

Falcon Heights City Council Workshop

**City Hall
2077 W Larpenteur Ave.
6:30 p.m.**

AGENDA Wednesday, November 6, 2013

- 1) Continued Discussion regarding the On-Sale Liquor License Sec 6-24**
- 2) Update from Ady Wickstrom on Ramsey County Public Transportation**
- 3) Discuss Amending Tobacco Ordinance**

If you have a disability and need accommodation in order to attend this meeting, please notify City Hall 48 hours in advance between the hours of 8:00 a.m. and 4:30 p.m. at 651-792-7600. We will be happy to help.



The City That Soars!

Council Workshop Staff Report

Meeting Date	November 6, 2013
Agenda Item	Workshop 1
Attachment	City Code Sec. 6-24 on sale license MN Statute on-sale license City Code options On Sale Liquor License Fee Survey
Submitted By	Michelle Tesser, Assistant to the City Administrator

Item	Discuss On-Sale License City Code Sec. 6-24
Description	<p>Council discussed at October's workshop the possibility of amending the language of City Code Sec 6-24 to allow a local establishment (Coffee Grounds) the ability to receive a full liquor license without selling 55% of food sales as required by City Code.</p> <p>Council asked staff to get City Attorney, Roger Knutson's opinion on the following questions:</p> <ol style="list-style-type: none"> 1. Can the city limit the time liquor is sold? 2. Can the city limit hard liquor? 3. Can the city offer a beer and wine license with the exception of hard liquor? 4. Could the license transfer from one owner to another owner? 5. Is there a theatre venue exception that would apply to the business? <p>The answers to the questions are attached.</p> <p>Staff has drafted several options for the Council to review and discuss further.</p> <p>Staff would also like the Council to look at charging a cost for the yearly background checks required for all owners of restaurants and establishments that have liquor licenses in the city. See attached On Sale Liquor License Fee Survey.</p>
Budget Impact	Increase of approximately \$4,300 in liquor license fee
Attachment(s)	City Code Sec. 6-24 On Sale license MN Statute On-Sale license City Code options On Sale Liquor License Fee Survey
Action(s) Requested	Discussion

Sec. 6-24. - On-sale licenses.

(a)

Intoxicating liquor. On-sale licenses shall be granted only to restaurants and establishments where meals are regularly served at tables to the general public, and have a seating capacity for not less than 30 guests at one time; and where the sale of beverages is incidental to the principal business that is the sale of food. For restaurants, the term "incidental sale of alcoholic beverages" means that the sale of intoxicating liquor and 3.2 percent malt liquor during any given three-month period shall not account for more than 45 percent of the gross receipts and that the sale of food during any given three-month period shall account for at least 55 percent of the gross receipts. In the event a restaurant includes a bar or lounge or some similar area in which the principal activity is the sale and consumption of alcoholic beverages, such bar or lounge area shall not contain more than 30 percent of the total seating capacity of the restaurant. The number of on-sale licenses shall be limited to two.

(b)

Sunday. Sunday "on-sale" licenses shall be issued pursuant to Minn. Stats. § 340A.504, subd. 3.

(c)

Wine. On-sale wine licenses shall be issued for consumption of wine on the premises. The number of wine licenses shall be limited to three.

(d)

Sale of 3.2 percent malt liquor to certain establishments. Licenses shall be granted only to clubs, restaurants and establishments used exclusively for the sale of 3.2 percent malt liquor for consumption on the premises. The number of 3.2 percent malt liquor licenses shall be limited to four.

(e)

Wine and 3.2 percent malt liquor. Persons who hold both an on-sale wine license and an on-sale 3.2 percent malt liquor license and whose gross receipts are at least 60 percent attributable to the sale of food, are authorized to sell intoxicating malt liquor at on-sale without an additional license.

2012 Minnesota Statutes

340A.404 INTOXICATING LIQUOR; ON-SALE LICENSES.

Subdivision 1. **Cities.** (a) A city may issue an on-sale intoxicating liquor license to the following establishments located within its jurisdiction:

- (1) hotels;
- (2) restaurants;
- (3) bowling centers;

(4) clubs or congressionally chartered veterans organizations with the approval of the commissioner, provided that the organization has been in existence for at least three years and liquor sales will only be to members and bona fide guests, except that a club may permit the general public to participate in a wine tasting conducted at the club under section [340A.419](#);

(5) sports facilities, restaurants, clubs, or bars located on land owned or leased by the Minnesota Sports Facilities Authority;

- (6) sports facilities located on land owned by the Metropolitan Sports Commission; and
- (7) exclusive liquor stores.

(b) A city may issue an on-sale intoxicating liquor license, an on-sale wine license, or an on-sale malt liquor license to a theater within the city, notwithstanding any law, local ordinance, or charter provision. A license issued under this paragraph authorizes sales on all days of the week to persons attending events at the theater.

(c) A city may issue an on-sale intoxicating liquor license, an on-sale wine license, or an on-sale malt liquor license to a convention center within the city, notwithstanding any law, local ordinance, or charter provision. A license issued under this paragraph authorizes sales on all days of the week to persons attending events at the convention center. This paragraph does not apply to convention centers located in the seven-county metropolitan area.

(d) A city may issue an on-sale wine license and an on-sale malt liquor license to a person who is the owner of a summer collegiate league baseball team, or to a person holding a concessions or management contract with the owner, for beverage sales at a ballpark or stadium located within the city for the purposes of summer collegiate league baseball games at the ballpark or stadium, notwithstanding any law, local ordinance, or charter provision. A license issued under this paragraph authorizes sales on all days of the week to persons attending baseball games at the ballpark or stadium.

Subd. 1a. **Cities; auto racing facilities.** A city may issue an on-sale intoxicating liquor license to an auto racing facility located in the city. The license may authorize sales both to persons attending any and all events at the facility, and sales in a restaurant, bar, or banquet facility located on the premises of the auto racing facility. The license authorizes sales on all days of the week. The license may be issued for a space that is not compact and contiguous, provided that the licensed premises may include only the space within a defined area as described in the application for the license.

Subd. 2. **Special provision; city of Minneapolis.** (a) The city of Minneapolis may issue an on-sale intoxicating liquor license to the Guthrie Theater, the Cricket Theatre, the Orpheum Theatre, the State Theatre, and the Historic Pantages Theatre, notwithstanding the limitations of law, or local ordinance, or charter provision relating to zoning or school or church distances. The licenses authorize sales on all days of the week to holders of tickets for performances presented by the theaters and to members of the nonprofit corporations holding the licenses and to their guests.

(b) The city of Minneapolis may issue an intoxicating liquor license to 510 Groveland Associates, a Minnesota cooperative, for use by a restaurant on the premises owned by 510 Groveland Associates, notwithstanding limitations of law, or local ordinance, or charter provision.

(c) The city of Minneapolis may issue an on-sale intoxicating liquor license to Zuhrah Shrine Temple for use on the premises owned by Zuhrah Shrine Temple at 2540 Park Avenue South in Minneapolis, and to the American

Swedish Institute for use on the premises owned by the American Swedish Institute at 2600 Park Avenue South, notwithstanding limitations of law, or local ordinances, or charter provision relating to zoning or school or church distances.

(d) The city of Minneapolis may issue an on-sale intoxicating liquor license to the American Association of University Women, Minneapolis branch, for use on the premises owned by the American Association of University Women, Minneapolis branch, at 2115 Stevens Avenue South in Minneapolis, notwithstanding limitations of law, or local ordinances, or charter provisions relating to zoning or school or church distances.

(e) The city of Minneapolis may issue an on-sale wine license and an on-sale 3.2 percent malt liquor license to a restaurant located at 5000 Penn Avenue South, and an on-sale wine license and an on-sale malt liquor license to a restaurant located at 1931 Nicollet Avenue South, notwithstanding any law or local ordinance or charter provision.

(f) The city of Minneapolis may issue an on-sale wine license and an on-sale malt liquor license to the Brave New Workshop Theatre located at 3001 Hennepin Avenue South, the Theatre de la Jeune Lune, the Illusion Theatre located at 528 Hennepin Avenue South, the Hollywood Theatre located at 2815 Johnson Street Northeast, the Loring Playhouse located at 1633 Hennepin Avenue South, the Jungle Theater located at 2951 Lyndale Avenue South, Brave New Institute located at 2605 Hennepin Avenue South, the Guthrie Lab located at 700 North First Street, and the Southern Theatre located at 1420 Washington Avenue South, notwithstanding any law or local ordinance or charter provision. The license authorizes sales on all days of the week.

(g) The city of Minneapolis may issue an on-sale intoxicating liquor license to University Gateway Corporation, a Minnesota nonprofit corporation, for use by a restaurant or catering operator at the building owned and operated by the University Gateway Corporation on the University of Minnesota campus, notwithstanding limitations of law, or local ordinance or charter provision. The license authorizes sales on all days of the week.

(h) The city of Minneapolis may issue an on-sale intoxicating liquor license to the Walker Art Center's concessionaire or operator, for a restaurant and catering operator on the premises of the Walker Art Center, notwithstanding limitations of law, or local ordinance or charter provisions. The license authorizes sales on all days of the week.

(i) The city of Minneapolis may issue an on-sale intoxicating liquor license to the Guthrie Theater's concessionaire or operator for a restaurant and catering operator on the premises of the Guthrie Theater, notwithstanding limitations of law, local ordinance, or charter provisions. The license authorizes sales on all days of the week.

