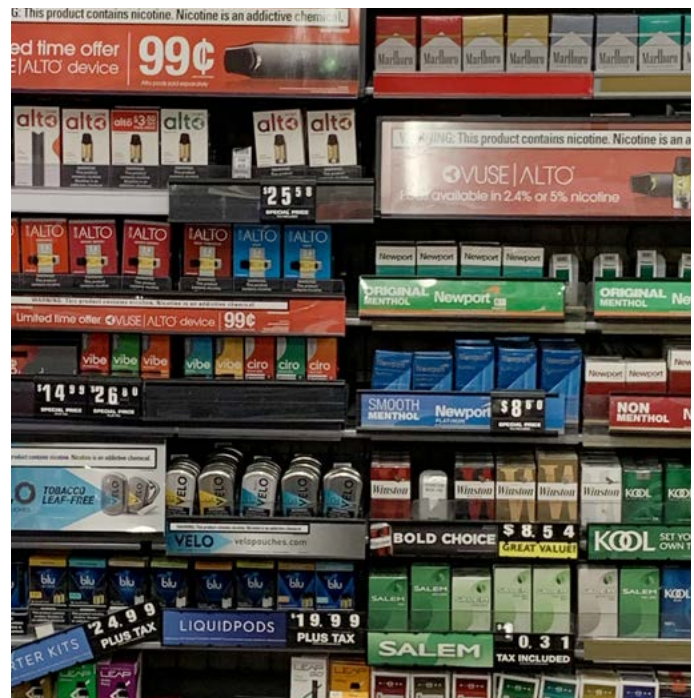


MINNESOTA CITY TOBACCO RETAIL LICENSING ORDINANCE



Through licensing and related regulations, Minnesota cities have the opportunity to address the sale of commercial* tobacco and related devices and products in the retail environment.

This model ordinance includes all the minimum retail tobacco sales restrictions required by Minnesota state and federal law. It also includes several additional provisions a city may choose to adopt to further advance public health. A city planning to adopt this model ordinance, in whole or in part, should first review it with a city attorney to determine suitability for the city's circumstances. While the model ordinance language can be modified by adding or omitting content concerning activities that a city does or does not seek to regulate, doing so may result in an ordinance that does not conform to state law, federal law, and best public health policy practices.



Because provisions within this model ordinance are controlled by statute and rules, the city attorney should review any modifications to ensure they conform to state and federal law. In addition, because the ordinance establishes rights and responsibilities of both the city and license

* The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by American Indians for centuries. When the word "product" or "retailer" follows "tobacco," a "commercial" context is implied and intended throughout this document.

applicants and holders, the city attorney should review the entire ordinance before it is adopted. The Public Health Law Center provides legal technical assistance to help communities that wish to adopt commercial tobacco control ordinances. We encourage communities to contact us for assistance when considering this model language.

Notice

This ordinance is drafted in the form prescribed by state law for statutory cities. Statutory cities must publish their ordinances — or a summary thereof — in the city’s official newspaper before they become effective. Home rule charter cities may have to follow the formatting and other procedural requirements found in their city’s charter. Charter cities should consult their charter and their city attorney to ensure they are in compliance with all charter requirements. All cities must provide copies of their ordinances to their county law library or its designated depository pursuant to Minn. Stat. § 415.021.

This ordinance may affect existing license holders. Under Minn. Stat. § 461.19, a city is required to give retailers notice that it is considering adopting or substantially amending a retail tobacco licensing ordinance. The city must take reasonable steps to send notice by mail at least 30 days prior to the meeting to the last known address of each licensee or person required to hold a license. The notice must state the time, place, and date of the meeting and the subject matter of the proposed ordinance. A city may also mail a copy of the proposed ordinance to all existing license holders to inform them of its contents and to provide them an opportunity to make their views known.

