



**WORK SESSION
VIRTUAL MEETING HELD VIA WEBEX
MARCH 22, 2022
5:45 PM**

Call to order

1. Presentation and discussion of policy recommendations by the Advisory Board of Health related to prohibiting flavored tobacco products and capping the number of tobacco licenses issued by the City of Richfield.

Adjournment

Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9739.



STAFF REPORT NO. 8
WORK SESSION
3/22/2022

REPORT PREPARED BY: Jennifer Anderson, Support Services Manager

DEPARTMENT DIRECTOR REVIEW: Jay Henthorne, Director of Public Safety/Chief of Police
3/16/2022

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
3/17/2022

ITEM FOR WORK SESSION:

Presentation and discussion of policy recommendations by the Advisory Board of Health related to prohibiting flavored tobacco products and capping the number of tobacco licenses issued by the City of Richfield.

EXECUTIVE SUMMARY:

The Richfield Advisory Board of Health (ABH) is responsible for making recommendations to the City Council related to community health services and has a long history of advocating for sound health policies to protect the residents of Richfield. The ABH will present draft policy recommendations that prohibit the sale of flavored tobacco products as well as cap the number of tobacco licenses issued by the city.

DIRECTION NEEDED:

The ABH seeks feedback and discussion of the draft policy language.

BACKGROUND INFORMATION:

A. HISTORICAL CONTEXT

In 2019, the Advisory Board of Health (ABH) began researching tobacco policies related to prohibiting flavored tobacco products, as well as capping the number of tobacco licenses the city issues. This work was then sidelined due to Covid. In late 2021/early 2022, presentations on these topics were provided to the ABH by Bloomington Public Health and the Association for Non-Smokers MN (ANSR). The ABH has since worked with ANSR and the Public Health Law Center at Mitchell Hamline School of Law to develop draft policy language.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

The City of Richfield has a tobacco policy that regulates the sale, possession, and use of tobacco and related devices and products and is intended to protect young people against the serious effects associated with tobacco use.

C. CRITICAL TIMING ISSUES:

None

D. FINANCIAL IMPACT:

Tobacco licenses are issued and renewed annually by the Support Services Division. The 2022 fee for a retail tobacco license is \$525. With 24 establishments currently operating, retail tobacco licenses generated \$12,600 in revenue for 2022.

E. LEGAL CONSIDERATION:

It is advised the City Attorney should review the proposed ordinance prior to any formal action.

ALTERNATIVE(S):

PRINCIPAL PARTIES EXPECTED AT MEETING:

ABH commissioners Staff from the Association for Non-Smokers MN

ATTACHMENTS:

Description	Type
□ Draft tobacco policy	Cover Memo

SECTION 1146. TOBACCO

(Added, Bill No. 1998-19)

1146.01. Findings and Purpose.

Subdivision 1. The Richfield City Council makes the following Findings in support of this section intended to regulate the sale, ~~possession,~~ and use of tobacco, ~~tobacco-and~~ related devices, [electronic delivery devices](#), and [nicotine or lobelia delivery](#) products and to protect young people against the serious effects associated with the use of ~~tobacco and related devices and those~~ products:

- (a) The City Council recognizes that the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of ~~18-21~~ violates both state and federal laws;
- (b) Studies, which the city hereby accepts and adopts, have shown that 95 percent of smokers initiate use before the age of 21; and that almost no one starts smoking after age 25;
- (c) Tobacco use has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government;
- (d) Raising the [minimum](#) legal ~~purchasing-sales~~ age to 21 will take legal purchasers out of the social circles of underage users. ~~and~~ studies have concluded that raising the [minimum](#) legal ~~purchasing-sales~~ age for tobacco to 21 would result in a 12 percent decrease in tobacco use and approximately 223,000 fewer premature deaths for those born between 2000 and 2009;
- (e) Raising the [minimum](#) legal ~~purchasing-sales~~ age to 21 is in line with the minimum age to buy alcohol and simplifies ID checks for retailers;
- (f) There is evidence to suggest that enforcement of possession, use, or purchase (PUP) laws against youth detract from the enforcement of penalties against retailers and that youth of color in Minnesota are disproportionately over-represented in similar status-level offenses, increasing their interactions with law enforcement and the juvenile justice systems;
- (g) Enforcement of PUP laws has not been shown to reduce youth smoking significantly and because PUP laws do not sufficiently take into account the tobacco industry's responsibility for targeting youth with its marketing practices, this section is intended to regulate the sale of tobacco, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect minors and young adults against the serious effects associated with use and initiation, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minn. Stat. § 144.391, as it may be amended from time to time;
- (h) [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](#)
- (i) [Studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments;](#)
- (j) [Commercial tobacco use causes disease and death and constitutes an urgent public health threat as it remains the leading cause of preventable death and disability in the United States, with 480,000 people dying prematurely in the United States from smoking-related diseases every year. In the United States, smoking is responsible for about one in every five deaths, more deaths each year than human](#)

