



Legislation Text

File #: Ord 21-29, **Version:** 2

Amending Chapter 324 of the Legislative Code in order to create separate licenses for Tobacco Products Shops and Tobacco Shops, to restrict pricing discounts or coupons, and to create a distance requirement between establishments licensed to sell tobacco.

THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

SECTION 1

WHEREAS, the Saint Paul Zoning Code has a separate use identified as a “Tobacco Products Shop”, St. Paul Leg. Code § 65.535; and

WHEREAS, Saint Paul Legislative Code, Chapter 324 regulates tobacco licenses in general, but does not distinguish between or define a Tobacco Products Shop and a Tobacco Shop; and

WHEREAS, the Council wishes to distinguish between a retail store that that is accessible to minors and can sell limited products (Tobacco Shop) and a retail store that that can only be entered by persons who are age 21 or over that can sell additional types of products (Tobacco Products Shop); and

WHEREAS, a clearer definition will allow the City to more easily enforce existing regulations; and

WHEREAS, Minnesota Statute § 609.685 regulates the sale of tobacco to persons under 21 imposing administrative, petty misdemeanor, and misdemeanor penalties and it is not necessary for a separate ordinance penalty; and

WHEREAS, price is the single most important factor in reducing smoking; and

WHEREAS, tobacco is a leading cause of premature, preventable death in Minnesota and high prices are the single most effective way of preventing youth from starting to smoke and encouraging adults to quit; and

WHEREAS, cigarettes, e-cigarettes, cigars and smokeless tobacco, contain nicotine, which is highly addictive; and

WHEREAS, Minnesota's progress in reducing smoking among youth and adults is undermined by price discounts and price promotions and in 2018 the rate of tobacco used among youth increased for the first time in 17 years; and

WHEREAS, tobacco companies spent \$9.1 billion in 2018 to lower the price of tobacco products by using strategies like coupons and retail promotions; and they send coupons in birthday cards, pass them out at events and bars, promote them inside stores, and send emails and text alerts through their smartphone apps; and

WHEREAS, Minnesota adult smokers who redeemed cigarette coupons were less likely to quit smoking than those who didn't use coupons; and Minnesota adult nonsmokers who receive tobacco coupons are twice as likely to become smokers; and

WHEREAS, young smokers, women, and African Americans are more likely to use tobacco coupons or promotions; and

WHEREAS, Saint Paul already has a minimum price of \$2.60 per cigar; and

WHEREAS, Youth who lived in neighborhoods with more tobacco outlets were more likely to try smoking and studies recommend tobacco prevention policies to decrease the number of tobacco outlets; and

WHEREAS, 41% of US teens (ages 13-16) lived within ½ mile of a tobacco outlet, and 44.4% attended school within 1,000 feet of tobacco outlet; and

WHEREAS, young adults ages 18-24 who lived in neighborhoods with more tobacco outlets were more likely to try non-cigarette combustible products like cigars, and adults ages 25-34 who lived in neighborhoods with high tobacco outlet density were more likely to try cigarettes; and

WHEREAS, combining density policies with menthol sales restrictions has the greatest potential to reduce cigarette smoking in communities disproportionately impacted by the tobacco industry and the general Minnesota population; and

WHEREAS, research has also shown that density of tobacco outlets normalizes tobacco use, increases the amount of tobacco advertising and promotion that youth encounter, and that communities with higher density of tobacco outlets have higher smoking rates; now, therefore be it

RESOLVED, that the Council of the City of Saint Paul does hereby ordain:

SECTION 2

Section 324.01 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.01. License required.