Additionally, Minn. Stat. § 415.19 requires statutory and home rule charter cities to post proposed new ordinances and ordinance amendments on the city website at least 10 days prior to a final vote by the city council, if the city already posts ordinances on its website. Under the same statute, within 10 days of a final vote, cities must also provide this same notice to all city listserv subscribers via their electronic notification system or, if the city does not have an electronic notification system, in the location that the city posts public notices. Cities must also provide new or renewing licensees with information about the city’s notification procedure at the time of application. For more information on procedural requirements for adoption or amendment of a tobacco retail licensing ordinance, see our publication *Commercial Tobacco Retail Licensing Ordinances: Procedural Requirements (2022)*.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use. Communities differ on their readiness and willingness to adopt certain

commercial tobacco control policies that are intended to help make that world a reality. As such, this model ordinance represents a balance between state and federal minimum standards, best public health policy practices, and practicality for city governments in Minnesota. This model ordinance contains several policy components that communities may or may not choose to adopt and that may go beyond minimum state and federal requirements, including:

- Prohibiting the sale of all flavored tobacco products, including menthol-flavored products;
- Regulating the price of commercial tobacco products, such as establishing minimum prices for cigars, cigarettes, and other tobacco products, restricting the redemption of coupons, and other price promotions;
- Prohibiting the sale of any tobacco product that has been removed from its original packaging and sold individually as a “loosie”;
- Establishing a minimum clerk age for employees selling licensed tobacco products;
- Limiting the number of retailers in a jurisdiction and regulating the distance between tobacco retailers and between retailers and youth-oriented facilities;
- Prohibiting the delivery and/or online sales of commercial tobacco products; and
- Prohibiting pharmacies from selling commercial tobacco products.

Context Box

Context boxes are included throughout this model ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A city wishing to adopt all or part of this model ordinance should keep this in mind and remove the context boxes.

While the Public Health Law Center does not lobby, advocate, or directly represent communities, adopting effective commercial tobacco control policies starts early with education, stakeholder and community engagement, and a strong advocacy plan. If a community is unaware of the resources available to them for engaging the community and developing an advocacy plan, or if a city is considering adopting an ordinance and is interested in learning about the range of resources available, the Public Health Law Center can provide assistance through our publications and referrals to experts in the field. In certain, limited circumstances, Public Health Law Center staff may be able to speak at public hearings or work sessions to provide education about particular policy options.

This retail tobacco licensing ordinance was prepared by the Public Health Law Center, located at the Mitchell Hamline School of Law in St. Paul, Minnesota. It was funded by, and developed in partnership with, the Minnesota Department of Health as part of its Tobacco Prevention and Control point-of-sale initiative.

The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not lobby nor does it provide direct legal representation or advice. This document should not be considered legal advice.

This publication represents the only Minnesota city model retailer licensing policy endorsed by the Public Health Law Center.

ORDINANCE NO. [_____]

**AN ORDINANCE REGULATING THE SALE OF TOBACCO
AND RELATED DEVICES AND PRODUCTS WITHIN
THE CITY OF [_____], MINNESOTA**

**THE CITY COUNCIL OF THE CITY OF [_____]
DOES ORDAIN:**

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Section 1. Findings of Fact and Purpose.

Because the city recognizes that the sale of commercial tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21 violates both state and federal law; and because studies, which the city accepts and adopts, have shown that 37.9 percent of Minnesota high school students have tried a commercial tobacco product; and because nearly 90 percent of people who smoke begin smoking before they have reached the age of 18 years, and 99 percent of smokers first tried smoking before age 26; and because marketing analysis, public health research, and commercial tobacco industry documents reveal that tobacco companies have used menthol, mint, fruit, candy, and alcohol flavors as a way to target youth and young adults and that the presence of such flavors can make it more difficult to quit; and because studies show that youth and young adults are especially susceptible to commercial tobacco product availability, advertising, and price promotions at tobacco retail environments; and because commercial tobacco use has been shown to be the cause of many serious health problems which subsequently place a financial burden on all levels of government; and because tobacco control measures save Minnesota billions in healthcare and productivity costs, this ordinance is intended to regulate the sale of commercial tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws to protect youth and young adults against the serious health effects associated with use and initiation, and to further the official public policy of the state to prevent young people from starting to smoke, as stated in Minn. Stat. § 144.391, as it may be amended from time to time.