(j) The city of Minneapolis may issue an on-sale wine license and an on-sale malt liquor license to the Minnesota Book and Literary Arts Building, Inc.'s concessionaire or operator for a restaurant and catering operator on the premises of the Minnesota Book and Literary Arts Building, Inc. (dba Open Book), notwithstanding limitations of law, or local ordinance or charter provision. The license authorizes sales on all days of the week.

(k) The city of Minneapolis may issue an on-sale intoxicating liquor license to a restaurant located at 5411 Penn Avenue South, notwithstanding any law or local ordinance or charter provision.

(l) The city of Minneapolis may issue an on-sale intoxicating liquor license to the Museum of Russian Art's concessionaire or operator for a restaurant and catering operator on the premises of the Museum of Russian Art located at 5500 Stevens Avenue South, notwithstanding any law or local ordinance or charter provision.

Subd. 2a. City of Minneapolis; arena. (a) Notwithstanding any other law, local ordinance, or charter provision, the city of Minneapolis may issue one or more on-sale or combination on-sale and off-sale intoxicating liquor licenses to the owner of the sports arena located at 600 First Avenue North in Minneapolis, or to an entity holding a concessions contract with the owner for use on the premises of that sports arena.

(b) The license authorizes sales on all days of the week to holders of tickets for events at the sports arena and to the owners of the sports arena and the owners' guests.

(c) The licensee may not dispense intoxicating liquor to any person attending or participating in an amateur athletic event held on the premises unless such dispensing is authorized by the city. The city may not authorize the dispensing of intoxicating liquor at any event held under the auspices of the Minnesota State High School League.

(d) The license authorized by this subdivision may be issued for space that is not compact and contiguous, provided that all such space is within the sports arena building and is included in the description of the licensed premises on the approved license application.

(e) Notwithstanding any law or rule to the contrary, a person licensed to make off-sales within the sports arena building may deliver alcoholic beverages to rooms and suites within the sports arena building (1) between midnight and 8:00 a.m. on Monday through Thursday, and (2) between midnight and 8:00 a.m. and between 10:00 p.m. and midnight on Friday through Sunday. No delivery authorized by this paragraph may be made to a room or suite within the building at any time when an event utilizing the room or suite is in progress.

(f) The holder of a license issued under this subdivision may dispense intoxicating liquor in miniature bottles if the intoxicating liquor is poured from the miniature bottles, mixed into another beverage, and dispensed on the premises by employees of the licensee.

Subd. 2b. Special provision; city of St. Paul. The city of St. Paul may issue an on-sale intoxicating liquor license to the Fitzgerald Theatre, the Great American History Theater at 30 East 10th Street, and the Brave New Workshop at the Palace Theater at 17 West Seventh Place, notwithstanding the limitations of law, or local ordinance, or charter provision relating to zoning or school or church distances. The license authorizes sales on all days of the week to holders of tickets for performances presented by the theatre and to members of the nonprofit corporation holding the license and to their guests.

Subd. 3. Notice to commissioner. A city shall within ten days of the issuance of a license under subdivision 1 or 5, inform the commissioner of the licensee's name and address and trade name, and the effective date and expiration date of the license. The city shall also inform the commissioner of a license transfer, cancellation, suspension, or revocation during the license period.

Subd. 4. Special provisions; sports, conventions, or cultural facilities; community festivals. (a) The governing body of a municipality may authorize a holder of a retail on-sale intoxicating liquor license issued by the municipality or by an adjacent municipality to dispense intoxicating liquor at any convention, banquet, conference, meeting, or social affair conducted on the premises of a sports, convention, or cultural facility owned by the municipality or instrumentality thereof having independent policy-making and appropriating authority and located within the municipality. The licensee must be engaged to dispense intoxicating liquor at an event held by a person or organization permitted to use the premises, and may dispense intoxicating liquor only to persons attending the event. The licensee may not dispense intoxicating liquor to any person attending or participating in a youth amateur athletic event, for persons 18 years of age or younger, held on the premises.

(b) The governing body of a municipality may authorize a holder of a retail on-sale intoxicating liquor license issued by the municipality to dispense intoxicating liquor off premises at a community festival held within the municipality. The authorization shall specify the area in which the intoxicating liquor must be dispensed and consumed, and shall not be issued unless the licensee demonstrates that it has liability insurance as prescribed by section [340A.409](#) to cover the event.

Subd. 4a. Publicly owned recreation; entertainment facilities. (a) Notwithstanding any other law, local ordinance, or charter provision, the commissioner may issue on-sale intoxicating liquor licenses:

(1) to the state agency administratively responsible for, or to an entity holding a concession or facility management contract with such agency for beverage sales at, the premises of any Giants Ridge Recreation Area building or recreational improvement area owned by the state in the city of Biwabik, St. Louis County;

(2) to the state agency administratively responsible for, or to an entity holding a concession or facility management contract with such agency for beverage sales at, the premises of any Ironworld Discovery Center building or facility owned by the state at Chisholm;

(3) to the Board of Regents of the University of Minnesota for events at Northrop Auditorium, the intercollegiate football stadium, including any games played by the Minnesota Vikings at the stadium, and at no more than seven other locations within the boundaries of the University of Minnesota, provided that the Board of Regents has approved an application for a license for the specified location and provided that a license for an intercollegiate football stadium is void unless it meets the conditions of paragraph (b). It is solely within the

discretion of the Board of Regents to choose the manner in which to carry out these conditions consistent with the requirements of paragraph (b); and

(4) to the Duluth Entertainment and Convention Center Authority for beverage sales on the premises of the Duluth Entertainment and Convention Center Arena during intercollegiate hockey games.

The commissioner shall charge a fee for licenses issued under this subdivision in an amount comparable to the fee for comparable licenses issued in surrounding cities.

(b) No alcoholic beverage may be sold or served at TCF Bank Stadium unless the Board of Regents holds an on-sale intoxicating liquor license for the stadium as provided in paragraph (a), clause (3), that provides for the sale of intoxicating liquor at a location in the stadium that is convenient to the general public attending an intercollegiate football game at the stadium. On-sale liquor sales to the general public must be available at that location through half-time of an intercollegiate football game at TCF Bank Stadium, and sales at the stadium must comply with section [340A.909](#).

[See Note.]

Subd. 5. Wine licenses. (a) A municipality may issue an on-sale wine license with the approval of the commissioner to a restaurant having facilities for seating at least 25 guests at one time. A wine license permits the sale of wine of up to 14 percent alcohol by volume for consumption with the sale of food. A wine license authorizes the sale of wine on all days of the week unless the issuing authority restricts the license's authorization to the sale of wine on all days except Sundays.

(b) The governing body of a municipality may by ordinance authorize a holder of an on-sale wine license issued pursuant to paragraph (a) who is also licensed to sell 3.2 percent malt liquors at on-sale pursuant to section [340A.411](#), and whose gross receipts are at least 60 percent attributable to the sale of food, to sell intoxicating malt liquors at on-sale without an additional license.

(c) A municipality may issue an on-sale wine license with the approval of the commissioner to a licensed bed and breakfast facility. A license under this paragraph authorizes a bed and breakfast facility to furnish wine only to registered guests of the facility and, if the facility contains a licensed commercial kitchen, also to guests attending private events at the facility.

(d) The State Agricultural Society may issue an on-sale wine license to the holder of a state fair concession contract pursuant to section [37.21, subdivision 2](#).

Subd. 5a.MS 2012 [Renumbered 340A.4175]

Subd. 6. Counties. (a) A county board may issue an annual on-sale intoxicating liquor license within the area of the county that is unorganized or unincorporated to a bowling center, restaurant, club, or hotel with the approval of the commissioner.

(b) A county board may also with the approval of the commissioner issue up to ten seasonal on-sale licenses to restaurants and clubs for the sale of intoxicating liquor within the area of the county that is unorganized or unincorporated. Notwithstanding section [340A.412, subdivision 8](#), a seasonal license is valid for a period specified by the board, not to exceed nine months. Not more than one license may be issued for any one premises during any consecutive 12-month period.

Subd. 6a.[Repealed, [1991 c 249 s 33](#)]

Subd. 7. Airports commission. On-sale licenses may be issued by the Metropolitan Airports Commission for the sale of intoxicating liquor in major airports owned by the Metropolitan Airports Commission and used as terminals for regularly scheduled air passenger service. Notwithstanding any other law, the license authorized by this subdivision may be issued for space that is not compact and contiguous.

Subd. 8. Lake Superior, St. Croix River, and Mississippi River tour boats. (a) The commissioner may issue an on-sale intoxicating liquor license to a person regularly engaged, on an annual or seasonal basis, in the business of offering tours by boat on Lake Superior and adjacent bays, the St. Croix River, and the Mississippi River. The license shall authorize the sale of intoxicating liquor between May 1 and November 1 for consumption on the boat while underway or attached to a dock or other mooring. No license may be issued unless each boat used in the tour business

regularly sells meals in the place where intoxicating liquor is sold.

(b) All sales of intoxicating liquor made on a boat while it is attached to a dock or other mooring are subject to any restrictions on the sale of liquor prescribed by the governing body of the city where the boat is attached, or of a county when it is attached outside a city. A governing body may prohibit liquor sales within its jurisdiction but may not require an additional license, or require a fee or occupation tax, for the sales.