- (a) No person shall sell or offer for sale at retail within the city any ~~tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery~~ licensed product or in any manner represent or hold himself or herself out as one who sells or offers for sale at retail any licensed ~~tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery~~ product or maintain a tobacco vending machine for the sale of ~~tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products without a license from the city.
- (b) A tobacco vending machine may be located in a public accommodation, provided that:
- (1) All tobacco vending machines shall be operable only by the activation of an electronic switch operated by an employee of the establishment before each sale, or by insertion of a token provided to the purchaser by an employee of the licensee;
 - (2) Any machine shall be located in the immediate vicinity, plain view and control of a responsible employee so that all ~~tobacco~~ purchases will be readily observable by that employee. The tobacco vending machine shall not be located in a coatroom, restroom, unmonitored hallway, outer waiting area or similar unmonitored areas. The tobacco vending machine shall be inaccessible to the public when the establishment is closed.
 - (3) Any tobacco vending machine shall have posted on or near it a sign with the statement, in letters at least one-half (½) inch high, "The sale of tobacco products or electronic delivery devices to persons under twenty-one is prohibited."
- (c) Any license issued pursuant to this chapter shall be issued to the person, firm or corporation that operates the principal business at that address. Each vending machine shall be required to have a separate license.
- (d) No license may be issued pursuant to this chapter for a location or place of sale if a tobacco license previously issued for that location or place of sale has been revoked for any reason other than nonpayment of license fees within the past five (5) years., ~~subject to the following exceptions:~~
- (1) ~~Notwithstanding subdivision (d), a license may be issued if the new applicant:~~

- a. ~~Currently holds another tobacco license in the city;~~
 - b. ~~Has held the license for at least five (5) years; and~~
 - c. ~~The license:~~
 - 1. ~~Has not been subject to adverse action within the past two (2) years;~~
 - 2. ~~Has been subject to no more than one (1) adverse action within the past five (5) years;~~
~~and~~
 - 3. ~~Is not the subject of any pending adverse actions.~~
- (2) ~~Notwithstanding subdivision (d), a license may be issued if the new applicant is otherwise able to demonstrate at least five (5) years of previous experience operating a tobacco retail establishment in a law abiding manner in the State of Minnesota. In considering an application made pursuant to this subsection, the factors to be considered by the council include, but are not limited to:~~
- a. ~~Any adverse or disciplinary actions against any business licenses held by the applicant in the previous five (5) years; and~~
 - b. ~~Any violations of the law related to operating a retail establishment, committed by the applicant in the previous five (5) years, regardless of whether any criminal charges have been brought in connection therewith.~~
- (3) ~~Any license granted pursuant to subpart (d)(1) or (d)(2) must be approved by the affirmative vote of no less than five (5) members of the council.~~

SECTION 3

Section 324.02 of the Saint Paul Legislative Code is hereby amended as follows:

Sec. 324.02. License for each location or vending machine.

A license shall permit the licensee to sell ~~tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products at retail at the one (1) location specified in said license, and a separate license shall be required for each location or tobacco vending machine.

SECTION 4

Section 324.03 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.03. - Definitions.

The following words and phrases, as used in this chapter, ~~shall~~ will, for the purposes of this chapter, have the meanings respectively ascribed to them in this section, except in those cases where the context clearly indicates a different meaning:

(1) *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, that is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

(2) *Cigarette* means and includes any roll for smoking, made wholly or in part of tobacco, irrespective of size and shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except whole tobacco leaf, and includes any cigarette as defined in Minn. Stat. § 297F.01, subd. 3.

(3) *Drug paraphernalia* means drug paraphernalia as defined in Saint Paul Legislative Code Section 255.01.

(23) *Electronic delivery device* means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, 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 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 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.

(3)4 *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 that is distinguishable by an ordinary consumer 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 menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, fruit or any candy, dessert, alcoholic beverage, 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 shall will constitute presumptive evidence that the product or device is a flavored product.

(5) *Licensed products* means collectively any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

(46) *Nicotine or lobelia delivery product* means any product containing or delivering nicotine or lobelia, whether natural or synthetic, intended for human consumption, or any part of such a 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 an approved purpose.

(7) Non-discounted price means the higher of the price listed for licensed products on a package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the sale price.