[immunodeficiency virus \(HIV\), illegal drug use, alcohol use, motor vehicle injuries, microbial agents, and toxic agents combined;](#)

(k) [Commercial tobacco use can affect nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths. According to the World Health Organization, tobacco use accounts for the greatest cause of death worldwide, responsible for nearly 6 million deaths per year. Over 16 million Americans have at least one disease caused by smoking;](#)

(l) [Secondhand smoke, according to the Centers for Disease Control and Prevention, causes stroke, lung cancer, and coronary heart disease in adults. In addition, it increases risks for sudden infant death syndrome, respiratory symptoms, middle-ear disease, and slows lung growth in children.](#)

(m) [Cigarette butts are the most-littered object in the world and the item most often found in beach cleanups globally. Butts contribute nonbiodegradable plastic, nicotine, heavy metals, pesticides, and other toxic substances to land and marine environments, down to the bottom of the oceans;](#)

(n) [The tobacco industry has been adjudicated as racketeers in federal court as a result of its collective and coordinated denial, deceit, and targeting of deadly, addictive products to structurally marginalized communities.](#)

Subd. 2. Studies. In making these findings, the City Council accepts the conclusions and recommendations of: the Institute of Medicine's report, "Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products" (2015), 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," ["Best Practices for Comprehensive Tobacco Control Programs, 2014,"](#) and "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997"; and of the following scholars in these scientific journals: Xin Xu et al., Annual Healthcare Spending Attributable to Cigarette Smoking: An Update, *Am. J. Prev. Med.* 48(3): 326-33 (Mar. 2015); Giovino GA, "Epidemiology of Tobacco Use in the United States," *Oncogene* (2002) 21, 7326-40; Khuder SA, et al., "Age at Smoking Onset and its Effect on Smoking Cessation," *Addictive Behavior* 24(5):673-7, September-October 1999; D'Avanzo B, et al., "Age at Starting Smoking and Number of Cigarettes Smoked," *Annals of Epidemiology* 4(6):455-59, November 1994; Chen, J & Millar, WJ, "Age of Smoking Initiation: Implications for Quitting," *Health Reports* 9(4):39-46, Spring 1998; Everett SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," *Preventive Medicine*, 29(5):327-33, November 1999, ~~copies of which are adopted by reference~~; Wakefield, M & Giovino, G "Teen Penalties for Tobacco Possession, Use, and Purchase: Evidence and Issues," *Tobacco Control* (2003)12, i6-i13; the Minnesota Juvenile Justice Advisory Committee's report, "2016 Annual report to Governor Mark Dayton and the Minnesota State Legislature (2016); [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; Andrea C. Villanti et al., Flavored Tobacco Product Use in Youth and Adults: Findings from the First Wave of the PATH Study \(2013-2014\), 53 Am. J. Prev. Med. 139 \(2017\), <https://www.ncbi.nlm.nih.gov/pubmed/28318902>; Shari P. Feirman et al., Flavored Tobacco Products in the United States: A Systematic Review Assessing Use and Attitudes, 18 Nicotine Tobacco Res. 739 \(2015\); copies of which are adopted by reference.- \(Amended, Bill No. 2013-19; Bill No. 2018-6\)](#)

1146.03. Definitions.

Subdivision 1. For the purposes of this section, the terms defined in this subsection have the following meanings given them:

Subd. 2. Tobacco. "Tobacco" means ~~cigarettes and~~ 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; pipe tobacco; 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; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco. ~~This term~~ Tobacco does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act. 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. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 3. Tobacco-related devices. "Tobacco-related devices" shall mean pipes, ~~cigarette~~ rolling papers, wraps, 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. Tobacco-related devices may or may not contain tobacco. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 4. Tobacco-related licensed product. ~~The term that collectively refers to A~~ any tobacco, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product, as those terms are defined in this section. (Added, Bill No. 2018-6)