In making these findings, the City Council accepts the conclusions and recommendations of: the U.S. Surgeon General reports, *E-cigarette Use Among Youth and Young Adults* (2016), *The Health Consequences of Smoking — 50 Years of Progress* (2014), and *Preventing Tobacco Use Among Youth and Young Adults* (2012); the Centers for Disease Control and Prevention in their studies, *Tobacco Use Among Middle and High School Students — United States, 2011–2015* (2016), and *Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997* (1998); and of the following scholars in these scientific journals: Chen, J., & Millar, W. J. (1998). Age of Smoking Initiation: Implications for Quitting. *Health Reports*, 9(4), 39-46; D'Avanzo, B., La Vecchia, C., & Negri, E. (1994). Age at Starting Smoking and Number of Cigarettes Smoked. *Annals of Epidemiology*, 4(6), 455-459; Everett, S. A., Warren, C. W., Sharp, D., Kann, L., Husten, C. G., & Crossett, L. S. (1999). Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students. *Preventive Medicine*, 29(5), 327-333; Giovino, G. A. (2002). Epidemiology of Tobacco Use in the United States. *Oncogene*, 21(48), 7326-7340; Khuder, S. A., Dayal, H. H., & Mutgi, A. B. (1999). Age

at Smoking Onset and Its Effect on Smoking Cessation. *Addictive Behaviors*, 24(5), 673–677; Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, A., & Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740–746; Minnesota Department of Health. (2021). *Data Highlights from the 2020 Minnesota Youth Tobacco Survey*. St. Paul, MN; Public Health Law Center. (2006). *The Verdict Is In: Findings from United States v. Philip Morris, The Hazards of Smoking*. University of California San Francisco. Truth Tobacco Industry Documents, <https://www.industrydocumentslibrary.ucsf.edu/tobacco>; Xu, X., Bishop, E. E., Kennedy, S. M., Simpson, S. A., & Pechacek, T. F. (2015) Annual Healthcare Spending Attributable to Cigarette Smoking: An Update. *American Journal of Preventive Medicine*, 48(3), 326–333; Olson, L. T., Coats, E. M., Rogers, T., Brown, E. M., Nonnemaker, J., Ross, A. M., Delahanty, J., & Xu, X. (2022). Youth Tobacco Use Before and After Local Sales Restrictions on Flavored and Menthol Tobacco Products in Minnesota. *Journal of Adolescent Health*, 70(6), 978–984; Maciosek, M. V., LaFrance, A. B., St Claire, A., Xu, Z., Brown, M., & Schillo, B. A. (2020). Twenty-Year Health and Economic Impact of Reducing Cigarette Use: Minnesota 1998–2017. *Tobacco Control*, 29(5), 564–569, copies of which are adopted by reference.

Findings of Fact and Purpose

A Findings of Fact and Purpose section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies and demonstrates the city’s reasoning for adopting specific provisions. This Findings of Fact and Purpose section reflects language appropriate for all the provisions suggested. The Public Health Law Center can provide support for communities to determine which Findings of Fact and Purpose statements and references should be retained in a final ordinance, depending on which provisions from the model ordinance the city chooses to adopt.

Section 2. Definitions.

Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. For the purpose of this ordinance, the following definitions apply unless the context clearly indicates or requires a different meaning:

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

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

COMPLIANCE CHECKS. The system the city uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. COMPLIANCE CHECKS may also be conducted by the city or other units of government for educational, research, and training purposes or for investigating or enforcing Tribal, federal, state, or local laws and regulations relating to licensed products.

DELIVERY SALE. The sale of any licensed product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed retail establishment. DELIVERY SALE includes but is not limited to the sale of any licensed product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. DELIVERY SALE includes delivery by licensees or third parties by any means, including curbside pick-up.

Prohibiting Delivery Sales

Local communities may be interested in prohibiting delivery sales as an effective means of curtailing underage access to licensed products, especially electronic delivery devices sold online. This definition supports the Delivery Sales Prohibition on page 19. For more information on online and delivery sales, see our publication *Online and Other Delivery Sales of Commercial Tobacco Products (2022)*.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. ELECTRONIC DELIVERY DEVICE includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, e-pipes, vape pens, mods, tank systems, or under any other product name or descriptor. ELECTRONIC DELIVERY DEVICE includes any component part of a product, whether or not marketed or sold separately. ELECTRONIC DELIVERY DEVICE does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

FLAVORED PRODUCT. Any licensed product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to or during the consumption of the product, including, but not limited to, any taste or smell relating to chocolate, cocoa, menthol, mint, wintergreen, vanilla, honey, fruit, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim, whether express or implied, made or disseminated by the manufacturer or retailer of a licensed product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such products, that a product has or produces a taste or smell other than a taste or smell of tobacco will constitute presumptive evidence that the product is a flavored product.