(8) Price reduction instrument means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, not included in the nondiscounted price, used for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.

(59) Sale means and includes any transfer, conditional or otherwise, of title or possession.

(610) Sale at retail means and includes all sales except those where the merchandise is sold for the purpose of resale by a person principally engaged in selling merchandise for resale.

(11) Snuff means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity.

(12) Snus means any smokeless tobacco product marketed and sold as snus, and sold in ready-to-use pouches or loose as a moist powder.

(713) Tobacco or tobacco product means 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, little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snus; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco. Tobacco products excludes any tobacco product that has been approved 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 being marketed and sold solely for such an approved purpose.

(14) Tobacco License means either a Tobacco Shop or a Tobacco Products Shop license.

(15) Tobacco Shop License means a license issued to a person, firm, or corporation for an establishment that:

a. May offer for sale licensed products which are accessible to the public only with the intervention of a store employee; and,

b. May allow persons who are under the age of 21 to enter the establishment; and

(16) Tobacco Products Shop License means a license issued to a person, firm, or corporation for an establishment that:

- a. Must derive at least ninety (90) percent of its revenue from the sale of licensed products;
- b. Must prohibit persons who are under the age of 21 from entering the establishment;
- c. Must be accessible only through a door opening directly to the outside; and
- d. Must be staffed by at least one individual solely dedicated to the tobacco products shop during all operating hours.

(817) Tobacco-related devices means cigarette papers, pipes for smoking, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

(18) Tobacco vending machine means a machine for vending ~~tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices~~ licensed products by the insertion of money, tokens, or other form of payment.

SECTION 5

Section 324.04 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.04. - Fee, duration, limitation on number of licenses.

(a) License fee, duration: The annual license fee for each ~~location of sale or each tobacco vending machine~~ license issued under this chapter shall will be established by ordinance as specified in section 310.09(b) of the Legislative Code. ~~The~~ Each license shall ~~will~~ will expire one (1) year from the date of issuance during each calendar year. The annual license fee shall ~~will~~ will be prorated for licenses in force less than a full year.

(b) Limitation on number of licenses and location:

(1) The total number of Tobacco Shop licenses issued ~~under this chapter by the city for the retail sale of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products~~ shall ~~will~~ will not exceed ~~two hundred forty-two (242)~~ one hundred fifty (150). ~~The total number of Tobacco Products Shop licenses issued under this chapter will not exceed twenty-five 25.~~ Establishments or locations holding ~~either Tobacco Shop or Tobacco Product Shop~~ licenses on ~~July 1, 2018, July 31, 2021,~~ or with an application of a license pending on ~~July 1, 2018, July 31, 2021,~~ that is ultimately granted shall ~~will~~ will not be affected by this limitation, but shall ~~will~~ will be entitled to have such licenses

renewed or new license granted, subject to the following conditions exceptions:

(a) The establishment or location is in compliance with all other requirements of law and there exist no grounds for adverse actions against such licenses;

(b) The previous license has not terminated or expired more than one two (12) years before the new license had been first applied for;

(c) A previous license has not been revoked by the council

(2) No Tobacco License may be issued to a person, firm, or corporation for any establishment located within one-half mile (2,640 feet) of another establishment possessing a Tobacco License. Said one-half mile being calculated and computed as the distance measured from the property line of the premises or building proposed as the location for the Tobacco License to the property line of any other Tobacco License.

SECTION 6

Section 324.05 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.05. - Application.

In addition to any other information required by the director, the applicant ~~shall~~ must state the true name of the applicant, the name under which he or she ~~shall~~ will conduct his or her business, whether such business is that of an individual, sole trader, firm, partnership, or corporation, and the address where such business is to be conducted. Any person applying for more than one (1) license ~~shall~~ must file with the department of safety and inspections a list of all locations ~~of sale and/or the location of each vending machine~~ for which license applications are being filed. Any change in the location of the place of sale ~~shall~~ will require a new license application ~~be reported to the director within five (5) days of said change.~~

SECTION 7

Section 324.07 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.07. - Sales prohibited.