Subd. 5. Self-service merchandising. "Self-service merchandising" shall mean open displays of ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery~~ licensed products in any manner where any person has access to ~~such items~~ the licensed products without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention entails the actual physical exchange of the ~~tobacco, tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery~~ licensed product, between the customer and the licensee or employee. Self-service merchandising shall not include vending machines. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 6. Vending machine. "Vending machine" shall mean any mechanical, electric or electronic, or other type of device which dispenses ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products, upon the insertion of money, tokens, or other form of payment ~~directly into~~ or onto the machine by the person seeking to purchase such items. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 7. Loosies. "Loosies" shall mean the common term used to refer to single cigarettes, cigars, and any other licensed products 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, a single or individually packaged cigarette. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 8. Retail establishment. "Retail establishment" shall mean any place of business where ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products, are available for sale to the general public. Retail establishments shall include, but not be limited to, grocery stores, tobacco product shops, liquor stores, convenience stores, gasoline service stations, bars, and restaurants. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 9. Moveable place of business. "Moveable place of business" shall mean any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions ~~motorized vehicles, mobile sales kiosks, kiosks, trailers or other structure or equipment not permanently attached to the ground.~~ (Amended, Bill No. 2013-19)

Subd. 10. Sale. A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.

Subd. 11. Compliance checks. "Compliance checks" shall mean the system the City of Richfield uses to investigate and ensure that those authorized to sell ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine and lobelia~~ licensed delivery products, are following and complying with the requirements of this section. Compliance checks shall involve the use of persons under the age of 21 as authorized by this section to attempt to purchase such items. Compliance checks may also be conducted by other units of government for educational, research and training purposes or for the purpose of enforcing appropriate Federal, State or local laws and regulations relating to ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine and lobelia~~ delivery licensed products. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 12. Electronic delivery device. "Electronic delivery device" shall mean any product or electronic device that can be used to deliver nicotine, lobelia or any other substance, ~~whether natural or synthetic, s intended for human consumption through the inhalation of aerosol or vapor from the product to the person inhaling from the device. 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. The term shall include such devices whether they are manufactured, marketed, or sold as electronic delivery devices, electronic cigars, electronic pipes, vape pens, mods, tank systems, or under any other product name or descriptor and includes any component part of such a product whether or not sold separately. Electronic delivery device does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act. This term excludes any 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.~~ (Added, Bill No. 2013-19; amended, Bill No. 2015-13; Bill No. 2018-6)

Subd. 13. Cigar. A "cigar" shall mean any roll of tobacco that is wrapped in tobacco leaf or in any substance containing tobacco, with or without a tip or mouthpiece, that is not a cigarette as defined in Minn. Stat. § 297F.01, subdivision 3 as amended from time to time. (Added, Bill No. 2015-13)

Subd. 14. Smoking. "Smoking" shall mean ~~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, inhaling or exhaling from, or carrying, any lighted or heated tobacco, tobacco product, tobacco-related device or any other lighted or heated product, whether natural, synthetic, containing, made or derived from nicotine, tobacco marijuana or other plant. Smoking also includes the inhaling or exhaling of vapor from any electronic delivery device or nicotine or lobelia delivery product, as well as carrying such device or product that is turned on or otherwise activated.~~ (Added, Bill No. 2015-13; amended, Bill No. 2018-6)

Subd. 15. Place of Employment. "Place of employment" shall mean any indoor area at which two or more individuals perform any type of service for consideration of payment under any type of contractual relationship, including, but not limited to, an employment relationship with or for a private corporation, partnership, individual, or government agency. Place of employment includes any indoor area where two or more individuals gratuitously perform services for which individuals are ordinarily paid. A place of employment includes, but is not limited to, public conveyances, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, employee cafeterias, lounges, auditoriums, gymnasiums, restrooms, elevators, hallways, museums, libraries, bowling establishments, employee medical facilities, and rooms or areas containing photocopying equipment or other office equipment used in common. Vehicles used in whole or in part for work purposes are places of employment during hours of operation if more than one person is present. An area in which work is performed in a private residence is a place of employment during hours of operation if:

- (1) The homeowner uses the area exclusively and regularly as a principal place of business and has one or more on-site employees; or
- (2) The homeowner uses the area exclusively and regularly as a place to meet or deal with patients, clients, or customers in the normal course of the homeowner's trade or business.

