



Legislation Details (With Text)

File #: Ord 15-57 **Version:** 2

Type: Ordinance **Status:** Passed

In control: City Council

Final action: 1/6/2016

Title: Amending Chapter 324 of the Legislative Code pertaining to flavored tobacco and making amendments to comply with state statute.

Sponsors: Dai Thao, Chris Tolbert, Russ Stark, Amy Brendmoen, Dan Bostrom, Dave Thune

Indexes:

Code sections:

Attachments: 1. Campaign for Tobacco Free Kids - Ltr of Support, 2. Clear Way MN Letter of Support, 3. Model Cities Support Letter- Flavored Tobacco Ordinance, 4. Rainbow Health Initiative - Ltr of Support, 5. Crave the Change - Ltr of Support, 6. ANSR - Ltr of Support, 7. MMA - Ltr of Support, 8. AALF-HWG - Ltr of Support, 9. Am. Cancer Society CAN - Letter of Support, 10. Twin Cities Medical Society - Ltr of Support, 11. Blue Cross Blue Shield - Letter of Support, 12. Minnesota Department of Health, 13. CHSAC Letter of Support signed, 14. Goldsmith letter of support for tobacco ordinance, 15. Support for Tobacco Ordinance, 16. AHA - Ltr of Support, 17. Hughes - Email of Opposition, 18. Nicotine Tob Res-2015-Shiffman, 19. Christopher Berg, 1501 Rose St, La Crosse WI - email of opposition, 20. Dreher - support email, 21. Safi - opposition email, 22. SA Letter of Opposition, 23. ClearWay Study - Ecigarette Prevalence, 24. ClearWay Study - ScienceDaily Article, 25. ALA-Past-President-Charles-Connor-Letter, 26. Cancer Research UK, 27. Products - Data Briefs - Number 216 - September 2015, 28. Smoking Cessation and Beliefs, 29. Rutgers Study - Smoking Cessation, 30. MNVA Submission - St, 31. Downing - Ltr of Opposition, 32. MN Cancer Alliance - Letter of Support, 33. Stier - email, 34. MNAAP - Ltr of Support, 35. O'Rourke - Opposition email, 36. O'Rourke - attachment WSJSiegelOPED (2), 37. O'Rourke - attachment Public_Health_England, 38. O'Rourke - attachment PHE Joint Letter, 39. O'Rourke - attachment E-cigarettes save lives The Spectator (2), 40. MDH - Ltr of Support, 41. CLUES - Ltr of Support, 42. AICAF - flavored tobacco 11.17 Ltr of Support, 43. Allina Health - United Hospital Ltr of Support, 44. Various Opposition emails, 45. Ord. 15-57 - Opposition email, 46. MN Academy of Family Physicians Ltr of Support, 47. NBCC Opposition Ltr Ord 15-57, 48. Hansen email - support, 49. Montagne Ltr of Support, 50. Holiday Companies Letter of Opposition, 51. Item 38-Research Article-Submitted 111815, 52. Item 38-Letters from Merchants-Submitted 111815, 53. Item 38-FDA Compliance Checks Inspections-Submitted 111815, 54. Item 38-NATO Document-Submitted 111815, 55. Item 38-Blue Cross Blue Shield-Submitted 111815, 56. MN Communities Caring for Children Ltr

Date	Ver.	Action By	Action	Result
1/11/2016	2	Mayor's Office	Signed	
1/6/2016	2	City Council	Adopted	Pass
11/18/2015	2	City Council	Continue Public Hearing	Pass
11/12/2015	1	City Council	Laid Over to Third Reading/Public Hearing	Pass
11/4/2015	1	City Council	Laid Over to Second Reading	

Amending Chapter 324 of the Legislative Code pertaining to flavored tobacco and making amendments to comply with state statute.

SECTION 1

Chapter 324. - Tobacco

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 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) 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.
- (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.

(Code 1956, § 366.02; Ord. No. 17714, § 1, 2-20-90; C.F. No. 94-341, § 1, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 15-12, § 1, 4-22-15)

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 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.

(Code 1956, § 366.05; C.F. No. 94-341, § 2, 4-13-94; C.F. No. 97-314, § 1, 4-20-97)

Sec. 324.03. - Definitions.

The following words and phrases, as used in this chapter, shall, 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.

~~Cigarette paper and cigarette wrapper means and includes any paper of other substance or materials, except tobacco, used as a wrapper or cover for a cigarette, as herein defined.~~

- (2) Electronic delivery device means 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 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) 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, menthol, mint, or wintergreen, 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 chocolate, cocoa, vanilla, honey, 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, menthol, mint, or wintergreen, shall constitute presumptive evidence that the product or device is a flavored product.

- (4) Nicotine or lobelia delivery product means any product containing or delivering nicotine or lobelia 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.

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

- (63) 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.

- (74) Tobacco or tobacco product means any products 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; 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 includes electronic cigarettes containing or delivering nicotine for the purposes of licensing and regulation under this chapter. 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.

- (85) Tobacco-related devices means cigarette papers, or 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.
- (96) Tobacco vending machine means a machine for vending tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices by the insertion of money, tokens, or other form of payment ~~a coin~~.
- (7) 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. Stats., § 297F.01, subdivision 3, as amended.

(Code 1956, § 336.01; C.F. No. 94-341, § 3, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 10-1014, § 1, 10-13-10; Ord 13-8, § 1, 4-24-13; Ord 14-34, § 1, 8-27-14)

Sec. 324.04. - Fee and duration.

