

ORDINANCE NO. 2014-17

AN ORDINANCE AMENDING CHAPTERS 5, 12 AND 14 AS THEY RELATE TO THE USE OF ELECTRONIC DELIVERY DEVICES FOR NICOTINE AND TOBACCO PRODUCT SALES.

The City Council of the City of Bloomington hereby ordains:

Section 1. That Chapter 5 of the City Code is hereby amended by deleting those words that are in ~~strike through~~ font contained in brackets [] and adding those words that are underlined, to read as follows:

CHAPTER 5

PUBLIC FACILITIES AND PROPERTY

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ARTICLE III. PARKS AND PLAYGROUNDS

SEC. 5.20. DEFINITIONS.

The following word or term when used in this Article shall have the following meanings, unless the context clearly indicates otherwise:

Electronic Delivery Device – 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 devices include any component part of such a product whether or not sold separately. An electronic delivery device does not include any product 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.

Parks - A park, conservation area, playground, beach, recreation center or other area in the City owned, leased or used, wholly or in part, by the City for such purposes or which is designated by the City Council as a park.

Tobacco product - Cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimpl cut, ready, rugged and other smoking tobacco; snuff, snuff flower, cavendish, plug and twist tobacco; fine cut and other chewing tobaccos; shorts, refuse scripts, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such a manner as to be suitable for chewing, sniffing, or smoking in a pipe; rolling paper; or other tobacco-related devices.

Tobacco use - Smoking, chewing, snuffing or otherwise inhaling or ingesting any tobacco product.

SEC. 5.21. REGULATIONS.

The following regulations shall apply to all City parks:

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(7) Beaches and public waters –

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(E) No person shall use tobacco products ~~including~~ or electronic delivery devices at any of the City's designated beach areas, or other designated pool and play areas at City-owned swimming pools and aquatic facilities. These areas shall be posted by appropriate signs and markers as directed by the Park Director.

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(21) No person shall use tobacco products ~~including~~ or electronic delivery devices on City-owned athletic play fields, including their spectator areas, while the fields are being used for organized youth athletic events or organized adult recreational events. These areas shall be posted by appropriate signs and markers as directed by the Park Director.

(22) No person shall use tobacco products ~~including or electronic delivery devices~~ on City-owned property during City sponsored cultural programs such as Arts in the Park, Summer Fete and River Rendezvous. The Park Director may permit the use of tobacco products for special events such as historical programs and theatrical productions if such use is an integral part of the event. These areas shall be posted by appropriate signs and markers as directed by the Park Director.

(23) **City-Owned Parks, Open Spaces and Recreation Areas -**

- (A) No person shall use tobacco products ~~including or electronic delivery devices~~ on City-owned golf courses and on the exterior premises of the Bloomington Ice Garden. These areas shall be posted by appropriate signs and markers as directed by the Park Director.
- (B) No person shall use tobacco products ~~including or electronic delivery devices~~ on City-owned parks, conservation areas and open spaces, including trails used for walking and biking or on property for which the City retains a perpetual easement for public use as a park. These areas shall be posted by appropriate signs and markers as directed by the Park Director.
- (C) No person shall use tobacco products ~~including or electronic delivery devices~~ at City-owned picnic shelters during private rentals of these facilities. These areas shall be posted by appropriate signs and markers as directed by the Park Director.
- (D) This Section does not apply to the use of tobacco products in motor vehicles parked on the premises of City-owned parks, conservation areas, open spaces and recreational facilities.

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Section 2. That Chapter 12 of the City Code is hereby amended by deleting those words that are in ~~strike through~~ font contained in brackets [] and adding those words that are underlined, to read as follows:

CHAPTER 12

PUBLIC PEACE AND SAFETY

ARTICLE I. GENERAL PROVISIONS

Division O. Smoking Prohibited

SEC. 12.79. ~~[FINDINGS OF FACT AND]~~ PURPOSE.

Tobacco smoke is a leading cause of disease in nonsmokers and is a major source of indoor air pollution. Secondhand smoke causes heart disease, lung cancer, respiratory infections, decreased respiratory function, reproductive problems and other health problems. There is no safe level of exposure to tobacco smoke. The use of e-cigarettes is similar to the smoking of cigarettes. The long term health effects of e-cigarettes to direct users and to those exposed to the vapors are unknown and the safety of their use has not been scientifically demonstrated. The origin and quality of e-cigarette fluid ingredients are generally not known and may contain a number of constituents. Some of these constituents are potentially harmful and have been documented to include irritants, genotoxins and animal carcinogens.