Subd. 9. Military bases and installations. The commissioner may issue an on-sale license for the sale of intoxicating liquor within the boundaries of a military base or installation under the jurisdiction of the adjutant general with the approval of the adjutant general. No municipal or county license is required for the sale of intoxicating liquor under this subdivision.

Subd. 10. Temporary on-sale licenses. (a) The governing body of a municipality may issue to (1) a club or charitable, religious, or other nonprofit organization in existence for at least three years, (2) a political committee registered under section [10A.14](#), or (3) a state university, a temporary license for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the licensee. The license may authorize the on-sale of intoxicating liquor for not more than four consecutive days, and may authorize on-sales on premises other than premises the licensee owns or permanently occupies. The license may provide that the licensee may contract for intoxicating liquor catering services with the holder of a full-year on-sale intoxicating liquor license issued by any municipality. The licenses are subject to the terms, including a license fee, imposed by the issuing municipality. Licenses issued under this subdivision are subject to all laws and ordinances governing the sale of intoxicating liquor except sections [340A.409](#) and [340A.504, subdivision 3](#), paragraph (d), and those laws and ordinances which by their nature are not applicable. Licenses under this subdivision are not valid unless first approved by the commissioner of public safety.

(b) A county under this section may issue a temporary license only to a premises located in the unincorporated or unorganized territory of the county.

(c) The governing body of a municipality may issue to a brewer who manufactures fewer than 3,500 barrels of malt liquor in a year a temporary license for the on-sale of intoxicating liquor in connection with a social event within the municipality sponsored by the brewer. The terms and conditions specified for temporary licenses under paragraph (a) shall apply to a license issued under this paragraph, except that the requirements of section [340A.409, subdivisions 1](#) to 3a, shall apply to the license.

Subd. 10a. Temporary on-sale licenses; farm winery. The governing body of a municipality may issue to a farm winery licensed under section [340A.315](#) a temporary license for the on-sale at a county fair located within the municipality of intoxicating liquor produced by the farm winery. The licenses are subject to the terms, including a license fee, imposed by the issuing municipality and all laws and ordinances governing the sale of intoxicating liquor not inconsistent with this section. Licenses under this subdivision are not valid unless first approved by the commissioner of public safety.

Subd. 11. Removal of wine from restaurant. A restaurant licensed to sell intoxicating liquor or wine at on-sale under this section may permit a person purchasing a full bottle of wine in conjunction with the purchase of a meal to remove the bottle on leaving the licensed premises provided that the bottle has been opened and the contents partially consumed. A removal of a bottle under the conditions described in this subdivision is not an off-sale of intoxicating liquor and may be permitted without additional license.

Subd. 12. Caterer's permit. The commissioner may issue a caterer's permit to a restaurant that holds an on-sale intoxicating liquor license issued by any municipality. The holder of a caterer's permit may sell intoxicating liquor as an incidental part of a food service that serves prepared meals at a place other than the premises for which the holder's on-sale intoxicating liquor license is issued.

(a) A caterer's permit is auxiliary to the primary on-sale license held by the licensee.

(b) The restrictions and regulations which apply to the sale of intoxicating liquor on the licensed premises also apply to the sale under the authority of a caterer's permit, and any act that is prohibited on the licensed premises is also prohibited when the licensee is operating other than on the licensed premises under a caterer's permit.

(c) Any act, which if done on the licensed premises would be grounds for cancellation or suspension of the on-

sale licensee, is grounds for cancellation of both the on-sale license and the caterer's permit if done when the permittee is operating away from the licensed premises under the authority of the caterer's permit.

(d) The permittee shall notify prior to any catered event:

(1) the police chief of the city where the event will take place, if the event will take place within the corporate limits of a city; or

(2) the county sheriff of the county where the event will take place, if the event will be outside the corporate limits of any city.

(e) If the primary license ceases to be valid for any reason, the caterer's permit ceases to be valid.

(f) Permits issued under this subdivision are subject to all laws and ordinances governing the sale of intoxicating liquor except those laws and ordinances which by their nature are not applicable.

(g) The annual state fee for a caterer's permit is \$300.

Subd. 13. Holders of multiple on-sale licenses; uniform licensing periods. Notwithstanding any local ordinance or other law, a local government unit may adjust the licensing period for any holder of multiple on-sale alcoholic beverage licenses in the state, upon request of the licensee. The local government unit may charge a fee for an adjustment of the licensing period.

Subd. 14. Private college. Notwithstanding any other law, local ordinance, or charter provision, the governing body of a municipality may issue an on-sale intoxicating liquor license to a private, nonprofit college located within the municipality, or to any entity holding a caterer's permit and a contract with the private, nonprofit college for catering on the premises of the private, nonprofit college, or for any portion of the premises as described in the approved license application. The license authorized by this subdivision may be issued for space that is not compact and contiguous, provided that all such space is included in the description of the licensed premises on the approved license application. The license authorizes sales on all days of the week to persons attending events at the private, nonprofit college. All other provisions of this chapter not inconsistent with this section apply to the license authorized under this section.

History: 1985 c 201 s 3; 1985 c 305 art 6 s 4; 1Sp1985 c 16 art 2 s 3 subd 1; 1Sp1986 c 3 art 1 s 37; 1987 c 5 s 1,2; 1987 c 27 s 1; 1987 c 29 s 1; 1987 c 152 art 1 s 1; 1987 c 310 s 8; 1987 c 328 s 2; 1989 c 40 s 1; 1990 c 554 s 7-10; 1991 c 249 s 4-7,31; 1992 c 486 s 7; 1994 c 611 s 16,17; 1995 c 42 s 1; 1995 c 198 s 8,9; 1996 c 418 s 5,6; 1997 c 129 art 1 s 3,4; 1998 c 364 s 3,4; 1999 c 202 s 1-4; 2000 c 440 s 3; 2001 c 193 s 1,2; 2003 c 126 s 6,7; 2005 c 24 s 1; 2005 c 25 s 3; 2005 c 131 s 3; 2005 c 136 art 8 s 15; 2006 c 210 s 8,9; 2006 c 247 s 14; 2007 c 89 s 5; 2009 c 95 art 2 s 37; 2009 c 120 s 6-8; 2010 c 255 s 2,3; 2010 c 384 s 95; 2011 c 16 s 1; 2011 c 55 s 7-11; 2012 c 235 s 3,4,11,12; 2012 c 299 art 1 s 7

NOTE: The amendment to subdivision 4a by Laws 2012, chapter 235, section 3, expires July 1, 2014. Laws 2012, chapter 235, section 11.

On-Sale Liquor License Questions
Roger Knutson, City Attorney

1. Can the city limit time for which alcohol can be served at this establishment?

No. The council cannot establish hours that are only applicable to this establishment.

2. Can the city limit the hard liquor being served?

No.

3. Can the city offer a beer and wine license with the exception of hard liquor?

By statute the City could issue a wine license to a restaurant that does not gross 60% from food under 340A.404, Subd 5(a). The 60% food applies to subdivision 5(b):

MINNESOTA STATUTES

340A.404 INTOXICATING LIQUOR; ON-SALE LICENSES.

Subd. 5. **Wine licenses.** (a) A municipality may issue an on-sale wine license with the approval of the commissioner to a restaurant having facilities for seating at least 25 guests at one time. A wine license permits the sale of wine of up to 14 percent alcohol by volume for consumption with the sale of food. A wine license authorizes the sale of wine on all days of the week unless the issuing authority restricts the license's authorization to the sale of wine on all days except Sundays.

(b) The governing body of a municipality may by ordinance authorize a holder of an on-sale wine license issued pursuant to paragraph (a) who is also licensed to sell 3.2 percent malt liquors at on-sale pursuant to section 340A.411, and whose gross receipts are at least 60 percent attributable to the sale of food, to sell intoxicating malt liquors at on-sale without an additional license

By statute the city could also approve a 3.2 license with the wine license without meeting the 60%:

MINNESOTA STATUTES

340A.403 3.2 PERCENT MALT LIQUOR LICENSES.

Subdivision 1. **Issuance by county or city.** The governing body of a city or county may issue off-sale or on-sale licenses for the sale of 3.2 percent malt liquor within their respective jurisdictions.

4. Could the license transfer from one owner to another owner?

Transferring a license requires City approval, background checks etc. The City can deny the transfer if it is found to be in the public interest to deny the transfer.

5. Is there a theatre venue exception that would apply to the business?

No, but wine and malt liquor can be issued to a “theater.” “Theater is defined as a “building containing an **auditorium** in which live dramatic, musical, dance, or literary performances are regularly presented to holders of tickets for those performances” Mn. Stat. 340A101, Subd 27a.

Auditorium for the Coffee Ground location is a stretch.

6. This potential new owner of Coffee Grounds wants to change the business into a non-profit. Is there any loop hole that would allow a non-profit to have a liquor license and not follow the state statute regarding wine/beer?

No, there is just a temporary license.

7. As a non-profit the city would be able to issue a temporary liquor license. Is there a limitation to the number of permits issued per year? I only see the rule of *not more than four days per temporary permit* in MN Stat. 340A. 404 Subd 10?

There is no limit.