IMITATION TOBACCO PRODUCT. Any edible non-tobacco product designed to resemble a tobacco product, or any non-edible tobacco product designed to resemble a tobacco product and intended to be used by children as a toy. IMITATION TOBACCO PRODUCT includes, but is not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling chewing tobacco, and shredded beef jerky in containers resembling tobacco snuff tins. IMITATION TOBACCO PRODUCT does not include electronic delivery devices or nicotine or lobelia delivery products.

INDOOR AREA. All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

LICENSED PRODUCTS. The term that collectively refers to any tobacco product, tobacco-related device, electronic delivery device, or nicotine or lobelia delivery product.

LOOSIES. The common term used to refer to single cigarettes, cigars, and any other licensed products that have been removed from their original retail packaging and offered for sale. LOOSIES does not include premium cigars that are hand-constructed, have a wrapper made entirely from whole tobacco leaf, and have a filler and binder made entirely of tobacco, except for adhesives or other materials used to maintain size, texture, or flavor.

Prohibiting the Sale of Single Cigarettes and Other Products Removed From Their Original Packaging

Federal law and the tobacco Master Settlement Agreement prohibit the sale of single cigarettes. State and local governments can replicate and expand on the federal provisions. This definition includes and expands on the existing federal ban on the sale of single cigarettes (commonly referred to as “loosies”) to also prohibit the sale of cigars and other tobacco products (e.g., smokeless pouches and Juul pods) that have been removed from their intended packaging. This exception language removes premium cigars from the definition, and thus the sales prohibition, of loosies.

MOVEABLE PLACE OF BUSINESS. Any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and that is not a fixed address or other permanent type of structure licensed for over-the-counter sales transactions.

NICOTINE OR LOBELIA DELIVERY PRODUCT. Any product containing or delivering nicotine or lobelia, whether natural or synthetic, intended for human consumption, or any part of such a product, that is not tobacco or an electronic delivery device as defined in this section. NICOTINE OR LOBELIA DELIVERY PRODUCT does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

PHARMACY. A place of business at which prescription drugs are prepared, compounded, or dispensed by or under the supervision of a pharmacist and from which related clinical pharmacy services are delivered.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. RETAIL ESTABLISHMENT includes, but is not limited to, grocery stores, tobacco product shops, convenience stores, liquor stores, gasoline service stations, bars, and restaurants.

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

SELF-SERVICE DISPLAY. The open display of licensed products in a retail establishment in any manner where any person has access to the licensed products without the assistance or intervention of the licensee or the licensee’s employee and where a physical exchange of the licensed product from the licensee or the licensee’s employee to the customer is not required to access the licensed products.

SMOKING. Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. SMOKING also includes carrying or using an activated electronic delivery device.

TOBACCO PRODUCT. Any product containing, made, or derived from commercial tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a TOBACCO PRODUCT, including but not limited to, cigarettes; cigars; 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 commercial tobacco. A TOBACCO PRODUCT does not include any nicotine cessation product that has been authorized by the U.S. Food and Drug Administration to be marketed and for sale as “drugs,” “devices,” or “combination products,” as defined in the Federal Food, Drug, and Cosmetic Act.

TOBACCO-RELATED DEVICE. Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. TOBACCO-RELATED DEVICE includes components of tobacco-related devices or tobacco products which may be marketed or sold separately. TOBACCO-RELATED DEVICES may or may not contain tobacco.

VENDING MACHINE. Any mechanical, electric or electronic, or other type of device that dispenses licensed products upon payment by any form by the person seeking to purchase the licensed product.

YOUTH-ORIENTED FACILITY. Any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. Youth-oriented facility includes, but is not limited to, schools, playgrounds, recreation centers, and parks.

Section 3. License.

- (A) **License required.** No person shall sell or offer to sell any licensed product without first having obtained a license to do so from the city.
- (B) **Application.** An application for a license to sell licensed products must be made on a form provided by the city. The application must 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 Clerk will forward the

application to the City Council for action at its next regularly scheduled meeting. If the City Clerk determines that an application is incomplete, it will be returned to the applicant with notice of the information necessary to make the application complete.