~~[The City Council finds that:~~

- ~~(a) Tobacco smoke is a leading cause of disease in nonsmokers and a major source of indoor air pollution. Secondhand smoke causes heart disease, lung cancer, respiratory infections, decreased respiratory function, reproductive problems and other health problems. Secondhand smoke kills an estimated 35,000 to 62,000 Americans each year from heart disease. Secondhand smoke also causes an estimated 3,000 lung cancer deaths in America each year.~~
- ~~(b) These adverse health effects are well documented and numerous medical and scientific authorities, including the American Medical Association, the Surgeon General, the National Institute on Occupational Safety and Health, the National Cancer Institute, the Environmental Protection Agency, the National Academy of Sciences, the National Toxicology Program and the World Health Organization have recognized the deadly effects of exposure to secondhand smoke.~~

- ~~(c) There is no safe level of exposure to tobacco smoke. Neither the separation of smokers and nonsmokers, nor the introduction of new ventilation systems, can eliminate the health hazards caused by secondhand smoke.~~
- ~~(d) Employees in smoky workplaces are at special risk. One study has estimated that working in a smoky setting for eight hours is equivalent to smoking 16 cigarettes. Also at special risk are children, elderly people, and those with cardiovascular disease or impaired respiratory function, including people with asthma and those with obstructive airway disease.~~
- ~~(e) Objective evidence does not bear out the fear that elimination of public smoking will harm a community's economy or result in a net loss of jobs in restaurants and bars. On the contrary, many independent economic studies have shown that the elimination of smoking has no material economic impact on a community. These studies are drawn from the experience of hundreds of communities that have successfully eliminated smoking in workplaces and public places. The states of California, Connecticut, Delaware, Maine, Massachusetts, and New York have adopted laws ending all smoking in bars, restaurants, and other public places, as have the nations of Ireland, New Zealand and Norway.~~
- ~~(f) By reducing the exposure of young people to adult smoking and unhealthy role modeling, elimination of smoking in public places furthers Minnesota's goal of reducing youth smoking.~~
- ~~(g) There is no legal or constitutional "right to smoke." Business owners have no legal or constitutional right to expose their employees and customers to toxic chemicals, whether in tobacco smoke or otherwise. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.]~~

Therefore, the City Council declares that the purpose of this ordinance is to:

- (1) Protect the public health, safety and welfare by better insuring the ability of citizens to breathe safe and uncontaminated air;
- (2) Affirm that the right to breathe has priority over the desire to smoke; ~~and~~
- (3) Protect vulnerable populations including employees, children, the elderly and those with chronic health conditions[-]; and
- (4) Restrict the use of e-cigarettes and other electronic delivery devices in the same manner as smoking.

SEC. 12.80. DEFINITIONS.

The following words and terms, when used in this Division, shall have the following meanings unless the context clearly indicates otherwise:

* * *

Smoking – the inhaling, exhaling or combustion of any cigarette, cigar, pipe or any other lighted smoking equipment, including inhaling or exhaling vapor from any electronic delivery device. Smoking includes carrying a lighted cigarette, cigar, pipe or any other lighted smoking equipment.

Electronic Delivery Device – 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 devices include any component part of such a product whether or not sold separately. An electronic delivery device does not include any product 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.

SEC. 12.81. PROHIBITIONS.

- (a) Except as provided in subsection (c), no person shall smoke in public places and places of work, including outdoor and bar areas of restaurants. The proprietor of an outdoor dining area or outdoor bar area of a restaurant may designate for smoking up to fifty percent (50%) of the outdoor seating capacity of the restaurant provided this location is appropriately signed as a smoking area. Tobacco sampling within a tobacco products shop as defined by Minnesota Statute 144.4167, Subd. 4 is specifically prohibited in Bloomington. Sampling of electronic delivery devices including products used in electronic delivery devices is also prohibited.
- (b) To ensure that tobacco smoke or vapor electronic delivery devices does not enter public places and places of work and that persons entering such places are not exposed involuntarily to ~~[tobacco]~~ smoke or vapor, smoking and the use of electronic delivery devices are~~[is]~~ prohibited within twenty-five (25) feet of entrances, exits, open windows and ventilation intakes of public

places and places of work. This prohibition does not apply to entrances and exits that are used solely in the event of an emergency and are appropriately signed for that purpose.

