

ORDINANCE NO. 12-01

**CITY OF FALCON HEIGHTS
RAMSEY COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING THE FALCON HEIGHTS CITY CODE
CONCERNING TOBACCO**

THE CITY COUNCIL OF THE CITY OF FALCON HEIGHTS ORDAINS:

SECTION 1: Section 14-292 of the Falcon Heights City Code is amended to provide:

Purpose and Intent: Because the City recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, 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 young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time.

SECTION 2: Section 14-293 of the Falcon Heights City Code is amended to provide:

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

- (1) **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 as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, or 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.
- (2) 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.
 - (3) 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.
 - (4) 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 taxes, of more than \$2.00 per cigar.
 - (5) Minor. Any natural person who has not yet reached the age of 18 years.
 - (6) 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.
 - (7) 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 sold solely for that approved purpose.
 - (8) Retail Establishment. Any place of business where tobacco, tobacco products, tobacco-related devices, or 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.

- (9) Sale. Any transfer of goods for money, trade, barter or other consideration.
- (10) Self-Service Merchandising. Open displays of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, or 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 product, tobacco-related device, or nicotine or lobelia delivery device 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.
- (11) Smoking. 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.
- (12) Tobacco or Tobacco Products. Tobacco and 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; 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; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco 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.
- (13) Tobacco-Related Devices. 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.
- (14) Vending Machine. Any mechanical, electric 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.

SECTION 3: Section 14-294 of the Falcon Heights City Code is amended to provide:

Sec. 14-294. License.

- (1) License required. No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, or nicotine or lobelia delivery device without first having obtained a license to do so from the City.
- (2) Application. An application for a license to sell tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices shall be made on a form provided by the City. The application shall contain 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, and any additional information the City deems necessary. Upon receipt of a completed application, the City Administrator shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Administrator shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.
- (3) Action. The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Administrator shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.
- (4) Term. The license is effective from January 1st to December 31st of each year.
- (5) Revocation or suspension. Any license issued under this section may be revoked or suspended as provided in Section 14-297.
- (6) Transfers. All licenses issued under this Chapter 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 without the prior approval of the City Council.
- (7) Moveable place of business. No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this section.
- (8) Display. All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- (9) Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application.

- (10) Issuance as a privilege and not a right. The issuance of a license issued under this section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.
- (11) Smoking. Smoking shall not be permitted and no person shall smoke within the indoor area of any retail establishment with a tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products is prohibited.

SECTION 4 Section 14-295 of the Falcon Heights City Code is amended to provide:

Sec. 14-295. License Restrictions.

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

- (1) To any person under the age of 18 years.
- (2) By means of any type of vending machine.
- (3) 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 product, tobacco-related device, or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer.
- (4) By means of loosies as defined in Section 14-293.
- (5) 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.
- (6) By any other means, to any other person, in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

SECTION 5. Effective Date: This ordinance shall take effect from and after its passage.

ADOPTED this _____ day of _____, 2012, by the City Council of
Falcon Heights, Minnesota.

CITY OF FALCON HEIGHTS

BY: _____
Peter Lindstrom, Mayor

ATTEST:

Bart Fischer, City Administrator/Clerk