(Added, Bill No. 2015-13)

Subd. 16. Public Meeting. "Public meeting" shall mean any meeting open to the public pursuant to Minn. Stat. § 13D.01. (Added, Bill No. 2015-13)

Subd. 17. Public Place. "Public place" shall mean any enclosed, indoor area used by the general public, including, but not limited to, restaurants; bars; any other food or liquor establishment; retail and other commercial establishments; educational ~~facilities~~ facilities; hospitals; nursing homes; auditoriums; arenas; meeting rooms; waiting rooms; and common areas of rental apartment buildings. (Added, Bill No. 2015-13)

Subd. 18. Sampling. "Sampling" shall mean the lighting of tobacco, tobacco products, tobacco-related devices or the activation of and inhaling of vapor from electronic delivery devices or nicotine or lobelia delivery products in a retail establishment by a customer or potential customer for the purpose of sampling the product or device before a purchase. (Added, Bill No. 2015-13; amended, Bill No. 2018-6)

Subd. 19. Nicotine or lobelia delivery product. Any product containing or delivering nicotine or lobelia intended for human consumption, whether natural or synthetic, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section. Nicotine or Lobelia Delivery Product does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as "drugs," "devices," or "combination products," as defined in the Federal Food, Drug, and Cosmetic Act, any product that has been approved or otherwise verified for legal sale by the United States Food and Drug Administration for tobacco use cessation or for other medical purposes, and is being marketed and sold solely for that approved purpose. (Added, Bill No. 2018-6)

Subd. 20. Flavored product. Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, 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 licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

Subd. 21. Child-resistant packaging. Packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.

Subd. 22. 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.

Subd. 23. Person. One or more natural persons; a partnership, including a limited partnership; a corporation, including a foreign, domestic or nonprofit corporation; a trust; a political subdivision of the state; or any other organization.

1146.05. Sale and distribution of tobacco.

Subdivision 1. License required. No person or establishment shall sell or offer to sell any ~~tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery~~ licensed products without first having obtained a license to do so from the City of Richfield. All licenses issued under this section 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. (Amended, Bill No. 2013-19; Bill No. 2018-6)

Subd. 2. Application for renewal. An application for renewal of a license to sell ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~licensed products shall be made on a form provided by the Public Safety Director or the Public Safety Director's designee. The fee shall accompany the application. The application shall be reviewed and action taken on it by either the Public Safety Director or the Director's designee. ~~(Amended, Bill No. 2013-19; Bill No. 2018-6)~~The application must contain:

- (a) 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;
- (b) The business tax identification number of the licensee;
- (c) The name(s) and address(es) of the owner(s), shareholder(s), or partner(s) of the business for which the license is sought, if any, for the preceding year; and,
- (d) Any additional information the city deems necessary, including proof of licensure eligibility pursuant to Section [insert section re: license sunset].

Subd. 3. Action. The Public Safety Director or the Public Safety Director's designee may either approve or deny the application for license renewal, or may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the Public Safety Director or the Public Safety Director's designee denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the decision.

Subd. 4. License term. All licenses shall expire on December 31 of the year in which the license is issued. The annual license fee will not be prorated.

Subd. 5. Denial, revocation or suspension.

(a) A license under this section may be denied, suspended, or revoked by the council, after an investigation and public hearing where the licensee is granted the opportunity to be heard, for ~~one~~ (1) or more any of, but not limited to, the following reasons:

- (1) ~~(a)~~ The operation of the business is in conflict with any provision of this code.
- (2) ~~(b)~~ The operation of the business is in conflict with any health, fire, building, building maintenance, zoning, or any other applicable codes or laws.
- (3) ~~(c)~~ The applicant or licensee has failed to comply with one (1) or more provisions of this section or any statute, rule or ordinance pertaining to the sale of ~~tobacco, tobacco products, tobacco-related device, electronic delivery devices or nicotine or lobelia delivery~~licensed products.
- (4) ~~(d)~~ The applicant has committed fraud, misrepresentation or bribery in securing or renewing a license.
- (5) ~~(e)~~ The owner of the premises licensed or to be licensed would not qualify for a license under the terms of this section.
- (6) ~~(f)~~ The applicant is under the age of 21 years.
- (7) ~~(g)~~ 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 ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~licensed products.
- (8) ~~(h)~~ The applicant has had a license to sell ~~tobacco, tobacco products, tobacco-related devices, electronic delivery devices, or nicotine or lobelia delivery~~licensed products, revoked within the 12 months preceding the date of application.
- (9) ~~(i)~~ The applicant is prohibited by Federal, State, or other local law, ordinance, or other regulation, from holding such a license. ~~(Amended, Bill No. 2013-19; Bill No. 2018-6)~~