(a) No person ~~shall~~ may sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes ~~shall~~ may be sold individually or in packages of fewer than twenty (20) cigarettes.

(b) No person ~~shall~~ may sell or dispense ~~tobacco, tobacco-related devices, electronic delivery devices, or~~

~~nicotine or lobelia delivery devices~~ licensed products from a motor vehicle or other movable place of business.

(c) No person shall ~~may~~ sell ~~tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products from vending machines unless the vending machines are in a facility that cannot be entered at any time by persons younger than twenty-one (21) years of age.

(d) No person shall ~~may~~ offer for sale ~~tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products in any open displays which are accessible to the public without the intervention of a store employee. This restriction ~~shall does~~ not apply to establishments holding a Tobacco Products Shop license; ~~retail stores which derive at least ninety (90) percent of their revenue from tobacco and tobacco-related devices, and where the retailer ensures that no person younger than twenty-one (21) years of age is present, or permitted to enter, at any time.~~

(e) No person shall ~~may~~ sell, offer for sale, or otherwise distribute cigars in original packages containing three (3) or fewer cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than two dollars and sixty cents (\$2.60) per cigar contained within. In addition, no person shall ~~may~~ sell, offer for sale, or otherwise distribute cigars in original packages of four (4) or more cigars for a sale price, after any coupons, multipack or buy-one/get-one promotions, or any other discounts are applied and prior to applicable sales taxes being imposed, of less than ten dollars and forty cents (\$10.40) per package.

(f) No person may sell or offer for retail sale cigarette packages or cartons for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10) per pack.

(g) No person may sell or offer for retail sale moist snuff retail packages or multipacks for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10) per 1.2 ounce package. No person may sell or offer for retail sale any smokeless tobacco/moist snuff unless it is sold in a package of at least 1.2 ounces minimum package size. The price floor for packages larger than 1.2 ounces shall be computed by adding \$2.50 for each 0.3 ounces or any fraction thereof in excess of 1.2 ounces, excluding all applicable taxes.

(h) No person may sell or offer for sale or otherwise distribute snus for a sales price, prior to applicable sales taxes being imposed, of less than ten dollars (\$10) per .32 ounce package. No person may sell or offer for retail sale any snus unless it is sold in a package of at least 0.32 ounces minimum pack size. The price floor for packages larger than .32 ounces shall be computed by adding \$2.50 for each 0.08 ounces or any fraction thereof in excess of .32 ounces, excluding all applicable taxes.

(i) No holder of a license issued under this chapter, nor any employee or agent of same may sell tobacco products to a person under the age of twenty-one (21) years. Sale to persons under the age of twenty-one (21) years prohibited.

~~(1) Whoever sells or furnishes tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of twenty-one (21) years is guilty of a misdemeanor for the first violation. Whoever violates this section a subsequent time within five (5) years of a previous conviction is guilty of a gross misdemeanor.~~

~~(1-2) It is an affirmative defense to a charge under this subdivision if the defendant proves by a preponderance of the evidence that the defendant reasonably and in good faith relied on proof of age as described in Minn. Stat. § 340A.503, subd. 6.~~

(j) No person shall may sell, offer for sale, or otherwise distribute any flavored products, unless excepted under section 324.07(l) of this chapter.

(k) Coupons and Price Promotions. No holder of a license issued under this chapter, nor any employee or agent of same, may:

(1) accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any price reduction instrument or other offer that provides any licensed product without charge or for less than the listed or non-discounted price; or

(2) sell or offer to sell licensed products, to consumers through any multi-pack discounts (e.g., “buy-two-get-one-free”) or otherwise provide or distribute to consumers any licensed products, without charge or for less than the listed or non-discounted price in exchange for the purchase of any other licensed products.