- (C) **Action.** The City Council may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary. If the City Council approves the application, the City Clerk will issue the license to the applicant. If the City Council denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.
- (D) **Term.** All licenses issued are valid for one calendar year from the date of issue.
- (E) **Revocation or suspension.** Any license issued may be suspended or revoked following the procedures set forth in Section 10.
- (F) **Transfers.** All licenses issued are valid only on the premises for which the license was issued and only for the person to whom the license was issued. The transfer of any license to another location or person is prohibited.
- (G) **Display.** All licenses must be posted and displayed at all times in plain view of the general public in the retail establishment.
- (H) **Renewals.** The renewal of a license issued under this ordinance will be handled in the same manner as the original application. The request for a renewal must be made at least 30 days, but no more than 60 days, before the expiration of the current license.
- (I) **Issuance is a privilege and not a right.** The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.
- (J) **Instructional program.** Licensees must complete and ensure that all employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. Any training program must be pre-approved by the city. Licensees must maintain documentation demonstrating their compliance and must provide this documentation to the city at the time of renewal, or whenever requested to do so during the license term.

Instructional Program

Cities may consider developing their own instructional program that provides specific instruction for specific policy provisions adopted by the city or they may use the free instructional online program created and updated frequently by the Association for Nonsmokers Minnesota, which reflects state law requirements (stopsalestominors.org). If the jurisdiction's ordinance differs from state law, this online training should be supplemented with training specific to the local jurisdiction's requirements.

- (K) **Minimum clerk age.** Individuals employed by a licensed retail establishment under this ordinance must be at least [18 or 21] years of age to sell licensed products.

Minimum Age for Clerks

Cities may be interested in establishing a minimum age for employees to sell commercial tobacco products at licensed retail establishments. The tobacco industry has acknowledged that peer pressure facing young clerks from their underage peers seeking to purchase commercial tobacco products at the counter plays a role in youth access. Establishing a minimum clerk age addresses the peer pressure and impacts youth access. If a city chooses to establish a minimum clerk age below the age of 21 (e.g., 18), clerks between the ages of 18 and 20 could legally sell licensed products within the purview of their employment but would be unable to purchase them. This sample language allows people under the minimum clerk age to work for a licensed retailer but not engage in sales of commercial tobacco products. For more information in minimum clerk age, review our publication [*Establishing a Minimum Clerk Age \(2022\)*](#).

- (L) **Maximum number of licenses.** The maximum number of licenses issued by the city at any time is limited to [see "Licensing Cap" below]. When the maximum number of licenses has been issued, the city may place persons seeking licensure on a waiting list and allow them to apply on a first-come, first-served basis, as licenses are not renewed or are revoked. A new applicant who has purchased a business location holding a valid city license will be entitled to first priority, provided the new applicant meets all other application requirements in accordance with this ordinance.

Licensing Cap

Communities with a higher concentration of commercial tobacco retailers within their jurisdiction expose more youth and young adults to commercial tobacco industry marketing, making it easier for them to obtain licensed products. This heavier concentration of retailers also influences the brands chosen by young people and encourages their initiation of commercial tobacco use. One way to address retailer density issues is to place a limit or cap on the number of tobacco retailer licenses that may be issued by the city. The above provision would set the maximum number of licenses available.

Cities can choose how to structure a licensing cap to meet the needs of their communities. Potential options include setting the cap at the number of existing licensed retailers or limiting the number of licensed retailers based on population density. A city may also want to limit licenses to those that currently exist and reduce the number of available licenses over time, as licenses are revoked or expire and are not renewed. It is possible to craft language that would ultimately reduce the number of licenses over time to zero. Cities are encouraged to work with local public health departments, city attorneys, and the Public Health Law Center to determine the appropriate licensing cap provision for their community.