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

(Code 1956, § 336.03; Ord. No. 17386, § 1, 8-19-86; C.F. No. 92-1930, § 1, 1-14-93; C.F. No. 94-341, § 4, 4-13-94; C.F. No. 95-1271, § 1, 11-8-95; C.F. No. 97-314, § 1, 4-20-97)

Sec. 324.05. - Application.

In addition to any other information required by the director, the applicant shall state the true name of the applicant, the name under which he or she shall 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 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 be reported to the director within five (5) days of said change.

(Code 1956, § 336.04; C.F. No. 94-341, § 5, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 07-149, § 81, 3-28-07)

Sec. 324.06. - License to be displayed.

The license shall be displayed by the licensee in a prominent and conspicuous place at the licensed location of the tobacco vending machine to be licensed. In the case of a tobacco vending machine, the operator shall also affix his or her name, address and telephone number in a conspicuous place on each machine.

(Code 1956, § 336.06; C.F. No. 94-341, § 6, 4-13-94; C.F. No. 97-314, § 1, 4-20-97)

Sec. 324.07. - Sales prohibited.

- (a) No person shall sell a cigarette outside its original packaging containing health warnings satisfying the requirements of federal law. No cigarettes shall be sold in packages of fewer than twenty (20) cigarettes.
- (b) No person shall sell or dispense cigarette paper or cigarette wrappers from a vending machine or a motor vehicle. No person shall sell or dispense tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery devices from a motor vehicle or other movable place of business.
- (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) years of age.
- (d) No person shall offer for sale tobacco, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products ~~cigarette papers, cigarette wrappers, or pipes for smoking~~ 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, cigarette papers, cigarette wrappers, or pipes for smoking ~~and~~ where the retailer ensures that no person younger than eighteen (18) 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. No person shall sell, offer for sale, or distribute a single cigar unless the cigar is sold in an original package of at least five (5) cigars, provided that:
 - (1) This restriction shall not apply to any sale, offer to sell, or distribution of a single cigar that has a retail price greater than two dollars and ten cents (\$2.10) before the addition of sales tax, or of any "premium cigar," as defined by Minn. Stats. § 297F.01 subd. 13a, including any amendments.
 - (2) Cigars to which price promotions or discounts apply shall not be excluded from this restriction.
- (f) No person shall sell, offer for sale, or otherwise distribute any flavored products. This restriction shall not apply to 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) years of age is permitted to enter, at any time.
- (g) ~~Sale of tobacco and tobacco-related products to minors prohibited.~~
 - (1) Whoever sells or furnishes tobacco, or tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products to a person under the age of eighteen (18) 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 under this section or Minn. Stats. §§ 609.685 and 609.6855 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. § section 340A.503, subdivision 6.
- (hg) Exceptions.

(1) Notwithstanding section (ge), individuals exempted under Minn. Stats. § 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) years who purchases or attempts to purchase tobacco, or 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.

(ih) Any violation of this chapter shall subject the licensee to provisions of chapter 310 and section 324.11 of the Saint Paul Legislative Code.

(Code 1956, § 336.07; Ord. No. 17714, § 1, 2-20-90; C.F. No. 94-341, § 7, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 06-872, § 1, 10-11-06; C.F. No. 10-1014, § 2, 10-13-10; Ord 13-8, § 2, 4-24-13; Ord 14-34, § 2, 8-27-14)

Sec. 324.08. - Distribution of free ~~tobacco~~ 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 ~~tobacco~~ any products free to any person on the sidewalks, pedestrian concourses, pedestrian malls or pedestrian skyway systems within the City of Saint Paul.

(Code 1956, § 336.08; Ord. No. 17714, § 1 2-20-90; C.F. No. 92-1930, § 2, 1-14-93; C.F. No. 94-341, § 8, 4-13-94; C.F. No. 97-314, § 1, 4-20-97)

Sec. 324.09. - Use of false identification by minors prohibited.

No person under the age of eighteen (18) years shall purchase tobacco, or tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products as these terms are defined by Minn. Stat. § 609.685, subdivisions 1(a) and 1(b), 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, or tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products is a misdemeanor.

(Ord. No. 17733, § 1, 5-8-90; C.F. No. 94-341, § 9, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 13-8, § 3, 4-24-13)

Sec. 324.10. - Use of tobacco prohibited.

No person under the age of eighteen (18) years shall purchase, use or possess tobacco, or tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products, as these terms are defined by Minn. Stats., § 609.685 subdivisions 1(a) and 1(b). Possession of tobacco, or tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery products by a minor is a petty misdemeanor.

(Ord. No. 17733, § 2, 5-8-90; C.F. No. 94-341, § 10, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; Ord 13-8, § 4, 4-24-13)

Sec. 324.11. - 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. 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 of tobacco to a minor	\$200.00 fine	\$400.00 fine	\$800.00 fine suspension	Revocation

(c) Fines payable without hearing. Notwithstanding the provisions of section 310.05(l), 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.

(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.

(Ord. No. 17733, § 3, 5-8-90; C.F. No. 94-341, § 11, 4-13-94; C.F. No. 97-314, § 1, 4-20-97; C.F. No. 02-898, § 1, 11-6-02; C.F. No. 07-149, § 82, 3-28-07; Ord. No. 11-114, § 1, 12-28-11)

SECTION 2

This ordinance shall take effect and be in force ninety (90) days following its passage, approval, and publication.