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~~(a)~~(b) If a license is mistakenly issued or renewed to a person, the city will revoke the license upon the discovery that the person was ineligible for the license under this ordinance. The city will provide the license holder with notice of the revocation, along with information on the right to appeal.

Subd. 6. Moveable place of business. No license shall be issued to a moveable place of business. Only a fixed location business shall be eligible to be licensed under this section.

Subd. 7. Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

Subd. 8. Renewals. The application for renewal of a license issued under this section shall be handled as required in this section~~in the same manner as the original application~~. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.

Subd. 9. Employee training. The applicant for license renewal must provide proof that an employee training program on ~~tobacco~~ sales of licensed products has been provided during the license year by submitting records supporting that training at the time of their license renewal each year. (Amended, Bill No. 2004-9)

Subd. 10. Sunset on Tobacco Retail Licenses. The city will not issue any new licenses for the sale of licensed products after [insert date of amendment passage]. The city will only renew existing licenses that were issued by [insert date of amendment passage]. Licenses may be renewed subject to the provisions of this chapter until [insert specific date for end of all tobacco sales in the jurisdiction] after which no licenses will be renewed.

A license is only eligible for renewal by the same person who holds the license on [insert date of ordinance passage] for the premises set forth in the approved application. Eligible parties will lose the existing license if they fail to renew it annually.

1146.07. License fee.

The annual license fee for a tobacco license is set by appendix D. The license fee must be paid at the time of application for [renewal of](#) the license.

1146.09. Prohibitions.

Subdivision 1. Prohibited sales. It shall be a violation of this section for any person to sell or offer to sell any ~~tobacco, tobacco product, tobacco related device, electronic delivery device or nicotine or lobelia delivery~~ [licensed](#) product:

- (a) To any person under the age of 21 years.
 - (i) **Age verification.** Licensees must verify by means of government-issued photographic identification [containing the bearer's date of birth](#) 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.
 - (ii) **Signage.** Notice of the [minimum](#) legal sales age, ~~and~~ age verification requirement, [and possible penalties for underage sales](#) must be posted at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.
- (b) By anyone under the age of 18 years.
- (c) By means of any type of vending machine.
- ~~(d) By means of self-service merchandising.~~
- ~~(de)~~ By means of loosies.
- ~~(ef)~~ 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.
- ~~(fg)~~ By any other means prohibited by Federal, State, or other local law, ordinance provision, or other regulation. (Amended, Bill No. 2018-6)

Subd. 2. Child-resistant packaging. The sale of any liquid, whether or not such liquid contains nicotine, that is intended for human consumption and used in an electronic delivery device or nicotine or lobelia delivery product that is not contained in child-resistant packaging, is prohibited. All licensees under this Section must ensure that any such liquid is sold in child-resistant packaging, as defined in Minn. Stat. § 461.20, as amended from time to time. (Amended, Bill No. 2018-6)

Subd. 3. Cigar sales. 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. This subdivision does not apply to premium cigars as defined in Minn. Stat. § 297F.01, subdivision 13a. This subdivision shall become effective January 1, 2016.

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Subd. 4. ~~Smoking and sampling prohibited.~~ Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance. ~~Smoking shall be prohibited, and no person shall smoke, in a public place, at a public meeting, or in a place of employment. This subdivision also prohibits the sampling of tobacco, tobacco products, electronic delivery devices, nicotine or lobelia delivery products and products used in electronic delivery devices and nicotine or lobelia delivery products. A licensee under this Section that allowed sampling at its licensed premises on or before October 23, 2014 may continue to allow sampling, but only while that certain licensee operates at that certain licensed premises. (Amended, Bill No. 2018-6)~~

Subd. 5. ~~Samples prohibited. No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited. Smoking permitted. Except sampling, which is expressly prohibited under subd. 4, smoking is permitted as identified in Minn. Stat. § 144.4167.~~

Subd. 6. Flavored products. No person shall sell or offer for sale any flavored products.