City Code Options

After talking to City Attorney Roger Knutson, Staff looked at different ways the council could support the new business concept of Coffee Grounds. Staff looked at possible scenarios discussed at the previous council workshop. Options are below:

Option 1: Amend the city code language Sec 6-24 (a) to allow Coffee Grounds to obtain a full intoxicating liquor license but limit the number of city-wide on-sale intoxicating liquor licenses to two (2). Stout's Pub obtains the other license.

* Coffee Grounds will have to follow regular meal(s) requirement by State law, (bottom of page).

Sec. 6-24. - On-sale licenses.

(a) **Intoxicating liquor. On-sale licenses shall be granted only to restaurants and establishments where meals are regularly served at tables to the general public, and have a seating capacity for not less than 30 guests at one time; and where the sale of beverages is incidental to the principal business that is the sale of food. For restaurants, the term "incidental sale of alcoholic beverages" means that the sale of intoxicating liquor and 3.2 percent malt liquor during any given three-month period shall not account for more than 45 percent of the gross receipts and that the sale of food during any given three-month period shall account for at least 55 percent of the gross receipts. In the event a restaurant includes a bar or lounge or some similar area in which the principal activity is the sale and consumption of alcoholic beverages, such bar or lounge area shall not contain more than 30 percent of the total seating capacity of the restaurant. The number of on-sale licenses shall be limited to two.**

Option 1 and Option 2(a)(b):

2(a) Limit the hour's liquor can be distributed to patrons. For example, the city could use the hours Stout's Pub currently has in place. Stout's Pub currently sales liquor until 1:00a.m. on Friday and Saturday and midnight Monday-Thursday and Sunday.

2 (b) Similarly, the city has the option to change the hours of which liquor is sold in the city. For example, the city could change the hours to

midnight Monday-Sunday. This affects all restaurant and establishments that have an on- sale liquor license.

Option 3: Allow for the business to have a wine license and 3.2 malt liquor license but per MN State 340A.404 the city cannot allow the sale of intoxicating malt liquors (malt liquor over 3.2) without food sales of 60 percent.

Option 4: Don't amend city code language Sec 6-24 (a) and allow temporary liquor licenses to be taken out by the non-profit organization that will be operating the music side of the business. There is no limit on how many temporary liquor licenses can be done. Cost is \$25.00 for special event liquor license.

Option 3 and 4

If the business wants to have intoxicating malt liquor sold at their establishment than they could complete temporary liquor licenses. There is no limit. For example, the business could do a special beer of the month promotion.

Option 5: Go through the legislature to request a special provision for the address to allow the sale of wine and 3.2 malt liquor with no sale of food. Similar to Minneapolis and St. Paul. See MN Stat 340A. 404 Subd. 2- 2b.

Option 4 and Option 5:

Allow for the temporary liquor license until the legislature is able to approve the special provision.

Option 1 and Option 5:

Amend city code to allow full liquor license but still try for the special provision legislature route.

Option 6: The business could contract with a catering business to sell food and/or intoxicating liquor which would allow them to sell wine and intoxicating beer. Catering licenses are done through the state.

Option 7: Do nothing.

* If the Council goes Option 1. The owner of the establishment is required by state statute to prepare regular meals but will not be required to have a certain amount of food sales. The meals will have to be prepared on site and must be more than dessert and coffee. Nothing in the statute requires that the meal be baked, fried, or hot. It does have to be more than one food item.

Intoxicating On-Sale Liquor License Fee Survey					
	Population	On Sale Liquor License	Background Invest. Cost	Renewal Background	Other Info.
Apple Valley	49,084	\$4,400			Sales under \$275,000
		\$5,500			\$275,000-\$550,000
		\$6,600			Sales over \$550,000
Arden Hills	9,552	\$3,465			1999 sf or less
		\$4,620			2,000-2,999 sf
		\$5,775			3,000-3,999 sf
		\$6,930			4,000 sf or more
Brooklyn Park	75,781	\$7,500	\$500		
Cambridge	8,111	\$2,500	\$500		
Centerville	3,792	\$2,500	\$500	\$0	
Chanhassen	22,952	\$9,609	\$250	\$100	3000-6000 sq. ft. restaurant
		\$11,356			3000-6000 sq. ft. exclusive liq. Store
Circle Pines	4,918	\$5,000	\$1,000	\$0	
Columbia Heights	19,496	\$8,000	\$500	\$0	1st year
		\$6,500			if 60/40 split is proven
Elk River	22,974	\$5,000	\$400	\$0	
Forest Lake	18,375	\$3,000	\$500	\$0	
Golden Valley	20,371	\$8,000	\$3,000	\$100	Except \$500; everything else is returned depending on attorney fees
Inver Grove Heights	33,880	\$10,000	\$500	\$50	\$1M Gross liq sales bkgd for Corp.
		\$7,000	\$400		\$500,000-\$1M bkgd for partnership
		\$4,500	\$250		\$250,001-\$500,000 bkgd. For Individual
		\$3,500			\$0 - \$250,000

Intoxicating On-Sale Liquor License Fee Survey					
	Population	On Sale Liquor License	Background Invest. Cost	Renewal Background	Other Info.
Little Canada	9,773	\$4,458	\$0		
Mahtomedi	7,676	\$2,100	\$500	\$0	
Mankato	39,309	\$6,250	\$500		New license
		\$3,750			>60% Sales of food
		\$5,000			40-59% food
Mendota Heights	11,071	\$10,000	\$500	\$100	min 2000 sq. ft. min 200 guests
		\$7,500			min. 1000 sq. ft. mn 50 guests
New Prague	7,321	\$2,700	\$100		Bkgd. On new license
Northfield	20,007	\$2,600	\$200	\$200	
North Oaks	4,469	\$1,000	\$0		Restaurants
		\$650			Golf Club
Owatonna	25,599	\$3,000	\$150	\$0	
Plymouth	70,576	\$8,240	\$500	\$0	
Robbinsdale	13,953	\$5,500	\$500	\$250	
Rochester	106,769	\$3,200	\$500		Corporation
			\$300		Partnership
			\$200		Individual
Rosemount	21,874	\$4,500	\$350	\$0	Class A - no food required \$1500 deposit returned if invest. Does not exceed \$350
		\$3,000			Class B - 51% Sale of food
St. Louis Park	45,250	\$8,500	\$500	\$0	\$500 for new manager bkgd.
St. Michael	16,399	\$2,400			
Savage	26,911	\$5,250	\$500	\$500	

Intoxicating On-Sale Liquor License Fee Survey					
	Population	On Sale Liquor License	Background Invest. Cost	Renewal Background	Other Info.
South St. Paul	20,160	\$2,600	\$100		Single - bkgd
			\$200		Partnership-bkgd
			\$300		Corporation-bkgd
Stillwater	18,225	\$2,888	\$300	\$150	
West St. Paul	19,605	\$7,000	\$1,400	\$100	
White Bear Lake	23,797	\$3,200	\$400	\$0	



The City That Soars!

Council Workshop Staff Report

Meeting Date	November 6, 2013
Agenda Item	Workshop 3
Attachment	City Code Sec. 14-292 Other City Ordinances Resident Letter Tobacco Prevention City Ordinance Options, ANSR Sample Language, Public Health Law
Submitted By	Michelle Tesser, Assistant to the City Administrator

Item	Discuss Amending Tobacco Ordinance
Description	<p>In 2011, Council approved amendments to the Tobacco Ordinance to prevent businesses from sampling tobacco products inside tobacco establishments. Since that time, staff has received five different inquiries in a span of 1-2 years from potential business owners asking about license requirements for hookah or e-cigarette stores/lounges. Since the 2011 ordinance adoption, e-cigarettes have evolved into including non-nicotine e-juice or e-liquid which is used in vaporizing (inhale). These kinds of new advancements are not covered in our ordinance.</p> <p>The Council has received a letter from one resident asking that the City prevent these types of businesses from establishing in Falcon Heights (attached).</p> <p>Katie Engman with Ramsey County Tobacco Coalition a program of Association for Nonsmokers-MN will be at the workshop to answer any e-cigarette questions. Katie has also submitted tobacco prevention options and sample ordinance language.</p> <p>Roseville and Little Canada have very recently amended their ordinances to adapt to the e-cigarette advancements, these ordinances are attached.</p>
Budget Impact	N/A
Attachment(s)	City Code Sec. 14-292 Other City Ordinances Resident Letters City Ordinance Options, ANSR Sample Language, Public Health Law
Action(s) Requested	Discussion

Falcon Heights, Minnesota, Code of Ordinances >> PART I - GENERAL ORDINANCES >> Chapter 14 -
BUSINESSES >> ARTICLE IX. - TOBACCO >>

ARTICLE IX. - TOBACCO [12]

Sec. 14-292. - Purpose and intent.

Sec. 14-293. - Definitions.

Sec. 14-294. - License.

Sec. 14-295. - License restrictions.

Sec. 14-296. - Compliance checks.

Sec. 14-297. - Violations and penalties.

Sec. 14-298. - Affirmative defense.

Secs. 14-299—14-310. - Reserved.

Sec. 14-292. - 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 article 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 Minn. Stats. § 144.391, as it may be amended from time to time.

(Ord. No. 12-01, § 1, 3-14-2012)

Editor's note—

Ord. No. 12-01, § 1, adopted March 14, 2012, amended § 14-292 in its entirety to read as set out herein. Former § 14-292 pertained to definitions and derived from the Code of 1993, § 5-1.03(D)(2); Ord. No. 99-01, § 1, adopted Jan. 3, 1999.

