

CITY OF FALCON HEIGHTS, RAMSEY COUNTY, MINNESOTA

ORDINANCE NO. 18-03

**AN ORDINANCE AMENDING CHAPTER 14, ARTICLE IX
PERTAINING TO TOBACCO**

THE CITY COUNCIL OF THE CITY OF FALCON HEIGHTS ORDAINS:

SECTION 1: Chapter 14, Article IX of the Falcon Heights City Code is amended by adding and deleting language as follows:

SECTION 2: Section 14-292 of the Falcon Heights City Code is amended to provide:

Because marketing and public health research and tobacco industry documents reveal that tobacco companies have used fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of flavors such as menthol in tobacco products can make it more difficult for youth, young adult, and adult tobacco users to quit; and

The City further recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users. National data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use.

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 article shall be intended to regulate the sale of tobacco, tobacco-related devices, electronic cigarettes, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws, to protect youth and young adults against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, and electronic delivery devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in Minn. Stats. § 144.391, as it may be amended from time to time.

SECTION 3: Section 14-293 of the Falcon Heights City Code is amended by amending the definition of "Compliance checks", "Electronic Delivery Device", "Smoking" and "Tobacco-related devices" and adding the definitions of "Cigar", "Child-Resistant Packaging", "Flavored Tobacco", and "Person" and removing the definitions of "Minor":

Cigar. Any roll of tobacco that is wrapped in tobacco leaf or in any other substance containing tobacco, with or without a tip or mouthpiece, which is not a cigarette as defined in Minn. Stat. § 297F.01, subd. 3, as may be amended from time to time.

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.

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 article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Compliance checks means the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, and electronic delivery devices are following and complying with the requirements of this article. Compliance checks shall involve the use of persons under the age of 21 as authorized by this article. Compliance checks shall also mean the use of persons under the age of 21 who attempt to purchase tobacco, tobacco products, tobacco-related devices, or electronic 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 electronic delivery devices.

Electronic delivery device means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption through the inhalation of aerosol or vapor from the product. Electronic delivery device includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. Electronic delivery device includes any component part of a product, whether or not marketed or sold separately. Electronic delivery device does not include any product that has been approved or certified by the 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.

Flavored tobacco product means any tobacco, tobacco products, tobacco-related device, or electronic delivery device 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 menthol, mint, wintergreen, chocolate, cocoa, 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 a manufacturer of tobacco or tobacco related devices, 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 tobacco will constitute presumptive evidence that the product is a flavored product.

Person means any natural person, partnership, firm, joint stock company, corporation, or other legal entity, including an employee of a legal entity.

Smoking means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation. "Smoking" also includes the use of an electronic delivery device.

Tobacco-related devices include any tobacco product as well as a pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products. Tobacco-related devices include components of tobacco-related devices which may be marketed or sold separately.

Sec. 14-294. - License.

- (l) Sale by person under the age of 18. It shall be unlawful for any business licensed under this article to allow any person under the age of 18 years to sell, offer for sale, or attempt to sell tobacco, tobacco products, tobacco-related devices, or electronic delivery devices.
- (m) Age verification. Licensees must verify by means of government-issued photographic identification that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
- (n) Signage. Notice of the legal sales age and age verification requirement 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.

Sec. 14-295. - License restrictions.

It shall be a violation of this article for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, or electronic delivery device:

- (1) To any person under the age of 21 years.
- (6) In the form of liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.
- (7) By any other means, to any other person, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.
- (8) It shall be a violation of this article for any person to sell or offer to sell any flavored tobacco product. This prohibition on the sale of flavored tobacco products does not apply to retail establishments that:
 - a. Prohibit persons under 21 years of age from entering at all times; and
 - b. Derive at least 90 percent of their revenues from the sale of any tobacco, tobacco products, tobacco-related devices, or electronic delivery devices.
 - c. Any retail establishment that sells flavored tobacco products must provide upon request financial records that document annual sales.

State Law reference— Sale of tobacco to minors, Minn. Stats. § 609.685.

Sec. 14-296. - Compliance checks.

- (b) Annual compliance checks. From time to time, but at least twice per year, the City shall conduct compliance checks. 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, or electronic cigarettes. 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 tobacco, tobacco products, tobacco-related devices, or electronic cigarettes.
- (c) Persons under the age of 21 used for the purpose of compliance checks shall be supervised by City designated law enforcement officers or other designated City personnel. No person under the age of 21 used in compliance checks shall attempt to use a false identification misrepresenting the person's age, and all persons under the age of 21 lawfully engaged in a compliance check shall answer all questions about their person's 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.

(Code 1993, § 5-1.03(D)(6); Ord. No. 99-01, § 1, 1-3-1999)

State Law reference— Compliance checks, Minn. Stats. § 461.128, subd. 5.

Sec. 14-297. - Violations and penalties.

- (d) Administrative civil penalties; individuals: An individual who sells tobacco to a person under the age of 21 years shall pay an administrative penalty of \$50.00.

(Code 1993, § 5-1.03(D)(7); Ord. No. 99-01, § 1, 1-3-1999; Ord. No. 10-02, § 1, 1-27-2010)

Sec. 14-298. - Affirmative defense.

SECTION 5. Effective Date: This ordinance shall take effect 60 days from and after its passage and a summary published in the official newspaper.

ADOPTED this 9th day of May, 2018, by the City Council of Falcon Heights, Minnesota.

Moved by: Lindstrom

Approved by: Peter Lindstrom
Peter Lindstrom
Mayor

LINDSTROM 3 In Favor
GUSTAFSON
BROWN THUNDER 2 Against
MELANIE LEEHY
MARK MIAZGA

Attested by: Sack Thongvanh
Sack Thongvanh
City Administrator