



ORDINANCE NO. 69

AN ORDINANCE AMENDING ORDINANCE NO. 69 RELATING TO THE SALE OF TOBACCO, NICOTINE OR LOBELIA DELIVERY PRODUCTS, ELECTRONIC DELIVERY DEVICES, AND TOBACCO-RELATED DEVICES IN THE TOWN, AND TO REDUCE THE ILLEGAL SALE OF SUCH ITEMS TO PERSONS UNDER AGE 21 IN THE TOWN OF WHITE BEAR, RAMSEY COUNTY, MINNESOTA

THE TOWN BOARD OF SUPERVISORS OF THE TOWN OF WHITE BEAR ORDAINS:

SECTION 1. AMENDMENT AND APPEAL OF CONFLICTING ORDINANCES. The Tobacco Ordinance of the Town of White Bear (Township), Ramsey County, Minnesota, adopted December 5, 2011, as amended, and relating to the sale of tobacco, tobacco products, nicotine or lobelia delivery products, electronic delivery devices, and tobacco-related devices in the Town and to reduce the illegal sale of such items to persons under the age of 21, is hereby amended to be as follows, and all other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed. In all other respects all other Ordinance shall remain in full force and effect.

SECTION 2. PURPOSE AND FINDINGS. Because the Town recognizes that the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of under the age of 21 violates both state and federal law; and because studies, which the town accepts and adopts, have shown that youth use of any commercial tobacco product has increased to 26.4% in Minnesota; and because nearly 90% of smokers begin smoking before they have reached the age of 18 years, and that almost no one starts smoking after age 25; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale of commercial tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the Town Board of Supervisors accepts the conclusions and recommendations of: the U.S. Surgeon General reports, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking — 50 Years of Progress* (2014) and *Preventing Tobacco Use Among Youth and Young Adults* (2012); the Centers for Disease Control and Prevention in their studies, *Tobacco Use Among Middle and High School Students — United States, 2011–2015* (2016), and *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997* (1998); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of smoking initiation: implications for quitting. *Health Reports*, 9(4), 39-46; D'Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at

starting smoking and number of cigarettes smoked. *Annals of Epidemiology*, 4(6), 455–459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. (1999). Initiation of cigarette smoking and subsequent smoking behavior among U.S. high school students. *Preventive Medicine*, 29(5), 327–333; Giovino, G. A. (2002). Epidemiology of tobacco use in the United States. *Oncogene*, 21(48), 7326–7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age at smoking onset and its effect on smoking cessation. *Addictive Behaviors*, 24(5), 673–677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740–746; Minnesota Department of Health. (2018). *Data Highlights from the 2017 Minnesota Youth Tobacco Survey*. Saint Paul, MN; Tobacco Control Legal Consortium. (2006). *The Verdict Is In: Findings from United States v. Philip Morris, The Hazards of Smoking*. University of California — San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco/>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual healthcare spending attributable to cigarette smoking: an update. *American Journal of Preventive Medicine*, 48(3), 326–333, copies of which are adopted by reference.

SECTION 3. 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 the neuter, and vice-versa. The term “shall” means mandatory and the term “may” mean permissive. The following terms shall have the definitions given to them:

3-1. TOBACCO. “Tobacco” shall mean 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; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. TOBACCO does not include any product that has been approved by the U.S. 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.

3-2. TOBACCO RELATED DEVICES. “Tobacco-related devices” means any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. tobacco-related device includes components of tobacco-related devices or tobacco products, which may be marketed or sold separately. tobacco-related devices may or may not contain tobacco.

3-3. NICOTINE OR LOBELIA DELIVERY PRODUCTS. “Nicotine or lobelia delivery products” shall mean Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not a tobacco 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 U.S. Food and Drug Administration as a tobacco-cessation product, a tobacco-dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

3-4. SELF-SERVICE DISPLAY. “Self-service display” shall mean the open display of licensed products in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee’s employee.

3-5. VENDING MACHINE. “Vending Machine” shall mean any mechanical, electric or electronic, or other types of device which dispenses licensed products upon the insertion of money, tokens, or other form of payment directly into the machine by the person seeking to purchase the licensed products.

3-6. LOOSIES. “Loosies” shall mean the common term used to refer to single cigarettes, cigars, and any other licensed product that have been removed from their original retail packaging and offered for sale. Loosies does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

3-7. SMOKING. “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying or using an activated electronic delivery device.

3-8. RETAIL ESTABLISHMENT. “Retail Establishment” shall mean any place of business where licensed products are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, and restaurants.

3-9. MOVABLE PLACE OF BUSINESS. “Movable Place of Business” shall refer to any form of business operated out of a kiosk, truck, van, automobile, or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

3-10. SALE. A “Sale” shall mean any transfer of goods for money, trade, barter, or other consideration.