Sec. 14-293. - 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 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 nicotine or lobelia delivery devices are following and complying with the requirements of this article. Compliance checks shall involve the use of minors as authorized by this article. 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.

Individually packaged means 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.

Indoor area means 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.

Loosies means 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.

Minor means any natural person who has not yet reached the age of 18 years.

Moveable place of business means any form of business operated out of a truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address storefront or other permanent type of structure authorized for sales transactions.

Nicotine or lobelia delivery device means 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.

Retail establishment means 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.

Sale means any transfer of goods for money, trade, barter or other consideration.

Self-service merchandising means 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.

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.

Tobacco or tobacco products means 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.

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.

Vending machine means 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.

(Ord. No. 12-01, § 2, 3-14-2012)

Editor's note—

Ord. No. 12-01, § 2, adopted March 14, 2012, amended § 14-293 in its entirety to read as set out herein. Former § 14-293 pertained to license required and derived from the Code of 1993, § 5-1.03(D)(3); Ord. No. 99-01, § 1, adopted Jan. 3, 1999.

Sec. 14-294. - License.

(a)

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.

(b)

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.

(c)

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.

(d)

Term. The license is effective from January 1 to December 31 of each year.

(e)

Revocation or suspension. Any license issued under this section may be revoked or suspended as provided in section 14-297

(f)

Transfers. All licenses issued under this article 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.

(g)

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.

(h)

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

(i)

Renewals. The renewal of a license issued under this section shall be handled in the same manner as the original application.

(j)

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.

(k)

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.

(Ord. No. 12-01, § 3, 3-14-2012)

Editor's note—

Ord. No. 12-01, § 3, adopted March 14, 2012, amended § 14-294 in its entirety to read as set out herein. Former § 14-294 pertained to license shall be displayed and derived from the Code of 1993, § 5-1.03(D)(4); Ord. No. 99-01, § 1, adopted Jan. 3, 1999.

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 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, on in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

(Code 1993, § 5-1.03(D)(5); Ord. No. 99-01, § 1, 1-3-1999; Ord. No. 12-01, § 4, 3-14-2012)

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

Sec. 14-296. - Compliance checks.

(a)

Open to inspection. All licensed premises shall be open to inspection by the city police or other authorized city officials during regular business hours.

(b)

Annual compliance checks. From time to time, but at least once per year, the city shall conduct compliance checks. Such compliance checks may involve, but are not limited to, engaging minors to enter the licensed premises to attempt to purchase tobacco, tobacco products, or tobacco-related devices.

(c)

Minors. If minors are used for compliance checks, they shall not be guilty of unlawful possession of tobacco when such items are obtained as part of a compliance check.

(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.

(a)

Generally. The license holder shall be responsible for the conduct of its agents or employees while on the licensed premises. Any violation of this article shall be considered an act of the license holder for purposes of imposing a civil penalty, license suspension, or revocation. Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(b)

Notice of violation. Upon the occurrence of a suspected violation, the police department shall inform the city administrator of the suspected violation. The city administrator shall then send to the license holder a written notice of the civil violation. The notice shall advise the license holder of the penalty and the license holder's right to request a hearing regarding the violation of this article.

(c)

Administrative civil penalties; licensee: Each license issued hereunder shall be subject to suspension or revocation for violation of any provisions of this chapter or the laws of the State of Minnesota as follows:

(1)

First violation: The first violation of this chapter shall be punishable by a civil penalty of \$500.00.

(2)

Second violation: A second violation of this chapter within any twenty-four-month period shall be punishable by a civil penalty of \$750.00.

(3)

Subsequent violation: A third or subsequent violation of this chapter within any twenty-four-month period shall be punishable by revocation of the license plus a civil penalty of \$250.00. Any licensee whose license is revoked under this section shall not be eligible for renewal for a period of two years after the revocation.

(d)

Administrative civil penalties; individuals: An individual who sells tobacco to a person under the age of 18 years shall pay an administrative penalty of \$50.00.

(e)

Hearing: Following receipt of a notice of a violation and penalty issued under this section, the license holder or individual may agree to the presumptive penalty or request a hearing before the city council. A request for a hearing shall be made by the individual or license holder in writing and filed with the city administrator or designee within ten days of the mailing of the notice of the alleged violation. Following

receipt of a written request for hearing, the individual or license holder shall be afforded an opportunity for a hearing before the council.

(f)

Findings: If after the hearing the license holder or individual is found in violation of this chapter, the council shall impose the presumptive penalty.

(g)

Default: If the individual or license holder has been provided written notice of the violation and if no request for a hearing is filed within the ten-day period, then the presumptive civil penalty, suspension or revocation imposed in this chapter shall take immediate effect by default. The city administrator or designee shall mail notice of the fine, suspension or revocation to the individual or license holder.

(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.

It is an affirmative defense to charges under this article if the license holder proves by a preponderance of the evidence that the license holder reasonably and in good faith relied on proof of age as described in Minn. Stats. § 340A.503, subd. 6 in making the sale.

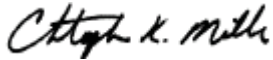
(Code 1993, § 5-1.03(D)(9); Ord. No. 99-01, § 1, 1-3-1999)

Secs. 14-299—14-310. - Reserved.

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 10/21/13
Item No.: 9.c

Department Approval



City Manager Approval



Item Description: Consider Ordinance Amending City Code Chapter 306: Cigarette and Tobacco Products

BACKGROUND

At the October 14, 2013 City Council meeting, the Council held a brief discussion on whether to amend City Code Chapter 306 to incorporate evolving forms of electronic cigarettes or ‘e-cigarettes’.

As noted in the previous Staff Report, the City Code was amended in February of 2012 to include e-cigarettes in the City’s regulatory function. At the time, the City relied on the fact that e-cigarettes were an alternative nicotine-delivery device. The presence of nicotine made it subject to the same laws and regulations that governed regular cigarettes and other tobacco products.

However, in some cases newer e-cigarettes feature non-nicotine substances and flavorings which may not necessarily fall within the current Code definitions. This is problematic from a regulatory standpoint because a casual observer would be unable to detect which e-cigarettes contain nicotine and which do not.

At the October 14th meeting, the Council asked Staff to provide information regarding the e-cigarette regulatory efforts of other cities and to develop a proposed ordinance that would incorporate all e-cigarette types into City Code. The Council was also interested in further discussion on whether the use of e-cigarettes should be restricted in public places.

Regulatory Efforts by other Cities

A number of governmental agencies throughout the State have already weighed in on whether to regulate the sale or use of e-cigarettes. The following is a sample of those efforts.

- ❖ The City of Duluth banned their indoor use in all public places.
- ❖ The City of North Mankato banned any indoor sampling for a period of 1 year to allow for further study.
- ❖ The City of Mankato banned their indoor use (sampling) in tobacco stores, but chose to delay any action that would ban them in all public places.
- ❖ Hennepin County banned their use on all County property
- ❖ Metro Transit banned their use on all public transportation
- ❖ The cities of St. Paul, Minneapolis, Shoreview, Little Canada, and Falcon Heights are actively reviewing the issue but have not taken any formal position on regulating e-cigarettes beyond current State Law.

34 It should be noted that e-cigarettes are NOT regulated under the State’s Minnesota Clean Indoor Act of
35 1975 or the Freedom to Breathe Act of 2007 – both of which, along with other statutory provisions,
36 provide explicit authority for local governments to impose their own regulations on tobacco-related
37 products. Nor are they regulated by the U.S. Food and Drug Administration like tobacco is, although the
38 FDA itself is suggesting that it is moving in that direction.

39
40 In the event that the City Council desires to regulate all e-cigarettes and similar devices, Staff has
41 developed proposed language that would modify City Code Chapter 306. It is included in the draft
42 ordinance shown below in *Attachment A*.

43 **POLICY OBJECTIVE**

44 The Council is asked to consider the attached ordinance that includes a revised definition of tobacco
45 products to include all e-cigarettes and similar devices.

46 **FINANCIAL IMPACTS**

47 Not applicable.

48 **STAFF RECOMMENDATION**

49 Not applicable.

50 **REQUESTED COUNCIL ACTION**

51 Consider an ordinance amending City Code Chapter 306 to expand the definition of tobacco products to
52 include all e-cigarettes and similar devices.

53
54

Prepared by: Chris Miller, Finance Director
Attachments: A: Proposed Ordinance to amend City Code Chapter 306
B: Current City Code Chapter 306

55

City of Roseville
ORDINANCE No. _____

**AN ORDINANCE AMENDING TITLE 3, SECTION 306.01; RELATING TO
TOBACCO PRODUCTS**

THE CITY OF ROSEVILLE ORDAINS:

SECTION 1: Title 3, Section 306.01 of the Roseville City Code is amended to read as follows:

TOBACCO RELATED PRODUCT: Cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready, rubbed and other smoking tobacco, snuff, snuff flower, Cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scrips, clippings, cuttings and sweepings of tobacco prepared in such manner as to be suitable for chewing, sniffing or smoking in a pipe, rolling paper or other tobacco related devices. Also, any products 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. And, shall include electronic cigarettes or other devices that can be used to deliver nicotine or any other substance or flavorings to the person inhaling from the device. This Chapter does not apply to devices that have been approved or otherwise certified for sale by the U.S. 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.

SECTION 2: Effective date. This ordinance shall take effect upon its passage and publication.

