

ORDINANCE 463

AN ORDINANCE AMENDING CHAPTER 112 OF THE SPRING LAKE PARK CODE OF ORDINANCE RELATING TO TOBACCO

The City Council of the City of Spring Lake Park, Minnesota, ordains as follows:

Section 1. §112.01 shall be hereby amended as follows:

§ 112.01 PURPOSE.

~~—Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess, and use tobacco-related products, and those sales, possession, and use are violations of both state and federal laws; and because studies, which are hereby accepted and adopted, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this chapter shall be intended to regulate the sale, possession, and use of tobacco-related products for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco-related products, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.~~

Because the city 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 18 violates both state and federal laws; and because studies, which the city 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 marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; 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 City Council 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 December 2018 www.publichealthlawcenter.org Minnesota City Retail Tobacco Licensing Ordinance 6 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. Phillip 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 2. The following definitions in § 112.02 are hereby amended. Any definitions not listed below shall remain in full effect.

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell tobacco-related products are following and complying with the requirements of this chapter. **COMPLIANCE CHECKS** shall involve the use of ~~minors~~ persons under the age of 21 as authorized by this chapter. **COMPLIANCE CHECKS** shall also mean the use of ~~minors~~ persons under the age of 21 who attempt to purchase tobacco-related 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 tobacco-related products.

ELECTRONIC DELIVERY DEVICES. 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 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 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.

~~—— ***MINOR.*** Any natural person who has not yet reached the age of 18 years.~~

Section 3. §112.05 (A)(1) is hereby amended to read as follows:

(1) The applicant is under the age of ~~18~~ 21 years;

Section 4. §112.06 (A) is hereby amended to read as follows:

(A) To any person under the age of ~~18~~ 21 years;

Section 5. §112.07 is hereby amended to read as follows:

§ 112.07 VENDING MACHINES ~~RESTRICTED~~PROHIBITED.

It shall be unlawful for any person licensed under this chapter to allow the sale of tobacco- related products by the means of a self-service vending machine ~~unless minors are at all times prohibited from entering the licensed establishment.~~

Section 6. §112.08 is hereby amended to read as follows:

§ 112.08 SELF-SERVICE MERCHANDISING PROHIBITED.

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco-related products by any means whereby the customer may have access to those 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 tobacco, tobacco-related products between the licensee or his or her clerk and the customer. All tobacco, tobacco-related products shall either be stored behind a counter or other area, not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco-related products at the time this chapter is adopted shall comply with this section within 90 days. This section shall not apply to retail stores which derive at least 90% of their revenue from tobacco-related products and which cannot be entered at any time by persons younger than ~~18~~ 21 years of age.

Section 7. §112.10 is hereby amended to read as follows:

§ 112.10 COMPLIANCE CHECKS; INSPECTIONS.

All licensed premises shall be open to inspection by the City Police Department or other authorized City official during regular business hours. ~~From time to time, but at least once per year, t~~The City shall conduct compliance checks from time to time but at least twice per year. The City will conduct at least one compliance check that involves the participation of a person between the ages of 15 and 17 and at least one compliance check that involves the participation of a person between the ages of 18 and 20 by engaging, with the written consent of their parent or guardian, minors over the age of 15 years but less than 18 years, to enter the licensed premises to attempt to purchase tobacco-related products. Prior written consent to participate is required of their parents or guardians for persons over the age of 15 years but less than 18 years. Minors~~Persons~~Persons under the age of 21 used for the purpose of compliance checks shall be supervised by designated law enforcement officers or other designated city personnel. Persons under the age of 21~~Minors~~ used for compliance checks shall not be guilty of an unlawful purchase or attempted purchase, nor the unlawful possession of tobacco, tobacco-related products when those items are obtained or attempted to be obtained as a part of the compliance check. No minor-person under the age of 21 used in compliance checks shall attempt to use a false identification misrepresenting the ~~minor's person's~~ age, and all ~~minors-persons~~ persons under the age of 21 lawfully engaged in a compliance check shall answer all questions about ~~the minor's~~ their age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.

Section 8. §112.11 is hereby amended to read as follows:

§ 112.11 UNLAWFUL ACTS ~~INVOLVING MINORS.~~

Unless otherwise provided, the following acts shall be a violation of this chapter.

(A) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco-related product to any ~~minor~~ person under the age of 21.

(B) *Illegal possession.* It shall be a violation of this chapter for any ~~minor~~ person under the age of 21 to have in his or her possession any tobacco-related product. This division shall not apply to ~~minors~~ persons under the age of 21 lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this chapter for any ~~minor~~ person under the age of 21 to smoke, chew, sniff, or otherwise use any tobacco-related product.

(D) *Illegal procurement.* It shall be a violation of this chapter for any ~~minor~~ person under the age of 21 to purchase or attempt to purchase or otherwise obtain any tobacco-related product, and it shall be a violation of this chapter for any person to purchase or otherwise obtain items of this type on behalf of a ~~minor~~ person under the age of 21. It shall further be a violation for any person to coerce or attempt to coerce a ~~minor~~ person under the age of 21 to illegally purchase or otherwise obtain or use any tobacco-related

product. This division shall not apply to ~~minors~~ persons under the age of 21 lawfully involved in a compliance check.

(E) *Use of false identification.* It shall be a violation of this chapter for any ~~minor~~ person to attempt to disguise his or her true age by the use of a 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 an age older than the actual age of the person.

(F) *Liquid packaging.* Effective January 1, 2015, it shall be a violation of this section for any licensee to sell any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and use in an electronic delivery device, that is not in child resistant packaging.

Section 9. §112.99(C) is hereby amended to read as follows:

(C) *Administrative penalties.*

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$75 for a first violation of this chapter, \$200 for a second offense at the same licensed premises within a 24-month period, and \$250 for a third or subsequent offense at the same location within a 24-month period. After the third offense, the license is automatically suspended for seven days commencing the day following the date of the third offense. In addition to the seven-day suspension, the City Council shall conduct a hearing at the regular Council meeting following the third violation to determine whether the license should be suspended longer than seven days. Any additional suspension may be for the remainder of the license period or 90 days, whichever is greater. Upon a fourth violation at the same location within a 24-month period, the license will be revoked.

(2) *Other individuals.* Other individuals, other than ~~minors~~ persons under the age of 21 regulated by division (C) of this section, found to be in violation of this chapter shall be charged an administrative fine of \$50.

(3) ~~Minors~~ Persons under the age of 21. ~~Minors~~ Persons under the age of 21 found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco-related products, may be referred to the Anoka County Attorney's Office.

(4) *Statutory penalties.* If the administrative penalties authorized to be imposed by M.S. § 461.12, as it may be amended from time to time, differ from these established in this section, then the statutory penalties shall prevail.

Section 10. Effective Date. This Ordinance shall have full force and effect upon its passage and publication.

Passed by the City Council of the City of Spring Lake Park, Minnesota, this 16th day of March 2020.

Robert Nelson, Mayor

ATTEST:

Daniel R. Buchholtz, City Administrator/Clerk