ORDINANCE AMENDING SECTION 5.35 OF THE MANKATO CITY CODE RELATING TO TOBACCO

WHEREAS, there are studies that support increasing the tobacco purchase age to 21 from 18, that indicate it would decrease early deaths, cut low birth weights and substantially reduce the number of 15 to 17 year olds who begin smoking; and

WHEREAS, as of February 2017, over 220 municipalities in 16 states, and the entire states of Hawaii and California (covering nearly 60 million people) have changed the legal age to purchase tobacco products from 18 to 21; and

WHEREAS, the City of Edina, was the first city in Minnesota to raise the tobacco purchasing age to 21, and

WHEREAS, the Mankato City Council proposes changing the tobacco purchasing age to 21.

NOW THEREFORE BE IT ORDAINED by the City Council for the City of Mankato that Mankato City Code Section 5.35, be and hereby is amended as follows:

Sec. 5.35. - Tobacco.

Subd. 1. Purpose and Intent. Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain and use tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices and the sales, possession, and use are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts 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 ordinance shall be intended to regulate the sale, possession and use of tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices, and to further the official public policy of the state in regard to preventing youth people from starting to smoke as stated in Minnesota Statute, Section 144.391, as it may be amended from time to time.

Subd. 2. Definitions. Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly-accepted definitions. For the purpose of this Section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A. Compliance Checks. The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of ~~minors~~ persons under the age of

21 who attempt to purchase tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices 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, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices.

B. Electronic Cigarettes. Any electronic smoking device that can be used to deliver nicotine or any other substance to the person inhaling from the device. The term shall include such devices whether they are manufactured as electronic cigarettes, electronic cigar, electronic pipes or any other product name.

C. Individually Packaged. The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include but not be limited to single cigarette packs, single bags or cans of loose tobacco in any form and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this definition shall not be considered individually packaged.

D. 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.

E. Loosies. The common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term "loosies" does not include individual cigars with a retail price, before any sales tax, of more than $2 per cigar.

F. Minor. Any natural person who has not yet reached the age of 18 years.

G. Moveable Place of Business. Any form of business operated out of a 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.

H. Nicotine or Lobelia Delivery Devices. Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and solely for that approved purpose.

I. Retail Establishment. Any place of business where tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants and drug stores.

J. Sale. Any transfer of goods for money, trade, barter or other consideration.

K. Self-Servicing Merchandising. Open displays of tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

L. Smoking. Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, e-cigarette or any other lighted or heated tobacco or plant product. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, e-cigarette or any other lighted or heated tobacco or plant product intended for inhalation.

M. Tobacco or Tobacco Products. Tobacco or tobacco products includes 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; cigars; cheroots; stogies; perigee; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff, snuff flour, Cavendish; plug and twist tobacco; fine cut and other chewing tobacco; shorts; refuse scraps; clippings; cuttings and sweeping of tobacco; and other kinds and forms of tobacco. Tobacco excluded 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 approved purpose.

N. Tobacco-Related Devices. Tobacco-related devices includes any tobacco product as well as a pipe, rolling papers, ashtray or other device intentionally designed to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.

O. Vending Machine. Any mechanical, electrical or electronic or other type of device which dispenses tobacco, tobacco products or tobacco-related devices upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product or tobacco-related device.

(Ord. of 1-13-14)

Subd. 3. License.

A. License Required. No person shall sell or offer to sell any tobacco, tobacco product, or tobacco-related device or nicotine or lobelia delivery device without first having obtained a license to do so from the City. No license shall be issued for the sale of tobacco, tobacco-related products or tobacco-related devices to a person under the age of 21.

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

C. 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 purpose of sampling tobacco and tobacco-related products including e-cigarettes and hookah is prohibited.

D. Signage. Notice of the legal sales age and the age verification requirement shall be posted at each location where tobacco, tobacco-related products or tobacco-related devices are offered for sale. The required signage, which will be provided to the licensee by the city, shall be posted in a manner so that it is clearly visible to anyone who is considering making a purchase.

Subd. 4. Fees. No license shall be issued under this Section until the appropriate license fee shall be paid in full. The annual tobacco license fee shall be established by resolution of the City Council.

Subd. 5. Basis for Denial of License.

A. The applicant is under the age of ~~eighteen (18)~~ twenty-one (21) years.

B. The applicant has been convicted within the past five years of any violation of a federal, state or local law, ordinance, provision or other regulation relating to purchase tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices.

C. The applicant has had a license to sell tobacco, tobacco products, or tobacco-related devices and nicotine or lobelia delivery services revoked within the preceding twelve (12) months of the date of the application.

D. The applicant fails to provide any information required on the application or provides false or misleading information.

E. The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.

However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city 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.

Subd. 6. Prohibited Sales. It shall be a violation of this Section for any person to sell or offer to sell any tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery device:

A. To any person under the age of ~~eighteen (18)~~ twenty-one (21) years. Licensee shall verify by means of a government issued photographic identification that the person obtaining the tobacco or tobacco related device is over the age twenty-one (21).

B. By means of any type of vending machine.

C. By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery device between the licensee or the licensee's employee and the customer.

D. By means of loosies as defined in subdivision 2.

E. 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. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.

F. By any other means, to any other person, or in any other manner or form prohibited by federal, State or other local law, ordinance provision or other regulation.

