco product or tobacco related device.

C. Illegal Procurement. It shall be a violation of this Chapter for any underaged person 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 underaged person. It shall be a violation of this Chapter for any person to sell or otherwise provide any tobacco, tobacco product or tobacco related device to any underaged person or to coerce or attempt to coerce a underaged person to illegal purchase or otherwise obtain or use any tobacco, tobacco product or tobacco related device. This subdivision shall not apply to underaged persons lawfully involved in a compliance check on behalf of the city.

D. Use of False Identification. It shall be a violation of this Chapter for any underaged person to attempt to disguise the underaged person'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.

E. Redemption of Coupons. It shall be a violation of this Chapter for any retail establishment to redeem coupons for any underaged person for free or discounted tobacco products. It shall be a violation of this Chapter for any retail establishment to redeem coupons for any person by mail-order.

F. Tobacco Advertising. After August 28, 1997, in compliance with the Federal rules as adopted by the Federal Drug Administration (FDA) it shall be a violation of this Chapter for any person to permit or place outdoor tobacco advertisements or billboards within 1000 feet of elementary and secondary schools and public playgrounds or to permit or place outdoor tobacco advertisements or billboards beyond 1000 feet of elementary and secondary schools and public playgrounds unless said advertisement or billboard consists of black text on a white background. After August 28, 1997, it shall be a violation of this Chapter for any retail establishment that permits persons under the age of twenty one (21) to be present in or enter its premises at any time to permit or place any tobacco advertisement inside its establishment unless said advertisement consists of black text on a white background.

G. Sale and Distribution of Non-tobacco Items and Services. It shall be a violation of this Chapter for any person to disseminate or give away and non-tobacco items or service that identifies it with tobacco products, including, but not limited to, the following items: tee shirts, caps and sporting goods.

H. Mandatory Compliance With all Federal and State Statutes, Rules and Regulations. It shall be a violation of this Chapter for any person to violate any federal or state statute or regulations regarding the sale of tobacco products.

175.12 ADMINISTRATIVE FINES. Any violation of the restrictions attached to a tobacco product license shall be cause for a fine, suspension or revocation of such license or any combination thereof Separate fines may be assessed against both the licensee and an employee of the licensee for each violation. Without limiting the possible suspension or revocation of licenses under this Chapter, if the violator is both a licensee and an employee/clerk, he/she shall be fined as a licensee. The first violation for a licensee shall result in an administrative fine of \$100.00 payable to the city. The first violation for an employee shall result in an administrative fine of

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\$50.00 payable to the city. Failure of the licensee or employee to pay the fine for a first violation within thirty (30) days from the date of invoice shall result in a two (2) day license suspension. A second violation for a licensee within twelve months shall result in a fine of \$250.00 payable to the city and five (5) day license suspension. A second violation for an employee shall result in a fine of \$100.00 and a five (5) day license suspension. A third violation by either a licensee or an employee within any twelve (12) month period or any violation or sale during a license suspension, shall result in a license revocation and prosecution as a misdemeanor.

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.

The accused violator whether a licensee or employee, may at any time withdraw from the administrative penalty process and elect to have the case heard in court under a misdemeanor prosecution with the applicable penalty for such misdemeanor violation to be determined by the court and not governed by this Chapter, except for the suspension or revocation of licenses allowed hereunder. Upon discovery of a suspected violation, the violator may be issued a citation by the city police and given notice of the violator's right to be heard on the accusations. Said notice shall set forth the nature, date and time of violation, the name of the officer issuing the notice and the amount of the scheduled penalty.

175.13 ADMINISTRATIVE REVOCATION HEARING. Any person contesting an administrative offense or penalty pursuant to this Chapter may request a hearing before the Hearing Examiner. Such request shall be filed in writing at the City Clerk's office within twenty (20) days of the offense. The City Clerk shall notify the hearing Examiner, who will notify the licensee or employee of the date, time, place and nature of the hearing. The hearing shall be conducted no more than twenty (20) days after the Hearing Examiner receives notice of the request, unless a later date is mutually agreed to by the Hearing Examiner, the licensee and/or the licensee's employee, and the City. Within ten (10) days after such hearing, the Hearing Examiner shall affirm, repeal, or modify the charge against the licensee and/or employee. Any person aggrieved by the decision of the Hearing Examiner may appeal the decision to the City Council by filing notice of such appeal with the City Clerk within twenty (20) days of receiving notice of the Hearing Examiner's decision. At its next regular scheduled meeting following the filing of the notice of appeal, the Council shall review the decision and findings of fact of the Hearing Examiner and shall affirm/repeal modify the decision. The position of Hearing Examiner is hereby created and shall be an individual trained in the law but does not have to be currently licensed to practice law in the State of Minnesota. The City Administrator may, at his discretion, and with the approval of the City Council, contract with third parties for the furnishing of all services of the Hearing Examiner as contained in this Chapter and set the rate of compensation therefore.

175.14 PENALTY FOR VIOLATION. Any person, occupant, property owner or owners, firm, partnership or corporation found to be in violation of this Chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished according to law. Each day that a violation is permitted to exist constitutes a separate offense.

175.15 EXCEPTIONS AND DEFENSES. Nothing in this Chapter shall prevent the providing of tobacco, tobacco products or tobacco related device to a underaged person 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.

175.16 SEVERABILITY AND SAVINGS CLAUSE. If any subdivision or portion of this Chapter shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or affect the validity and enforceability of any other subdivision or provision of this Chapter.

175.17 EFFECTIVE DATE. The provision of Section 175.06(b) through 175.06(g), Section 175.07, Section 175.08 and Sections 175.11(e) through 175.11(g) shall be effective on August 28, 1997. All other provisions of this ordinance take effect upon its passage and publication as provided by Minnesota Statutes.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CHISAGO CITY, MINNESOTA
THIS 8th DAY OF APRIL 1997.**

ATTEST:

Amy Oehlers, Deputy Clerk

Charles Gramling, Mayor

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CHISAGO CITY, MINNESOTA
THIS 8th DAY OF DECEMBER 2020.**

ATTEST:

John Pechman, City Administrator

Bob Gustafson, Mayor