For more information on retailer density, review our publication [Location, Location, Location: Tobacco & E-Cig Point of Sale.](#)

Commercial Tobacco “Endgame” Strategies

Commercial tobacco “endgame” strategies are policies that end the sale of all or certain commercial tobacco products in a jurisdiction. These endgame policies may take effect immediately or may be phased in over time. The rationale is that commercial tobacco products, if used as intended, are harmful and deadly to the consumers and the jurisdiction seeks to protect public health by ending the sale of these products. There are several methods by which jurisdictions have adopted or may consider adopting a commercial tobacco endgame policy:

- Prohibiting the sale of all or nearly all commercial tobacco products
- Prohibiting all or nearly all issuances of commercial tobacco licenses (typically, on a specific “effective date”)

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- Reducing density down to zero through sunseting caps on licenses (either by not allowing any new licenses/transfers or by establishing a set schedule of reduced caps until zero)
- Increasing the minimum legal sales age (MLSA) every year or setting the MLSA at a number above the typical human lifespan (either age specific or birth year specific)

For more information, see our forthcoming fact sheet on commercial tobacco endgame strategies and our article in the Mitchell Hamline Law Review, *Not For Sale: State Authority to End Cigarette Sales* (2018).

- (M) **Proximity to youth-oriented facilities.** No new or renewed license will be granted to any person for a retail establishment location that is within [1,000] feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed licensee to the nearest property line of a youth-oriented facility.
- (N) **Proximity to other licensed retailers.** No new license will be granted to any person for a retail establishment location that is within [2,000] feet of any other existing licensed retail establishment, as measured by the shortest line from the property line of the space to be occupied by the applicant for a license to the nearest property line of the existing licensee.

Proximity Restrictions

Research has demonstrated that policies requiring set distances between retailers and between retailers and youth-oriented facilities help to reduce tobacco retailer density and increase prices for commercial tobacco products. These proximity buffers may have significant impact in urban, low-income neighborhoods, which have been historically targeted by the tobacco industry with pervasive marketing and price promotions at the point-of-sale. The greatest public health impacts are seen when these policies are combined with a cap on the number of licenses issued. Jurisdictions with GIS capacity may want to consider mapping locations of commercial tobacco retailers to identify their proximity to youth-oriented facilities and other retailers.

The youth-oriented facilities proximity limitation above would prohibit tobacco retailing within a certain distance of relevant businesses and facilities with no exception for existing licensed

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retailers. As a result, retail licenses for locations that do not meet these proximity limitations would not be renewable after expiring. Issuing a tobacco retail license is a privilege, not a right, and jurisdictions have the authority to grant or deny tobacco retailer licenses.

The retailer proximity limitation does allow an exception for existing retailers to continue to operate by prohibiting new licenses to be issued, but allowing renewal of the license for existing licensed locations. The license could eventually be phased out through attrition if the licensee fails to renew or a license is revoked.

For more information on proximity restrictions, review our publications [*Regulating the Location, Density, and Type of Tobacco Retailers \(2022\)*](#) and [*Location, Location, Location: Tobacco & E-Cig Point of Sale*](#).

Luke, D. A., Hammond, R. A., Combs, T., Sorg, A., Kasman, M., Mack-Crane, B. A., Henriksen, L. (2017). Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *American Journal of Public Health*, 107(5), 740-746; Myers, A. E., Hall, M. G., Isgett, L. F., & Ribisl, K. M. (2015). A Comparison of Three Policy Approaches for Tobacco Retailer Reduction. *Preventive Medicine*, 74, 67-7; Ribisl, K. M., Luke, D. A., Bohannon, D. L., Sorg, A. A., & Moreland-Russell, S. (2017). Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools. *Nicotine & Tobacco Research*, 19(2), 239-244.

- (O) **Pharmacies ineligible for licensure.** No new or renewed license will be granted to a pharmacy or any retail establishment that operates an on-site pharmacy.

Pharmacy Prohibitions

Several communities have adopted laws prohibiting pharmacies from selling commercial tobacco products. These laws have been shown to significantly reduce commercial tobacco retailer density when compared to communities without similar laws. Some studies have shown that pharmacy prohibitions are most effective in reducing health disparities when combined with proximity restrictions. For more information on this topic, see [*Prohibiting Pharmacy Sales of Tobacco Products \(2018\)*](#).

Giovenco, D. P., Spillane, T. E., Mauro, C. M., & Hernández, D. (2018). Evaluating the Impact and Equity of a Tobacco-Free Pharmacy Law on Retailer Density in New York City Neighbourhoods. *Tobacco Control*, 28(5), 548-554. Jin, Y., Lu, B., Klein, E. G., Berman, M., Foraker, R. E., & Ferketich, A. K. (2016). Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts. *American Journal of Public Health*, 106(4), 679-685.