Nothing in this ordinance is intended to prohibit communication of pricing information or other truthful, non-misleading information to consumers.

(h!) Exceptions

(1) Notwithstanding section (gj), individuals exempted under Minn. Stat. § 609.685 are also exempt from this section.

(2) The penalties in this section do not apply to a person under the age of twenty-one (21) years who purchases or attempts to purchase ~~tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia~~ licensed products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.

(3) Retail stores holding a Tobacco Products Shop license that derive at least ninety (90) percent of their revenue from the sale of tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products and where the retailer ensures that no person under twenty-one (21) years of age is permitted to enter, at any time are permitted to sell and offer for sale flavored tobacco products.

~~(4) Establishments holding an off-sale intoxicating liquor license issued by the City of Saint Paul under chapter 409 of the Saint Paul Legislative Code who also hold a license for tobacco sales under this chapter shall be permitted to sell and offer for sale flavored tobacco products only in the following flavors: menthol, mint, and wintergreen.~~

(im) Any violation of this chapter shall will subject the licensee to provisions of chapter 310 and section 324.10

of the Saint Paul Legislative Code.

SECTION 8

Section 324.08 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.08. Distribution of free products prohibited.

~~No person in the business of selling or promoting tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products or agent or employee of such person shall distribute any tobacco products free to any person on the sidewalks, pedestrian concourses, pedestrian malls or pedestrian skyway systems within the city.~~

SECTION 9

Section 324.09 of the Saint Paul Legislative Code is hereby amended to read as follows:

~~Sec. 324.09. Use of false identification by minors prohibited.~~ Reserved.

~~No person under the age of twenty one (21) years shall purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery licensed products using a driver's license, a Minnesota identification card, or other form of identification which is false, fictitious, altered or counterfeited as to age or any other material fact of identification. Use of false identification to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products is a misdemeanor.~~

SECTION 10

Section 324.10 of the Saint Paul Legislative Code is hereby amended to read as follows:

Sec. 324.10. Presumptive penalties.

- (a) *Purpose.* The purpose of this section is to establish a standard by which the city council determines the amount of fines, length of license suspensions and the propriety of revocations for licensees. These penalties are presumed to be appropriate for every case; however, the council may deviate therefrom in an individual case where the council finds and determines that there exist substantial and compelling reasons which make it appropriate to do so, except, the council may not deviate below statewide minimum penalties for licensees. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate. Where no penalty is listed below, the presumptive penalty under Saint Paul Legislative Code Section 310.
- (b) *Presumptive penalties for licensees for violations.* Adverse penalties for licensees for violations or convictions shall be presumed as follows:

SEE ATTACHMENT

- (c) *Fines payable without hearing.* Notwithstanding the provisions of section 310.05(I), a licensee who would be making a first or second appearance before the council may elect to pay the fine to the department of safety and inspections without a council hearing, unless the notice of violation has indicated that a hearing is required because of circumstances which may warrant deviation from the presumptive fine amount. Payment of the recommended fine will be considered to be a waiver of the hearing to which the licensee is entitled, and will be considered an "appearance" for the purpose of determining presumptive penalties for subsequent violations.
- (d) Computation of time. Except as otherwise provided by Minn. Stat. § 461.12, subd. 2, subsequent violations are subject to the following:
- (1) Second, third and fourth appearances. A second violation within twenty four (24) months shall be treated as a second appearance, a third within twenty four (24) months treated as a third appearance, and a fourth within twenty four (24) months treated as a fourth appearance for the purpose of determining the presumptive penalty.
- (2) Any appearance not covered by subsections (1) above shall be treated as a first appearance. Measurement of the twenty four (24) month period shall be as follows: The beginning date shall be the earliest violation's date of appearance before the council, and the ending date shall be the date of the new violation. In case of multiple new violations, the ending date to be used shall be the date of the violation last in time.

SECTION 11

This Ordinance will take effect and be in force thirty (30) days following passage, approval, and publication.