



Legislation Text

File #: Ord 19-57, **Version:** 2

Amending Chapter 324 of the Legislative Code to raise the age of persons allowed to purchase tobacco and tobacco related devices and products from eighteen (18) to twenty-one (21).

WHEREAS, the City of Saint Paul has a history of passing bold tobacco prevention policies including passing smoke-free bars and restaurants, banning candy cigarettes, setting a minimum price for cigars, placing a cap on the number of tobacco outlets, implementing a distance requirement between tobacco shops, and restricting all flavored tobacco products to adult-only tobacco shops and liquor stores; and

WHEREAS, raising the tobacco sales age to 21 in the City of Saint Paul will prevent future generations from the harms of tobacco; and

WHEREAS, youth tobacco use in Minnesota has increased for the first time in 17 years, largely due to e-cigarettes and cigars; and

WHEREAS, E-cigarettes are not proven to be better for quitting smoking than existing treatments, and the FDA has not approved them as quitting aids; and

WHEREAS, one in five youth currently use e-cigarettes in Minnesota; and

WHEREAS, E-cigarettes used to resemble conventional cigarettes but now devices such as JUUL and Sourin resemble zip drives and are easily hidden from parents, teachers, and school administrators; and

WHEREAS, vape devices contain high levels of nicotine, and no amount of nicotine is safe for youth, which can cause lasting damage to brain maturation including long-term effect on cognitive development and mental health; and

WHEREAS, 95 percent of addicted adult smokers started before age 21, and keeping tobacco out of high schools will reduce the number of youth under 18 who become addicted to tobacco; and

WHEREAS, raising the tobacco sales age to 21 will reduce teens' ability to buy tobacco products themselves or access them through social sources; and

WHEREAS, 18-20 year-olds make up roughly 2-4% of tobacco sales but tobacco takes a human, economic and environmental toll on our communities costing 6,300 tobacco-related deaths in Minnesota each year and more than \$3 billion on excess health care costs and \$4.3 billion in lost productivity in Minnesota alone; and

WHEREAS, penalties for purchase, use, and possession have not been proven to reduce youth tobacco use, and it diverts focus from fostering a responsible retail environment; and

WHEREAS, the City of Saint Paul will join ~~forty~~ ~~thirty-one~~ local governments in Minnesota to raise the tobacco age to 21 in their communities, including: Edina, St. Louis Park, Bloomington, Plymouth, North Mankato, Richfield, Roseville, Falcon Heights, Beltrami, Minnetonka, Excelsior, Lauderdale, Otter Tail County, Hermantown, Brooklyn Center, Mendota Heights, Shoreview, St. Peter, Minneapolis, Eden Prairie, Duluth, Pope County, Waseca, Isanti County, Robbinsdale, North Oaks, Arden Hills, Albert Lea, Austin, Olmsted County, Lillydale, Wilkin, Stevens, Hennepin County, Benton County, Bemidji, Little Canada, Mankato, New Brighton, Byron, and states such as: California, New Jersey, Oregon, Hawaii, Maine, Massachusetts, Arkansas, Illinois, Virginia, Delaware, Washington, and Utah; and now

THEREFORE, THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN:

Section 1

That section 324.01. - *License required* is amended to read as follows:

- (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 product or in any manner represent or hold himself or herself out as one who sells or offers for sale at retail any 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 products without a license.
- (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; and
 - (2) ~~Any~~ The 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 inch high, "The sale of tobacco products or electronic delivery devices to persons under twenty-one is prohibited."

Section 2

That section 324.07 - *Sales prohibited* is amended to read as follows:

- (c) No person shall sell tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products from vending machines unless the vending machines are in a facility that cannot be entered at any time by persons younger than ~~eighteen (18)~~ twenty-one (21) years of age.
- (d) No person shall offer for sale tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products in any open displays which are accessible to the public without the intervention of a store employee. This restriction shall not apply to 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 ~~eighteen (18)~~ twenty-one (21) years of age is present, or permitted to enter, at any time.
- (e) No person shall 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 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 shall sell, offer for sale, or otherwise distribute any flavored products.

- (g) Sale to persons under the age of twenty-one (21) years ~~minors~~ 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 ~~eighteen (18)~~ 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.
 - (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.
- (h) Exceptions.
- (1) Notwithstanding section (g), 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 ~~eighteen (18)~~ twenty-one (21) years who purchases or attempts to purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia products while under the direct supervision of a responsible adult for training, education, research, or enforcement purposes.
 - (3) Retail stores 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 ~~eighteen (18)~~ twenty-one (21) years of age is permitted to enter, at any time are permitted to sell and offer for sale flavored tobacco products.

Section 3

That section 324.09 - *Use of false identification by minors prohibited* is amended to read as follows:

No person under the age of ~~eighteen (18)~~ twenty-one (21) years shall purchase tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery 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 4

That section 324.10 - *Use of tobacco prohibited* is amended ~~to read as follows:~~ by deleting it in its entirety.

~~No person under the age of eighteen (18) twenty-one (21) years shall purchase, use or possess tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products, except as provided in Sec. 238A.05. Possession of tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products by a minor is a petty misdemeanor.~~

Section 5

That section 324.4410 - *Presumptive penalties* is amended to read as follows:

- (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. 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. When deviating from these standards, the council shall provide written reasons that specify why the penalty selected was more appropriate.
- (b) *Presumptive penalties for violations.* Adverse penalties for violations or convictions shall be presumed

as follows:

Type of Violation	Appearance			
	1st	2nd	3rd	4th
(1) Sale to a minor <u>person under twenty-one years of age</u>	\$200.00 fine	\$400.00 fine	\$800.00 fine suspension	Revocation

Section 6

This ordinance shall take effect and be in force thirty (30) days from and after its passage, approval and publication.