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SEC. 12.82. RESPONSIBILITIES OF PROPRIETORS.

The proprietor or other person in charge of a public place or place of work where smoking is prohibited shall:

- (a) Post "nonsmoking" signs that comply with the Minnesota Clean Indoor Air Act Rules, Minnesota Rules Part 4620.0500;
- (b) Ensure that ashtrays, lighters and matchbooks are not provided in areas where smoking is prohibited. Receptacles for the deposit of cigarettes, cigars and other smoking equipment that have been extinguished may be located outdoors within twenty-five (25) feet of entrances to public places and places of work, provided that such receptacles are also located beyond twenty-five (25) feet from entrances, exits, open windows and ventilation intakes of public places and places of work; and
- (c) Ask any person who smokes or uses an electronic delivery device in an area where smoking is prohibited to refrain from smoking and, if the person does not refrain from smoking after being asked to do so, ask the person to leave and use any other means which may be appropriate to obtain compliance.

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SEC. 12.88. EFFECTIVE DATE.

This Division shall become effective upon publication.

SEC. 12.89. ~~[COMPLIANCE DATE.]RESERVED.~~

~~[Those public places or places of work issued a license by the City for the on-sale of 3.2 percent malt liquor, intoxicating liquor or wine or holding a premises permit for lawful gambling or a bingo hall license, shall comply with this Division by March 31, 2005. All other public places or places of work shall comply with this Division by September 1, 2004.]~~

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Section 3. That Chapter 14 of the City Code is hereby amended by deleting those words that are in ~~strikethrough~~ font contained in brackets [] and adding those words that are underlined, to read as follows:

CHAPTER 14

LICENSES AND PERMITS

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ARTICLE IV. BUSINESS LICENSES AND REGULATIONS

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Division W. Sale of Tobacco-Related Products

SEC. 14.435. PURPOSE.

The City Council finds that substantial scientific evidence exists that the use of tobacco-related products causes cancer, heart disease, and various other medical disorders. It is the further finding of the City Council that the present legislative scheme of prohibiting sales of tobacco-related products to persons under the age of eighteen (18) has proven ineffective in preventing such persons from using tobacco-related products. The City Council has concluded that minors have ready access to self-service merchandising, including vending machines, which sell tobacco-related products and that the prohibition

of the sale or dispensing of tobacco-related products through vending machines and the regulation of sales through self-service merchandising will thereby promote the health, safety and welfare of the residents of the City, particularly those residents under eighteen (18) years of age. The City Council also finds that marketing and public health research shows how flavors such as fruit, candy and sweet tasting products hold an intense appeal to minors. Further, the City Council finds that tobacco manufacturer spending on advertising, marketing and price is directed at youth. Therefore the purpose of this ordinance is to reduce the appeal to minors and reduce the likelihood that minors will become tobacco users later in life.

SEC. 14.436. DEFINITIONS.

The following words and terms when used in this Division shall have the following meanings unless the context clearly indicates otherwise:

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Cigars- any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minnesota Statutes, Section 297F.01, subdivision 3 as amended from time to time.

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SEC. 14.439. PROHIBITED SALES.

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- (c) It shall be a violation of this chapter of any person to sell, offer to sell or distribute cigars in an original package containing fewer than five cigars. This restriction shall not apply to any sales, offer to sell, or distribution of an original package consisting of one, two, three, four, or five cigars, provided that each original package has a retail sales price of at least \$2.60 per cigar and after any price promotions or discounts are taken into account and before the imposition of sales tax, but excluding retail sales tax, and tobacco product shops only accessible to those 18 years or older.
- (1) This section shall not apply to premium cigars as defined in Minnesota Statutes 297F.01 subdivision 13a.
- (2) The minimum pricing established in this section shall be adjusted periodically for inflation at least every three years.
- (d) **Effective Date.** The effective date of the self-service merchandising requirement of this Section is effective upon passage.

Passed and adopted this 17th day of November, 2014.



Mayor

ATTEST:



Secretary to the Council

APPROVED:



City Attorney