- (P) **Smoking prohibited.** Smoking, including smoking for the purpose of the sampling of licensed products, is prohibited within the indoor area of any retail establishment licensed under this ordinance.
- (Q) **Samples prohibited.** No person shall distribute samples of any licensed product free of charge or at a nominal cost. The distribution of licensed products as a free donation is prohibited.

Samples and Sampling

Tobacco manufacturers and retailers frequently distribute free or low-cost samples of their products to consumers when and where allowed by federal, state, and local laws. In addition, in many locations, lax federal and state laws allow customers to smoke or vape in tobacco retailer establishments. Tobacco stores and vape shops allow on-site sampling where customers smoke or use products and devices in the store. Both distribution of samples and on-site sampling in certain retail establishments are effective marketing strategies used by the tobacco industry to continuously attract new consumers and promote the use of their products. For more information see our publication [*Policy Options to Address Commercial Tobacco Product Samples and Sampling \(2022\)*](#).

Section 4. Fees.

No license will be issued under this ordinance until the appropriate license fees are paid in full. The fees will be established by the city's fee schedule and may be amended from time to time.

Licensing Fees

Fees provide revenue for the administration and enforcement of the ordinance and for retailer and community education. Periodic review and adjustment of licensing fees will ensure that they are sufficient to cover all administration, implementation, and enforcement costs, including compliance checks. Our online [*Tobacco Retail Licensing Calculator*](#) and our publication, [*Retail License Fees \(2022\)*](#), provides more information about retail licensing fees and a license fee checklist.

Section 5. Basis for Denial of License.

- (A) Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:
- (1) The applicant is under 21 years of age.
 - (2) The applicant has been penalized within the past five years for any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.
 - (3) The applicant has had a license to sell licensed products suspended or revoked within the preceding 12 months of the date of application.
 - (4) The applicant fails to provide any of the information required on the licensing application or provides false or misleading information.
 - (5) The applicant is prohibited by Tribal, federal, state, or other local law, ordinance, or other regulation from holding a license.
 - (6) The business for which the license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.
 - (7) Any other suitable reason that the granting of a license to the applicant is inconsistent with public health, safety, and welfare, including the applicant's history of noncompliance with this ordinance and other laws relating to the sale of licensed products.

License is a Privilege not a Right

This broad catch-all provision allows license denial under the jurisdiction's health, safety, and general welfare authority for reasons that may not be specifically listed here. Minn. Stat. § 412.221 subd. 32. If a license is denied under this provision, the jurisdiction would want to have clear reasoning and facts to support the denial.

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

Section 6. Prohibited Sales.

(A) **In general.** No person shall sell or offer to sell any licensed product:

- (1) By means of any type of vending machine.
- (2) By means of loosies.
- (3) 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 products subject to this ordinance.
- (4) By means of self-service display. All licensed products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public.
- (5) By means of delivery sales. All sales of licensed products must be conducted in person, in a licensed retail establishment, in over-the-counter sales transactions.

Delivery Sales Prohibition

The traditional compliance check system with which we are familiar was designed for use in brick-and-mortar, fixed location retail establishments — and when conducted at regular intervals as required by state and local laws, this approach can be successful in weeding out bad actors among those retailers. But this means of monitoring and enforcement does not transfer well to the rapidly growing online tobacco retailer environment, where underage persons can often gain access to a tobacco retailer’s website simply by clicking a prompt claiming they are of legal age to purchase and can then make purchases by taking advantage of lax age verification processes.

Local communities may be interested in prohibiting delivery sales as an effective means of curtailing underage access to licensed products. This approach recognizes the challenges inherent in trying to effectively monitor online retailers and prevent underage access to the enormous numbers of e-cigarette products found online, acknowledging that age verification processes do not prevent underage persons from obtaining e-cigarettes and other licensed products online.