3-11. COMPLIANCE CHECKS. “Compliance Checks” shall mean the system the Town uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this Ordinance. Compliance checks shall involve the use of persons under the age of 21 as authorized by this Ordinance. Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase licensed products for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be

conducted by other units of government for the purpose of enforcing appropriate Federal, State, or local laws and regulations relating to licensed products.

3-12. INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

3-13. LICENSED PRODUCTS. “Licensed products” is the term that collectively refers to any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

3-14. ELECTRONIC DELIVERY DEVICE. “Electronic delivery device” means any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. 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 U.S. 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.

3-15. CIGAR. “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, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

SECTION 4. LICENSE. No person shall sell or offer to sell any licensed products without first having obtained a license to do so from the Township.

4-1. SMOKING. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling licensed products is prohibited.

4-2. PROXIMITY TO OTHER RETAILERS. No license shall be granted pursuant to this section to any person for any retail sales of licensed products, within two thousand feet of any other establishment holding such license, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the nearest existing licensee, unless that person has been in the business of selling such products in that location before the date this section was enacted into law for at least one year and that location has not failed to renew its license.

4-3. APPLICATION. An application for a license to sell licensed products shall be made on a form provided by the Township. The application shall contain the full

name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the Township deems necessary. Upon receipt of a completed application, the Town Clerk shall forward the application to the Town Board for action at their next regularly scheduled meeting. If the Town Clerk shall determine that an application is incomplete, he shall return the application to the applicant with notice of the information necessary to make the application complete.

4-4. ACTION. The Town Board 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, as it deems necessary.

4-5. TERM. All licenses issued under this Ordinance shall expire on December 31st of the year issued.

4-6. REVOCATION OR SUSPENSION. Any license issued under this Ordinance may be revoked or suspended as provided in the Violations Penalties section of this Ordinance.

4-7. TRANSFERS. All licenses issued under this Ordinance shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the Town Board.

4-8. MOVABLE PLACE OF BUSINESS. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this Ordinance.

4-9. DISPLAY. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

4-10. RENEWALS. The renewal of a license issued under this section shall be handled 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. The issuance of a license under this Ordinance shall be considered a privilege and not an absolute right of the applicant, and shall not entitle the holder to an automatic renewal of the license.

SECTION 5. FEES. No license shall be issued under this Ordinance until the appropriate license fees shall be paid in full. The fees for this license are as set forth in Ordinance No. 54 (Fees & Charges).

SECTION 6. BASIS FOR DENIAL OF LICENSE. The following shall be grounds for denying the issuance or renewal of a license under this Ordinance; however, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the Township must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

6-1. The applicant is under the age of twenty-one (21) years.

6-2. The applicant has been convicted within the past five (5) years of any violation of a Federal, State, or local law, ordinance provision, or other regulation relating to licensed products.

6-3. The applicant has had a license to sell licensed products revoked within the preceding twelve months of the date of application.

6-4. The applicant fails to provide any information required on the application, or provides false or misleading information.

6-5. The applicant is prohibited by Federal, State or other local law, ordinance, or other regulation, from holding such a license.

SECTION 7. PROHIBITED SALES.

7-1. IN GENERAL. It shall be a violation of this Ordinance for any person to sell or offer to sell any licensed product:



7-1-1. By means of any type of vending machine.

7-1-2. By means of loosies as defined in Section 2 of this Ordinance.

7-1-3. Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic, or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process.

7-1-4. By any other means, to any other person, or in any other manner or form prohibited by Federal, State or other local law, ordinance provisions, or other regulation.

7-2. LEGAL AGE. No person shall sell any licensed product to any person under the age of 21.

7-2-1. AGE VERIFICATION. Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.

7-2-2. SIGNAGE. Notice of the legal sales age and age verification requirement must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the town, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

7-3. SELF-SERVICE SALES. It shall be unlawful for a licensee under this Ordinance to allow the sale of licensed products by any means whereby the customer may have access to such items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the licensed product between the licensee or his or her clerk and the customer. All licensed products shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit nor left open and accessible to the general public.

SECTION 8. RESPONSIBILITY. All licensees under this Ordinance shall be responsible for the actions of their employees in regard to the sale of licensed products 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 section shall be construed as prohibiting the Township from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, State or Federal law, or other applicable law or regulation.

SECTION 9. COMPLIANCE CHECKS AND INSPECTIONS. All licensed premises must be open to inspection by law enforcement or other authorized Town officials during regular business hours. From time to time, but at least twice per year, the Town will conduct compliance checks. In accordance with state law, the Town will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

SECTION 10. OTHER PROHIBITED ACTS. Unless otherwise provided, the following acts shall be a violation of this Ordinance.