(Amended, Bill No. 2013-19; Bill No. 2015-13)

1146.11. Vending machines.

~~It shall be unlawful for any person licensed under this section to allow the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine or lobelia delivery products, by the means of a vending machine. (Amended, Bill No. 2013-19; Bill No. 2018-6)~~

1146.13. Self-service sales.

It shall be unlawful for a licensee under this section to allow the sale of ~~tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine or lobelia delivery~~ 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 item, between the licensee or licensee's employee and the customer. All ~~tobacco, tobacco products, tobacco related devices, electronic delivery devices and nicotine or lobelia delivery~~ licensed products, shall either be stored behind a counter or other area not freely accessible to customers. A license holder who operates an establishment or fully enclosed portion of an establishment that sells at least 90 percent of its products in ~~tobacco, or tobacco products, tobacco related devices, electronic delivery devices or nicotine or lobelia delivery~~ licensed products, is exempt from the self-service merchandising provision if the license holder prohibits anyone under 21 years of age from entering the establishment or fully enclosed portion of an establishment and the license holder conspicuously displays a notice prohibiting persons under 21 years of age from entering the establishment. (Amended, Bill No. 2013-19; Bill No. 2018-6)

1146.15. Responsibility.

All licensees under this section shall be responsible for the actions of their employees in regard to the sale, ~~offer to sell, and furnishing~~ of ~~tobacco, tobacco products, tobacco related devices, electronic delivery devices or nicotine or lobelia delivery~~ licensed products on the licensed premises, and the sale, ~~offer to sell, and furnishing~~ 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 City from also subjecting the employee to whatever penalties are appropriate under this section, State or Federal law, or other applicable law or regulation. (Amended, Bill No. 2013-19; Bill No. 2018-6)

1146.17. Compliance checks and inspections.

All licensed premises shall be open to inspection by Richfield law enforcement or other authorized City officials during regular business hours. From time to time, but at least twice per year, the City shall conduct compliance checks. In accordance with state law, the city 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. One check will be conducted by engaging, with the written consent of their parents or guardians, a person over the age of 15 years but less than 17 years of age, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery products. A second check will be conducted by engaging a person over the age of 18 but less than 21 years of age, to enter the licensed premise to attempt to purchase such items. Persons used for the purpose of compliance checks shall be supervised by the Public Safety Director or the Public Safety Director's designee. No person used in compliance checks shall attempt to use a false identification misrepresenting the person's age and all persons lawfully engaged in a compliance check shall answer all questions about the person's age, asked by the licensee or licensee's employee and shall produce any identification, if any exists, for which the person is asked. Nothing in this subdivision 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.

(Amended, Bill No. 2013-19; Bill No. 2015-13; Bill No. 2018-6)

1146.19. Other ~~illegal~~ prohibited acts.

Subdivision 1. Unless otherwise provided, the following acts shall be a violation of this section.

Subd. 2. ~~Illegal sales~~ Prohibited furnishing or procurement. It shall be a violation of this section 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 purchase or attempt to purchase any licensed product to sell or otherwise provide any tobacco, tobacco products, tobacco-related devices, electronic delivery devices or nicotine or lobelia delivery products, to any person under the age of 21. (Amended, Bill No. 2018-6)

Subd. 3. Use of false identification. It shall be a violation of this section for any person- to use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification. under the age of 21 to attempt to disguise their 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.

(Amended, Bill No. 2013-19; Bill No. 2018-6)

1146.21. Violations.

Subdivision 1. Notice ~~and hearing~~. 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 that informs the alleged violator of their right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number. The alleged violator shall have the opportunity for a hearing before the Director of Public Safety before any penalty is imposed under this section. A decision that a violation has occurred shall be in writing.

Subd. 2. Hearings.

(a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The City Clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing. ~~Misdemeanor prosecution. Nothing in this subsection shall prohibit the City, from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.~~

Subd. 3. Hearing Officer. The City Council will designate a hearing officer. The hearing officer will be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

Subd. 4. Decision. A decision will be issued by the hearing officer within 10 business days of the hearing. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the city and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the city and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in Subd. 6 of this subsection.

Subd. 5. Costs. If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of ~~+~~ \$1,000 ~~+~~ must be paid by the person requesting the hearing.