Subd. 7. Self-Service Sales. It shall be unlawful for a licensee under this Section to allow the sale of tobacco, tobacco products, or tobacco-related devices and nicotine or lobelia delivery devices 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 products, tobacco-related devices and nicotine or lobelia delivery device between the licensee or their clerk and the customer. All tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices shall either be stored behind a counter or other area not freely accessible to customer or in a case or other storage unit not left open and accessible to the general public.

Subd. 8. Responsibility. All licensees under this Section shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices on the licensed premises and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this subdivision shall be construed as prohibiting the City from also subjecting the clerk to whatever penalties are appropriate under this Section, chapter, state or federal law or regulation.

Subd. 9. Compliance Checks and Inspections. All licensed premises shall be open to inspection by the Mankato Department of Public Safety or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with ~~the written consent of their parents or guardians, minors~~ persons over the age of 15 years, but less than ~~18~~ 21 years to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices. Prior written parental consent is required for any minor who participates in a compliance check. ~~Minors~~ Persons used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. ~~Minors~~ Persons used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices when those items are obtained as a part of the compliance check. No ~~minor~~ person used in compliance checks shall attempt to use a false identification misrepresenting the ~~minor's~~ persons age, and all ~~minors~~ persons lawfully engaged in a compliance check shall answer all questions about the ~~minor's~~ person's age asked by the licensee or their employee and shall produce any identification, if any exists, for which they are 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.

Subd. 10. Other Illegal Acts. Unless otherwise provided, the following acts shall be a violation of this section:

A. It shall be a violation of this Section for any person to sell or otherwise provide any tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery device to any ~~minor~~ person under the age of 21.

B. It shall be a violation of this Section for any minor to have in their possession any tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery device. This paragraph shall not apply to ~~minors~~ persons lawfully involved in a compliance check.

C. It shall be a violation of this Section for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery device.

D. It shall be a violation of this Section for any ~~minor~~ person under the age of 21 to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery device and it shall be a violation of this Section for any person to purchase or otherwise obtain those items on behalf of a ~~minor~~ person under the age 21. It shall further be a violation for any person to coerce or attempt to coerce a ~~minor~~ person under the age 21 to illegally purchase or otherwise obtain or use any tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery device. This paragraph shall not apply to ~~minors~~ persons lawfully involved in a compliance check.

E. It shall be a violation of this Section for any ~~minor~~ person under the age 21 to attempt to disguise their true age by the use of a false form of identification, whether the identification is that or another person or one in which the age of the age of the person has been modified or tampered with to represent an age older that the actual age of the person.

Subd. 11. Exceptions and Defenses. Nothing in this Section shall prevent the providing of tobacco, tobacco products, tobacco-related devices and nicotine or lobelia delivery devices to a ~~minor~~ person under the age 21 as part of a lawfully recognized religious, spiritual or cultural ceremony. It shall be an affirmative defense to the violation of this Section for a person to have reasonably relied on proof of age described by state law.

Subd. 12. Violations and Penalty.

A. ~~Nothing in this Section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.~~ Violations of these provisions may result in civil penalties being imposed as adopted by resolution to the Council. Conviction of a violation in a court of law is not required for the imposition of a civil penalty. Civil penalties may be appealed following the City's Administrative Hearing Procedure.

B. Subsequent violations. Three or more licensing violations at one time or within a twelve month time period will be heard by the City Council and be subject to licensing actions including suspension, revocation or other sanction as deemed appropriate by City Council. Action taken by the City Council can be appealed to a hearing officer per the Administrative Hearing Procedure.

~~B. Violations.~~

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.~~

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.~~

3. ~~Hearing Officer. The City Manager or designee shall serve as the hearing officer.~~

4. ~~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 under subdivision 13 of this ordinance, shall be recorded in writing, a copy of such shall be provided to the accused violator. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the accused violator.~~

~~5. If the violation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of $1,000 shall be paid by the person requesting the hearing.~~

~~6. Appeals. Appeals of any decision made by the hearing officer shall be filed in Blue Earth County District Court.~~

~~**Subd. 13. Penalties.**~~

~~A. Licensees. Any licensee found to have violated this ordinance, or whose employee shall have violated this ordinance, shall be charged an administrative fine of seventy-five dollars ($75) for a first violation of this ordinance, two hundred dollars ($200) for a second offense at the same licensed premise within a twenty-four (24) month period, and two hundred fifty dollars ($250) for a third or any subsequent offense at the same location within a twenty-four (24) month period. In addition, after the third offense, the license shall be suspended for not less than seven (7) days.~~

~~B. Other Individuals. Other individuals, other than minors regulated by paragraph C of this subdivision, found to be in violation of this ordinance shall be charged an administrative fee of $50.~~

C. Continued Violation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

D. Minors. Minors found in unlawful possession of, or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, or tobacco-related devices or nicotine or lobelia delivery devices shall be referred to the City or County Attorney's office for diversion or prosecution.

E. Misdemeanor. Nothing in this subdivision shall prohibit the City from seeking prosecution as a misdemeanor for any violation of this ordinance.

(Ord. of 6-26-78; Ord. of 11-22-82; Ord. of 5-26-98; Ord. of 8-12-13)

This Ordinance shall, in accordance with the provisions of Section 2.14 and 5.06 of the Mankato City Charter, become effective thirty (30) days after publication of notice of its adoption.

Adopted this _____ day of _____, 2018

_____
Eric T. Anderson
Mayor

Attest: _____
Renae Kopischke, CMC
Executive Assistant