10-1. PROHIBITED FURNISHING OR PROCUREMENT. It is a violation of this ordinance for any person 21 years of age or older to purchase or otherwise obtain any licensed product on behalf of a person under the age of 21. It is also a violation for any person 21 years of age and older to coerce or attempt to coerce a person under the age of 21 to illegally purchase or attempt to purchase any licensed product.

10-2. USE OF FALSE IDENTIFICATION. It shall be a violation of this Ordinance for any person under the age of 21 to attempt to disguise his or her true age by the use of 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 tampered with to represent and age older than the actual age of the person.

SECTION 11. VIOLATIONS.

11-1. NOTICE. Upon discovery of a suspected violation, the alleged violator shall be issued, either personally or by mail, a citation that sets forth the alleged violation and which shall inform the alleged violator of his or her right to be heard on the accusation.

11-2. HEARINGS. If a person accused of violating this Ordinance so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator.

11-3. HEARING OFFICER. The Town Board shall serve as the hearing officer.

11-4. DECISION. If the Town Board determines that a violation of this Ordinance did occur, that decision, along with the Town Board's reasons for finding a violation and the penalty to be imposed under Section 13 of this Ordinance, shall be recorded in writing, a copy of which shall be provided to the accused violator. Likewise, if the Town Board finds that no violation occurred or finds grounds for not imposing any penalty, such finding shall be recorded and a copy provided to the acquitted accused violator.

11-5. APPEALS. Appeals of any decision made by the Town Board shall be filed at the Ramsey County District Court. 

11-6. MISDEMEANOR PROSECUTION. Nothing in this Section shall prohibit the Town from seeking prosecution as a misdemeanor for any alleged violation of this Ordinance. If the Town elects to seek misdemeanor prosecution, no administrative penalty shall be imposed.

11-7. CONTINUED VIOLATION. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

SECTION 12. PENALTIES.



12-1. LICENSEES. Any licensee found to have violated this Ordinance, shall be charged an administrative fee of \$300.00 for a first violation of this Ordinance; \$600.00 for a second violation at the same licensed premises within a thirty-six month period; and \$1,00.00 for a third violation within a thirty-six month period. In addition, after the third offense, the license shall be suspended for not less than seven days, and allows for license revocation.

12-2. OTHER INDIVIDUALS. Individuals, other than persons under age 21 regulated by Section 11-3 of this section, found to be in violation of this Ordinance, shall be charged an administrative fine of \$50.

12-3. PERSONS UNDER THE AGE OF 21.  Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to non-criminal, non-monetary civil penalties such as tobacco-related education classes, diversion programs, community services, or another penalty that the town determines to be appropriate. The Town Board of Supervisors will consult with court personnel, educators, parents, children and other interested parties to determine an appropriate penalty for persons under the age of 21 in the Town. The penalty may be established by ordinance and amended from time to time.

12-4. MISDEMEANOR. Nothing in this Section shall prohibit the Town from seeking prosecution as a misdemeanor for any alleged violation of this Ordinance by a person 21 years of age or older.

SECTION 13. EXCEPTIONS AND DEFENSES. Nothing in this Ordinance shall prevent the providing of tobacco, tobacco products, or tobacco related devices to a person under the age of 21 as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this Ordinance for a person to have reasonably relied on proof of age as described by State law.

SECTION 14. SEVERABILITY. Should any section, subdivision, clause or other provision of this Ordinance be held to be invalid by any court of competent jurisdiction, such decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part held to be invalid.

SECTION 15. EFFECTIVE DATE. The Ordinance shall take effect and be in force from and after its passage and publication.

Passed by the Town Board of Supervisors of the Town of White Bear, Ramsey County, Minnesota, this 15th day of June, 2020.

APPROVED:

ED M. PRUDHON, Chair

ATTEST:

PATRICK CHRISTOPHERSON, Town Clerk

Board of Supervisors:
ED M. PRUDHON, Chair
STEVEN A. RUZEK, Supervisor
SCOTT E. MCCUNE, Supervisor

Synopsis Published in the White Bear Press June 24, 2020.

Historical Notes

2020

Section 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 passed on June 15, 2020, and effective June 24, 2020 by Prudhon (Chair), Ruzek and McCune; Christopherson (Clerk).

2011

Section 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 passed on December 5, 2011, and effective January 11, 2012 by Mample (Chair), Kermes and Prudhon; Short (Clerk).

2010

Section 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 passed on December 20, 2010, and effective January 26, 2011 by Sand (Chair), Mample and Kermes; Short (Clerk).

1997

Ordinance, Title and Section 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 originally passed December 1, 1997, and effective December 17, 1997 by Weisenburger (Chair), Sand and Ford; Short (Clerk).