Passed by the City Council of the City of Roseville this 14th day of October, 2013.

(SEAL)

CITY OF ROSEVILLE

BY: _____
Daniel J. Roe, Mayor

ATTEST:

Patrick Trudgeon, Interim City Manager

CHAPTER 306 CIGARETTE AND TOBACCO PRODUCTS

SECTION:

- 306.01: Definitions
- 306.02: License Required
- 306.03: Application
- 306.04: Prohibited Sales
- 306.05: Indoor Smoking Prohibited
- 306.06: Identification
- 306.07: Violations
- 306.08: Appeal

306.01: DEFINITIONS:

As used in this Chapter, the following words and terms shall have the meanings ascribed to them in this Section:

INDIVIDUALLY PACKAGED: Any package containing only one individually wrapped item. Included are single packs of cigarettes or single cans or containers of tobacco related products. Not included are cartons containing two or more individually packaged packs of cigarettes or similar packages containing multiple cans or containers of tobacco related products.

SELF SERVICE MERCHANDISING: An open display of tobacco products which the public has access to without the intervention of an employee.

TOBACCO RELATED PRODUCT: Cigarettes, cigars, cheroots, stogies, perique, granulated, plug cut, crimp cut, ready, rubbed and other smoking tobacco, snuff, snuff flower, Cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scrips, clippings, cuttings and sweepings of tobacco prepared in such manner as to be suitable for chewing, sniffing or smoking in a pipe, rolling paper or other tobacco related devices. Also, and products 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. (Ord. 1424 02-13-12)

306.02: LICENSE REQUIRED:

No person shall keep for retail sale or sell at retail any tobacco product as defined in this Chapter without a license. (Ord. 1133, 1-24-94)

306.03: APPLICATION:

The application shall state the full name and address of the applicant, the location of the building and the part to be used by the applicant under the license, the kind of business conducted at such location and such other information as shall be required by the application form. (Ord. 1133, 1-

24-94)

306.04: PROHIBITED SALES:

No person shall sell or give away any tobacco related product to any person under the age of 18 years, no person shall sell or dispense any tobacco product through the use of a vending machine, and it shall be unlawful for any person to offer for sale any individually packaged tobacco related product by means of self-service merchandizing. All sales must be made in such a manner that requires the vendee to specifically ask for the tobacco product and all other sales are unlawful. (Ord. 1133, 1-24-94)

306.05: INDOOR SMOKING PROHIBITED:

It shall be unlawful to light, inhale, exhale, or any combination thereof, of tobacco, tobacco products, or tobacco related devices by any person in any retail establishment. (Ord. 1424, 02-13-12)

306.06: IDENTIFICATION:

Any person who sells a tobacco product must require identification if such person has any reason to believe that the purchaser is less than 18 years of age. (Ord. 1133, 1-24-94)

306.07: VIOLATIONS:

- A. Misdemeanors: Any person who violates this Chapter shall be guilty of a misdemeanor.
- B. Penalty for Noncompliance: In addition to any criminal penalties which may be imposed by a court of law, the City Manager may suspend or revoke a license on a finding that the license holder or its employee has failed to comply with this Chapter.
- C. Minimum Penalty: In no event shall a penalty be less than:
 - 1. For a first violation, the mandatory minimum penalty shall be the administrative penalty imposed pursuant to City Code Section 102.01C.
 - 2. For a second violation in 12 months the mandatory minimum penalty shall be suspension for two days.
 - 3. For a third violation in 12 months the mandatory minimum penalty shall be suspension for five days.
- D. Hearing and Notice: Revocation or suspension of a license shall be preceded by a hearing before the City Manager. A hearing notice shall be given at least ten days prior to the hearing, including notice of the time and place of the hearing and shall state the nature of the charges against the licensee. (Ord. 1133, 1-24-94)

306.08: APPEAL:

The aggrieved party may appeal the decision of the City Manager within ten days of receiving notice of the City's action. The filing of an appeal stays the action of the City Manager in suspending or revoking a license until the City Council makes a final decision. The City Council may modify the suspension or revocation. (Ord. 1133, 1-24-94)

802. TOBACCO PRODUCTS

802.010. DEFINITIONS. For purposes of this regulation, the following terms shall mean:

- (a) "Tobacco Product" means cigarettes; cigars; cheroots; stogies; perique; granulated, plug-cut, crimp-cut, ready rubbed and other smoking tobacco; snuff; snuff flowers; 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, prepared in such a manner as to be suitable for chewing or smoking in a pipe, or other tobacco related devices.
- (b) "Self-Service Merchandising" means a method of displaying Tobacco Products or delivery devices in a manner in which such Tobacco Products or delivery devices are accessible to the public without the intervention of any employee.
- (c) "Vending Machine" means any mechanical, electric or electronic device, appliance or any other medium or object designed or used for vending purposes which, upon insertion of money, tokens or any other form of payment, dispenses Tobacco Products or delivery devices.
- (d) "Tobacco Store" means a retail establishment with an entrance door opening directly to the outside that derives more than 90 percent of its gross revenue from the sale of cigars, cigarettes, loose tobacco, cigarette or cigar lighters, ~~and~~ tobacco-related devices, and delivery devices and in which the sale of other products is merely incidental. This definition does not include a tobacco department or section of any business establishment with any other kind of liquor, food or restaurant license.
- (e) "Tobacco-related device" means any 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.
- (f) "Compliance Checks" are 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.

- (g) “Individually Packaged” means the practice of selling any tobacco ~~or~~ tobacco product or delivery device wrapped individually for sale. Individually wrapped tobacco, ~~and~~ tobacco products and delivery devices 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, e-cigarettes, and vapor inhalers. Cartons or other packaging containing more than a single pack or other container as described in this definition shall not be considered individually packaged.
- (h) “~~Nicotine Or Lobelia~~ Delivery Devices” means any product containing or delivering nicotine or lobelia any other substance intended for human consumption that can be used to deliver nicotine, lobelia or any other substance through inhalation of vapor or any other product or byproduct by any means, or any part of such a product, that is not tobacco as defined in this section. Delivery devices include, but are not limited to: e-cigarettes, e-cigars, personal vaporizers, or any other product where it delivers a substance into the human body through the inhalation of vapor or any other product or byproduct. Delivery devices; do not include~~ing~~ 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.
- (i) “Smoking” means inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco, plant, natural or synthetic product. Smoking includes inhaling or exhaling vapor or any other product or byproduct of a delivery device. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

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802.020. LICENSE REQUIRED. No person shall, directly or indirectly, keep for retail sale, sell at retail, keep for wholesale, sell at wholesale or otherwise dispose of Tobacco Products, tobacco-related devices, or ~~nicotine or lobelia~~ delivery devices unless licensed by the City of Little Canada. A Tobacco Store license is available to a premises meeting the definition of such a store; a General Sales and Display license is available to all other premises seeking a tobacco license. License applications shall be submitted to the City Administrator together with the applicable license fee as determined from time to time by City Council resolution. A license shall be issued for the specific premises identified in the application.

802.025. RESTRICTIONS ON NUMBER OF LICENSES. The number of tobacco licenses within the City shall not exceed ten (10).

802.030. APPLICATION. Any person desiring a license to engage in the business of dealing and/or selling Tobacco Products shall first make application therefor to the Council of the City by filing with the City Administrator for presentation to the Council an application in writing, which

application shall set forth the name and place of residence of the applicant and the exact location of the place at which the applicant proposes to carry on said business. An application to renew a Tobacco Store license shall include a certified statement by the business owner that the tobacco store is in compliance with the requirement that more than 90% of gross revenue derived from the sale of approved products and the requirement that no more than 50% of the gross revenue of the store is derived from the sale of tobacco-related devices and delivery devices. Such certification shall include the following: total gross revenues, total gross revenues derived from the sale of approved products, and total gross revenues derived from the sale of tobacco-related products and delivery devices. The City reserves the right to request additional financial information, as deemed necessary. Said application shall be signed by the applicant in person, and when received by the City Administrator shall be placed on file; provided, however, that no such application shall be received unless it is accompanied by the payment of a fee as provided for herein.

802.040. LICENSE GRANTED BY RESOLUTION. The Council shall, after whatever investigation it deems necessary, by resolution grant the license applied for by such applicant, if in the opinion of the Council the applicant is entitled thereto. 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.

802.045. PROXIMITY RESTRICTION. No Tobacco Store license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, or ~~nicotine or lobelia~~ delivery devices within 500 feet of any school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been in the business of selling such products in that location before the date this section was enacted into law for at least one year. For the purpose of this section, a “youth-oriented facility” is defined to include any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21.

802.050. LICENSE FEE. The annual Tobacco Products license fee shall be determined by resolution of the City Council. If the application is made after July 1, the annual fee shall be prorated on a monthly basis.

802.060. TERM. Tobacco Products licenses shall be for a term of one year. The annual Tobacco Products license shall commence July 1 of each year.