Subd. 6. Appeals. Appeals of any decision made by the hearing officer must be filed in [_____] County district court within 10 business days of the date of the decision.

Subd. 7. Continued violation. Each violation, and every day on which a violation occurs or continues, shall constitute a separate offense.

1146.23. Penalties.

Subdivision 1. Licensees. Any licensee found to have violated this section, or whose employee shall have violated this section, shall be charged an administrative fee as follows:

- (a) **First violation.** ~~\$3200.00~~ fine with no suspension.
- (b) **Second violation.** If within ~~3624~~ months of the first violation, ~~-\$6500.00~~ fine with a two-day suspension. If outside of ~~3624~~ months of the first violation, it will be counted as a first violation. (Amended, Bill No. 2013-19)
- (c) **Third violation.** If within ~~3624~~ months of the ~~second first~~ violation, ~~-\$1,000700.00~~ fine with a seven-day suspension. If outside of ~~3624~~ months of the second violation, it will be counted as a second violation. (Amended, Bill No. 2013-19)
- (d) **Fourth violation.** If within ~~3624~~ months of the third violation, \$1,000.00 fine ~~with a suspension of up to 60 days, with the option to revoke the license and the license will be revoked.~~ If outside of ~~3624~~ months of the third violation, it will be counted as a third violation. ~~When a license is revoked, one (1) year's time must elapse from the date of revocation before the establishment is eligible to reapply for a tobacco license.~~ (Amended, Bill No. 2013-19)
- (e) ~~**Step back option.** The City's disciplinary penalties include a "step back" option as an incentive for licensed establishments. Under the "step back" option, each time an establishment passes two (2) consecutive compliance checks, the establishment is deemed to have "stepped back" one (1) violation level. For example, if an establishment has had a total of three (3) violations but successfully passes~~

~~two (2) consecutive compliance checks after the third violation, the establishment "steps back" one (1) level to the second violation level; if a subsequent violation were to occur, the penalty would be imposed as if it were a third violation rather than a fourth violation. Each step back requires two (2) new consecutive successful compliance checks. (Amended, Bill No. 2004-9)~~

~~(f) Council appearance and fine reduction. A licensee must appear before the City Council after a second, third, or fourth violation. Upon such appearance, the Council will reduce the applicable fine by \$100.00. (Added, Bill No. 2013-19)~~

~~(fg) Penalty for noncompliance. If a licensee fails to comply with a suspension or revocation notice, the Council may increase the suspension or the fine, or both, at its discretion. (Added, Bill No. 2013-19)~~

~~**Subd. 2. Other individuals.** Individuals, other than licensees regulated by subdivision 1 of this subsection and other than persons under the age of 21 regulated under Subd. 3 of this subsection, found to be in violation of this section ~~shall~~ may be charged an administrative fee of \$~~5~~100.00. (Amended, Bill No. 2004-9)~~

~~**Subd. 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 noncriminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the city determines to be appropriate. The City Council will consult with educators, parents, guardians, persons under the age of 21, public health officials, court personnel, and other interested parties to determine an appropriate remedy for persons. Reserved. (Repealed, Bill No. 2018-6)~~

~~**Subd. 4. Misdemeanor.** Nothing in this section prohibits the city from seeking prosecution as a misdemeanor for an alleged second violation of this ordinance by a person 21 years of age or older within five years of a previous conviction under the ordinance. Nothing in this subsection shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this section.~~

1146.25. Exceptions and defenses.

~~**Subdivision 1.** Nothing in this section shall prevent the provision of tobacco, ~~tobacco products~~, tobacco-related devices, ~~electronic delivery devices, or nicotine or lobelia delivery products~~ to a person under the age of 21 as part of an Indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony. (Amended, Bill No. 2013-19; Bill No. 2018-6)~~

~~**Subd. 2.** It shall be an affirmative defense to the violation of this section for a person to have reasonably relied on proof of age as described by State law.~~

~~**Subd. 3.** It shall be a defense to a violation of the section that a licensee did not intentionally aid, advise, hire, counsel or conspire with another to sell tobacco, tobacco products, tobacco related devices, electronic delivery devices, or nicotine or lobelia delivery products to persons under the age of 21 or otherwise procure the sale of such items to persons under the age of 21.~~

(Amended, Bill No. 2018-6)

1146.27. Severability and savings clause.

If any section or portion of this section shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this section.

1146.28 Effective Date.

[This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.](#)