

MEMORANDUM

TO: Board of City Commissioners

FROM: City Attorney Wenko

RE: Tobacco Updates

I. UPDATES FOR COMPLIANCE WITH CENTURY CODE

It came to the attention of City staff that the City's current Code did not reflect recent legislative changes regarding the sale of tobacco to individuals under the age of 21. The matter came to our attention because of a citation being issued to a minor and being filed in Municipal Court.

The revisions being proposed are consistent with N.D.C.C. 12.1-31.

The revisions include:

1. Section 22-57
 - Makes it a non-criminal offense for anyone under the age of 21 years of age to purchase or possess tobacco products
 - Makes it a non-criminal offense for anyone under the age of 21 years of age to present false identification of age to purchase tobacco
 - Anyone 14 years of age or older must pay a fee of \$25.00
 - Provides a method of contesting the citation
2. Section 22-58
 - Makes it an infraction to sell or furnish tobacco products to anyone under the age of 21
 - Maximum penalty on an infraction is a \$1,000 fine
3. Section 22-59
 - Deletes this penalty section because the penalties for possession are covered in Section 22-57 and the penalty for selling tobacco products is covered in Section 22-58

II. PENALTIES FOR RETAILERS

In reviewing the code sections from the various cities across the State, I also reviewed the penalty sections for those cities as well. Upon review, it does appear that other cities have adopted more strict penalties regarding the suspension of licenses after multiple violations. Currently, the City's Code provides for the following penalties:

- (1) First offense. If the agent or employee of the licensee possesses a tobacco server training certificate card at the time of the violation by said agent or employee, the licensee will receive a written warning. If the agent or employee of the licensee does not possess a server training certificate card at the time of the

violation by said agent or employee, the City shall assess against the licensee an administrative fine in the amount of \$500.00.

- (2) Second offense. In the event of a second violation within a 24-month period by the licensee, agent, or employee of this article or Chapter 22, Article II, the City shall assess against the licensee an administrative fine in the amount of \$1,000.00. The City shall further suspend the licensee's license and authority to sell tobacco products for no less than two days.
- (3) Third offense. In the event of a third violation within a 24-month period by the licensee, its agent or employee, of this article or Chapter 22, Article II, the City shall assess against the licensee an administrative fine in the amount of \$2,000.00. The City shall further suspend the licensee's license and authority to sell tobacco products for no less than four days or revocation of license.

I have provided the compiled information below in the event the Commission had any desire to review the City's current ordinance.

MINOT

Sec. 18-69. - Civil penalties imposed for breach of restrictions.



The penalty imposed for a violation of [section 18-68](#) shall be dependent upon whether the licensee has also committed one (1) or more violations of that section within the twelve (12) months immediately preceding the violation in question, in accordance with the following schedule:

[EXPAND](#)

Number of Offense	Consequence
First	Civil penalty of one hundred dollars (\$100.00).
Second	Suspension of seven (7) consecutive calendar days.
Third	Suspension of thirty (30) consecutive calendar days
Fourth	Suspension of one (1) calendar year.

VALLEY CITY

6. If a violation of this chapter occurs by a licensee or licensee's agent or employee, the following administrative penalties, suspensions or revocations will be imposed:
 - a. First violation: \$300.00 administrative penalty.
 - b. Second violation: \$500.00 administrative penalty.
 - c. Third violation: \$1,000.00 administrative penalty, and the tobacco license will be suspended for a period of seven consecutive business days.
 - d. Fourth violation: \$3,000.00 administrative penalty, and the tobacco license will be revoked.

The foregoing penalties shall be for violations that occur within a period of 24 consecutive months commencing and running from the date upon which the first violation is committed (the "lookback period"), and are assessed in addition to any criminal penalties that may arise from the same violation. If any subsequent violation occurs within the last six months of the lookback period, the lookback period shall be

extended for a period of six months from the date upon which of the subsequent violation is committed.

GRAND FORKS

(A) For a first offense, an administrative penalty of not less than one hundred dollars (\$100.00) or more than three hundred dollars (\$300.00).

(B) For a second offense within one (1) year, an administrative penalty of not less than one hundred dollars (\$100.00) or more than three hundred dollars (\$300.00) and the suspension of the license for not less than one (1) day and not more than five (5) days.

(C) For a third offense within one (1) year, an administrative penalty of not less than one hundred dollars (\$100.00) or more than three hundred dollars (\$300.00) and suspension of the license for not less than ten (10) days and not more than thirty (30) days.

(D) For a fourth offense within one (1) year, an administrative penalty of not less than one hundred dollars (\$100.00) or more than three hundred dollars (\$300.00) and suspension of the license for not less than one hundred eighty (180) days.

(E) For a fifth offense within one (1) year, an administrative penalty of not less than one hundred dollars (\$100.00) or more than three hundred dollars (\$300.00) and revocation of the license.

(F) Revocation of the license may also occur at any time upon a finding of a knowing and willful disregard or disobedience of this article.

WILLISTON

- a) First offense: Mandatory \$100 administrative fee assessed to the tobacco sale license holder under whom the sale took place, and warning that authority to sell shall be suspended if a subsequent offense occurs within 12 months. Furthermore, the manager and/or supervisor shall undergo mandatory training at licensee's expense, regarding sales to minors which training shall be specified by the City.
- b) Second offense within 12 months: Mandatory one day suspension of authority to sell, mandatory \$150 administrative fee, and mandatory training at licensee's expense of all employees handling tobacco products.
- c) Third offense within 12 months: Minimum seven day suspension of authority to sell and mandatory \$250 administrative fee.
- d) Fourth offense within 12 months: Minimum thirty-day suspension of authority to sell and mandatory \$250 administrative fee.

- e) If the city commission, or its authorized designees, make a good cause factual finding that the violation constitutes egregious conduct or behavior, then the commission, or its authorized designees, may impose a penalty outside of the progressive suspension policy in 9-117(b)(1)a-d, which may include, but is not limited to, the revocation of a license to sell tobacco products and a fine not to exceed \$1,000.