802.070. LICENSE RESTRICTIONS. A license shall be issued subject to the following

restrictions:

- (a) The following restrictions apply to premises licensed as a Tobacco Store:
- (1) No person shall permit a minor to sample tobacco.
 - (2) No more than 50% of the gross revenue of the store may be derived from the sale of tobacco-related devices.
 - (3) Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking tobacco, or lighting and burning tobacco, for the purposes of sampling tobacco and tobacco related products or smoking from a delivery device is prohibited. Notwithstanding the preceding, smoking may occur in a Tobacco Store if all of the following circumstances are met:
 - i. The smoking is by a customer or potential customer for the specific purpose of sampling tobacco;
 - ii. The Tobacco Store has held a license from the City to sell tobacco products at that location for at least six months prior to the enactment of this provision; and
 - iii. The owner of the establishment has maintained a valid license and has abided by all applicable laws.
 - (4) Smoking from a delivery device for any reason is strictly prohibited in any Tobacco Store.
- Any smoking allowed under this exemption shall be prohibited if the license holder loses the license or transfers title to, relinquishes management or control of, or sells the business to any other individual or business entity.
- (b) The following restrictions apply to premises licensed for general tobacco sales and display:
- (1) The establishment shall fully comply with the Minnesota Clean Indoor Air Act, Minn. Stat. § 144.411 to 144.417.
 - (2) There shall be no display of tobacco-related devices except for cigarette lighters for sale on the licensed premises, whether the sale is for the benefit of the licensee or for a third party (e.g. consignment).

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(c) The following restrictions apply to all licenses:

- (1) Vending machines used to dispense Tobacco Products or ~~nicotine or lobelia~~ delivery devices shall be prohibited.
- (2) No sales shall be made 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.
- (3) A licensee shall comply with all applicable regulations of the State of Minnesota relating to the sale or dispensing of Tobacco Products and delivery devices. If there is a conflict between the regulations of the State and the regulations of the City, the more restrictive regulations shall control.
- (4) Every licensee is responsible for the conduct of its employees while on the licensed premises. Any sale or other disposition of Tobacco Products or delivery devices by an employee of a licensee shall be considered an act of the licensee.

802.080. SALES TO MINORS. No person shall give, sell or dispense any Tobacco Product or ~~nicotine or lobelia~~ delivery device to a person under eighteen (18) years of age. Any person convicted of violating this section shall pay a fine of \$100.00 for the first such conviction. Any person convicted to violating this section twice shall pay a fine of \$125.00. Any person convicted of violating this section three times shall pay a fine of \$150.00. Any person convicted of violating this section more than three times during any 24-month period shall be guilty of a misdemeanor.

802.090. ADMINISTRATIVE FINE, SUSPENSION, OR REVOCATION. Any violation of the City's regulations relative to the issuance of a Tobacco Products License or of any conditions/restrictions attached to the issuance of such license shall be cause for the imposition of an administrative fine, the suspension of the license, or the revocation of the license.

- (a) If the violation relates to a restriction of Section 802.070 other than the sale of tobacco or delivery device to minors or allowing a minor to sample tobacco or delivery device, the Council may suspend the license for up to 60 days or revoke the license. In addition to such action, or in lieu of such action, the Council may impose a civil fine not to exceed \$1,000.00 for each violation.
- (b) If the violation relates to the sale of Tobacco Products to minors, sale ~~of nicotine or lobelia~~ delivery devices to minors, or allowing the sampling of tobacco or delivery

| device by minors, by the licensee or the licensee's employee, the following administrative fines, suspensions, or revocations shall be imposed.

- (1) The first such violation shall subject the licensee to the payment of an administrative fine of \$200.00;
 - (2) The second violation at the same location within 24 months of a previous violation shall subject licensee to the payment of an administrative fine of \$500.00.
 - (3) The third violation at the same location within 24 months of two previous violations shall subject the licensee to the payment of an administrative fine of \$1,000.00 plus a seven (7) business day suspension of the license.
 - (4) The individual responsible for the sale to a minor shall be charged an administrative penalty of \$50.00, following notice of the violation and an opportunity for a hearing before the City Council.
 - (5) The City Council retains the discretion to consider suspension or revocation of a license at any time, if in the view of the Council the circumstances of the violation call for such a sanction.
- (c) The imposition of an administrative fine upon a licensee, and/or suspension of license or revocation of a license will be processed pursuant to Little Canada City Code Chapter 800. Licensees, whose licenses have been revoked, shall not be eligible for another Tobacco Products License for a minimum period of one year from the date of said revocation.

802.100. INSPECTION/COMPLIANCE CHECKS. Any applicant or licensee shall permit the City, or its representatives, to inspect and examine the place of business described in the application or license. Any refusal on the part of the applicant, or licensee, to permit such inspection will be sufficient grounds for the Council to refuse the application applied for or suspend a license previously granted. The City of Little Canada, or its authorized representative, may at any time conduct unannounced compliance checks of each licensee. Any finding of noncompliance with the requirements of this Chapter or other applicable regulations shall constitute a violation of this section.

(Source: Ord. 3, Amended: Ord. 331, 441, 513, 689, 707, 716, 726, 742)

October 21, 2013

Dear Roseville City Council.

I am writing as a follow up to my email on 9/23 and want to thank Council Members Tammy McGhee and Lisa Laliberte for contacting me. I was unable to attend the 10/14 City Council meeting when you discussed amending City Code Chapter 306 to incorporate all e-cigarettes. I am not able to attend tonight's meeting due to child care issues. However I wanted to let you know as a community member I feel strongly all e-cigarette devices should be included in City Code Chapter 306.

All e-cigarette devices should be included for many reasons:

1. Consistent licensing would allow the city to better understand the economic impact of these businesses. As many of the locations advertise as a place to "hang out," try new products and encourage use on-site or sell hookah pipes, the businesses, schools and residents in the surrounding area could be confident that there is City regulation on this growing trend. This regulation would allow:
 - Parents to be confident their children won't be allowed to try e-cigarettes. I firmly believe any product that has flavors such as bubble gum or strawberry are not marketing to adult men and women but to teens. Actions that mimic smoking are a gateway to smoking actual cigarettes and as a community we should continue to support Minnesota's anti-smoking efforts.
 - The number of retail locations could be tracked in the case of changing Federal guidelines
 - The Council could consider a limit of the number of licenses granted in order to maintain strong quality neighborhoods in Roseville.
 - Surrounding businesses as well as building owners would know what is permitted in e-cigarette businesses.
2. There is little medical research on the long term effect of inhaling the vapor from the devices containing nicotine or not. Allowing unregulated e-cigarette businesses to open without proper guidance or even knowledge by the city, could place the city at risk if and when federal guidelines are created.
3. Incorporating all devices would create consistent enforcement and not make our retailers, business owners and police have to make subjective decisions based on a visual judgment if someone is using an e-cigarette that may not contain nicotine but is the same device.

Finally the City of Roseville should consider the overall image of the city and the appeal to move into and remain here. If unregulated e-cigarette businesses are able to sell e-cigarette devices in our community there are many families, we included, which would take this as a sign the City Council is viewing ANY revenue increase to the bottom line over families.

Thank you for your time,
Carolyn India-Black
carolynindiablack@gmail.com

From: "Please Do Not Click Reply" <support@govoffice.com>
Date: September 24, 2013 at 8:50:58 AM CDT
To: "mayorlindstrom@gmail.com" <mayorlindstrom@gmail.com>
Subject: Mayor Peter Lindstrom (form) has been filled out on your site.

Your Site has received new information through a form.

Form: Mayor Peter Lindstrom

Site URL: www.falconheights.org

Your Name: Carolyn India-Black
Email Address: carolynindiablack@gmail.com
Your Address: 1396 California Ave W
City, State, Zip: Falcon Heights MN 55108
Daytime Phone: (651)646-1801
Evening Phone: (651)646-1801
Subject: E-Cigarettes

Message: I am writing to ask if you were aware that 2 e-cigarette businesses are advertising their opening in Roseville? One location is on Larpenteur, west of Fernwood in the same building as KD Bakery and the other is on Lexington, just north of Larpenteur across from Ol'Mexico.

Since Falcon Heights is next door and the business center on the corner of Larpenteur and Snelling has many vacancies are there any regulations for e-cigarette locations wishing to open in Falcon Heights?

I also sent the following questions to the Roseville Mayor and City Council and have the same questions for Falcon Heights if an e-cigarette store wished to open here. Does the current city code incorporate e-cigarettes as a tobacco product? Will these locations, referring to the 2 soon to be opened in Roseville, have regulated operating hours? Did these 2 businesses have to go through a licensing process prior to opening?

I understand e-cigarettes are still unregulated by the FDA and most municipalities; however with 2 stores opening next door to Falcon Heights I was wondering what the city's plan was for regulating the operation and advertising? The Roseville locations are within the boundaries of Falcon Heights Elementary bus routes and I believe advertising any kind of cigarette is not beneficial to our children.

Finally e-cigarettes are a relatively new product that may have new regulation coming from the FDA. If this happens and recently opened stores are forced to close or change quickly, I am concerned about the in and out of businesses in our retail locations and impact on the surrounding businesses.

Thank you for your time

Response preference:

I prefer a response by telephone.

I am a resident of Falcon Heights: Yes



Tobacco Prevention – City Ordinance Options

Local ordinances should include the following to be compatible with state and federal law:

- Prohibition of the sale of single cigarettes or “loosies”
- Prohibition of the sale of tobacco through vending machines or any other self-service method
- Prohibition of the sale of electronic cigarettes to youth
- Updated tobacco products definition to include those products that are dissolved, absorbed, inhaled, or ingested by any other means
- Ensure that local ordinances meet state minimum penalty structure for youth access violations
 - 1st violation: \$75
 - 2nd violation within 24 months: \$200
 - 3rd violation within 24 months: \$250 and a 7-day suspension of license

Local ordinances can include the following to strengthen your tobacco ordinance (listed in order of difficulty):

- Prohibit smoking (including electronic cigarettes) inside licensed tobacco retail stores
- Strengthen the penalty structure for youth access violations beyond state minimum
- Require vendor training*
- Increase the number of compliance checks required per year*
- Require the use of ID scanners at all tobacco vendors
- Require that tobacco sellers be 18 years or older
- Restrict the total allowed number of tobacco vendors
- Prohibit the sale of tobacco in certain facilities (pharmacies, etc.)
- Restrict tobacco advertising through time, place, and manner or through sign code changes
- Require a minimum pack size for non-premium cigars
- Limit the sale of flavored tobacco products
- Prohibit the redemption of tobacco coupons

**Tobacco licensing fees should be set to cover the city’s costs associated with enforcing the tobacco licensing ordinance, including the cost of conducting compliance checks. It should not be increased beyond the cost of enforcement.*

Ordinance options for smoke-free multi-unit housing:

- **Disclosure:** Require that managers make renters aware of smoking and nonsmoking policies before the renter signs a lease
- **Incentive:** Offer a financial incentive, waive or lower licensing or inspection fees for properties that are smoke-free
- **Mandate:** Require all of a certain percentage of units to be smoke-free at all multi-unit housing properties in a municipality

Ordinance Options for Indoor Workplaces:

- Prohibit the use of electronic delivery devices in indoor locations where smoking is prohibited.

Note: This list is intended as a general reference and is not a comprehensive listing of all options.

Point-of-Sale Tobacco Prevention Strategies in Order of Difficulty

<i>Least Difficult</i>						<i>Most Difficult</i>					
Require vendor training	Update local ordinance to meet new state and federal requirements	Increase tobacco license fees	Strengthen youth access penalty structure (above state minimum)	Increase the number of required compliance checks	Require the use of ID scanners at all tobacco vendors	Prohibit smoking in tobacco shops	Restrict age of tobacco seller	Prohibit the sale of single cigars (exempt premium)	Restrict tobacco advertising through 1) time, place, or manner or 2) content neutral restrictions (such as sign code regulation)	Prohibit or limit the sale of flavored "other tobacco products"	Prohibit the redemption of tobacco coupons

ELECTRONIC DELIVERY DEVICE SAMPLE LANGUAGE FOR LOCAL GOVERNMENT REGULATION

The Public Health Law Center has developed the following sample language regarding regulation of electronic delivery devices in Minnesota under local tobacco retailer license ordinances and local smoke-free workplace ordinances. The Public Health Law Center/League of Minnesota Cities (PHLC/LMC) Model Tobacco Licensing Ordinance was used as the starting point/template for drafting purposes, such that the new sample language would amend the model ordinance.

Please note that the Public Health Law Center provides information and legal technical assistance on issues related to public health, but does not provide legal advice, and does not enter into attorney-client relationships.

Sample language for a tobacco retailer license ordinance:

Definition section:

Electronic Delivery Devices: The sample language would delete the model ordinance definition of “nicotine or lobelia delivery device” and add a broader definition of an “electronic delivery device” to include all such products no matter what their form (electronic cigarettes, cigars, pipes), as well as component parts (heating elements/cartridges), which can used independently by a person to inhale vapors. The definition would continue to exclude any product that is FDA-approved for cessation treatment or other medical purposes.

Subd. XX. Electronic Delivery Device. “Electronic Delivery Device” shall mean any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

Smoking: The sample language would modify the model ordinance definition of “smoking” to specifically include inhaling and exhaling vapor from an electronic delivery device.

Subd. XX. Smoking. “Smoking” shall mean inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product, or inhaling or exhaling vapor from any electronic delivery device. Smoking shall include carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

Additional retail establishment sample language for the definition section:

- Amendments would delete all references to “nicotine and lobelia delivery devices” and replace with “electronic delivery devices” in the various ordinance sections as noted below:
 - Purpose and Intent section (delete and replace 3 references)
 - Definition section: In addition to the definitions already noted above, the following definitions would be amended to replace “nicotine delivery device” with “electronic delivery device”
 - Compliance Checks
 - Retail Establishment
 - Self-Service Merchandising (delete and replace 2 references)
- A definition could be added:
 - “Tobacco Products Shop.” “Tobacco Products Shop” shall mean any licensed retail establishment that derives at least 90 percent of its revenue from tobacco or tobacco products and where no person under the age of eighteen (18) is present, or permitted to enter, at any time.
- A definition could be amended:
 - “Vending Machine.” This definition could be amended to add “electronic delivery device” to the string of products listed.

Licensing section:

This section could be amended to require tobacco retailer licensure for sales of electronic delivery devices as described below:

Subd. XX. Tobacco Retailer License Required. No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related devices, or electronic delivery devices without first having obtained a tobacco retailer license from the [City] [County].

Subd. XX. Application. An application for a license to sell tobacco, tobacco products, tobacco-related devices, or electronic delivery devices shall be made on a form provided by the [City] [County]... (see model ordinance for complete text).

Subd. XX. Smoking prohibited in tobacco retail establishments. Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a tobacco retailer license. Smoking for the purposes of sampling tobacco, tobacco products, tobacco-related devices, or electronic delivery devices is prohibited.

Subd. XX. Proximity to youth-oriented facilities. No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, or electronic delivery devices within one thousand (1,000) feet of any school, playground, house of worship, or youth-oriented facility... (see model ordinance for complete text).

Subd. XX. Proximity to other tobacco retail establishments. No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, or electronic delivery devices within two thousand (2,000) feet of any other establishment holding such a license... (see model ordinance for complete text).

Basis for denial of license section:

This section would amend the grounds for denial to delete any references to “nicotine and lobelia delivery devices” and replace them with “electronic delivery devices.” It would amend other references to “nicotine and lobelia devices” and replace them with “electronic delivery devices,” regarding the text on prior convictions and revocation of license.

Prohibitions section (Prohibited Sales):

This section, which prohibits sales to minors, would be amended as described below:

Subd. XX. General. It shall be a violation of this ordinance for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, or any electronic delivery device:

- A. To minors (or “to any person under the age of 18 years”)
- B. By vending machines
- C. By means of self-service: would delete reference to “nicotine or lobelia delivery device” and replace it with “electronic delivery device”
- D. ... (etc.)

A provision could be added to totally prohibit vending machine sales of all products addressed in the ordinance including electronic delivery devices, as follows:

(Add) Subd. XX. Vending machines. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, tobacco-related devices, or electronic delivery devices by means of a vending machine.

Additional sample language could provide cities and counties with alternative options to further regulate electronic delivery devices, as described below:

A behind the counter option:

The following sample language would prohibit the sale of electronic delivery devices on open shelving (no self-service) by updating the PHLC/LMC model ordinance, deleting reference to “nicotine or lobelia delivery devices” and adding text as described below:

Subd. XX. Self Service Sales. It shall be unlawful for any person licensed under this ordinance to allow the sale of tobacco, tobacco products, tobacco-related devices, or electronic delivery devices in open displays which are accessible to the public without the intervention of the licensee or the licensee’s employee and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or electronic delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco-related devices, and electronic delivery devices shall be stored behind a counter in an area that is not accessible to consumers without the assistance of a store employee.

An option limiting sales to adult-only tobacco products shops:

The following sample language would limit sales of electronic delivery devices to adult-only tobacco retail establishments that cannot be entered by minors at any time.

Subd. XX. [title]. It shall be unlawful for any person licensed under this ordinance to allow the sale of any electronic delivery device in any retail establishment other than a tobacco products shop that has an entrance door opening directly to the outside, derives more than 90 percent of its gross revenue from the sale of tobacco or tobacco products and where the sale of other products is merely incidental, and where no person under the age of eighteen (18) is present, or permitted to enter, at any time.

A total prohibition option:

The following sample language would prohibit sales of electronic delivery devices.

Subd. XX. [title]. It shall be unlawful for any person licensed under this ordinance to sell or offer to sell an electronic delivery device.

Responsibility (of licensee) section:

This provision would be amended to delete the reference to “nicotine and lobelia delivery device,” replacing it with “electronic delivery device.”

Compliance checks section:

This provision would be amended to delete all references to “nicotine and lobelia delivery device” and replace them with “electronic delivery device.”

Other prohibited acts section:

This section would be amended to delete references to “nicotine and lobelia delivery device” and replace them with “electronic delivery device.” The “illegal use” text could be amended to include “inhale” as described below.

- *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff, inhale, or otherwise use any tobacco, tobacco product, tobacco-related device, or electronic delivery device.

Exceptions and defenses section:

The sample language would delete references to “nicotine and lobelia delivery device” and suggests amending this section to correctly mirror state law, allowing an exception for “tobacco” only— not any other products – as described below.

- Nothing in this chapter shall prevent the providing of tobacco to a minor as part of a lawfully recognized religious, spiritual or cultural ceremony...

Sample language for a smoke-free workplace ordinance:

Definitions section:

Sample language would add a definition of “electronic delivery device.”

Sample language would amend the current definition of “smoking.” (See above definitions.)

Prohibition section:

By amending the definition of smoking, the sample ordinance language would prohibit the use of electronic delivery devices in indoor locations where smoking is prohibited.