Because online age verification systems do not prevent underage access and purchases, and

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because the vast scope of online marketing of e-cigarettes to youth and young adults has contributed to a huge surge in underage access to and use of e-cigarettes — reversing decades of progress in reducing initiation and use of tobacco — state and local jurisdictions are increasingly choosing to completely prohibit delivery sales of licensed products to consumers (sales conducted by any means other than in-person, over-the-counter sales transactions in a licensed retail establishment). Cities are encouraged to work with the local public health department, city attorney, and the Public Health Law Center in considering this policy. For more information on this topic, please review our publications, [Online and Other Delivery Sales of Commercial Tobacco Products \(2022\)](#), [Online Sales of E-Cigarettes & Other Tobacco Products \(2019\)](#), and [Online E-Cigarette Sales & Shipments to Consumers: State Laws Prohibiting Them \(2019\)](#).

- (6) By any other means, to any other person, or in any other manner or form prohibited by Tribal, federal, state, or other local law, ordinance provision, or other regulation.
- (B) **Legal age.** No person shall sell any licensed product to any person under the age of 21.
- (1) **Age verification.** Licensees must verify by means of government-issued photographic identification containing the bearer’s date of birth that the purchaser is at least 21 years of age. Verification is not required for a person over the age of 30. That the person appeared to be 30 years of age or older does not constitute a defense to a violation of this subsection.
 - (2) **Signage.** Notice of the legal sales age, age verification requirement, and possible penalties for underage sales must be posted prominently and in plain view at all times at each location where licensed products are offered for sale. The required signage, which will be provided to the licensee by the city, must be posted in a manner that is clearly visible to anyone who is, or is considering, making a purchase.

Minimum Legal Sales Age (MLSA) of 21

Under federal and Minnesota state law (effective August 1, 2020), it is unlawful to sell licensed products to any person under the age of 21. [Pub.L. 111-31, H.R. 1256](#); [Minn. Stat. § 609.685](#);

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Minn. Stat. § 609.6855. State law does not prohibit local jurisdictions from enacting a higher minimum legal sales age. Jurisdictions in Minnesota may consider increasing the MLSA to 25, as the Institute of Medicine (reference provided below) report suggests this would be significantly more protective of public health. A 2013 modeling study of various MLSA policies in the United States found that a MLSA of 25 would result in a 16 percent decrease in smoking prevalence and 1,098,000 fewer premature deaths, compared to a 12 percent decrease and 705,000 fewer deaths for a MLSA of 21. Neuroscience also supports a MLSA of 25. A person's prefrontal cortex is not fully developed until the age of 25. Initiation of smoking before age 25 can impair brain development and increase the risk of addiction. If a person has not smoked by the time they are 25, it is extremely likely they will never smoke. Raising the MLSA to 25 would allow for consumers to have true freedom of choice regarding the use of tobacco products.

As of August 1, 2020, Minnesota law requires licensed retailers to display a sign in plain view to provide public notice that selling licensed products to any person under the age of 21 is "illegal and subject to penalties." Minn. Stat. § 461.22, Sec. 10. Federal and state law requires retailers to verify age as set forth in the above provision. *Id.*; Pub.L. 111-31, H.R. 1256. However, local jurisdictions could require licensed retailers to verify the age of all people attempting to purchase licensed products, regardless of how old the customer appears to be.

Institute of Medicine. (2015). *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products: Health and Medicine Division*. van der Eijk, Y., & Chen, J. I. (2022). Case for Raising the Minimum Legal Age of Tobacco Sale to 25. *Tobacco Control*, 31(3), 487-492; Oyston, J. (2017). A Fresh Approach to Tobacco Control: Raising the Minimum Legal Age for Access. *Canadian Medical Association Journal*, 189(8), E293-E294.

(C) **Flavored products.** No person shall sell or offer for sale any flavored products.

Sales of Flavored Products

Research demonstrates the harm that flavored tobacco products pose. These products increase initiation in all populations by masking the harsh taste of tobacco and nicotine. Flavors like menthol and clove also provide a numbing effect that leads to longer breath-holding. This makes quitting flavored licensed products more difficult. Overwhelmingly, youth who use licensed

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products started their commercial tobacco use by using flavored products. As of 2019, over 4.3 million middle and high school students used flavored tobacco products.

A flavored product prohibition has a strong potential to subvert youth initiation and use. Three-fourths of youth who use flavored products report they would no longer use tobacco products if the products were not flavored. Prohibiting the sale of flavored licensed products would reduce youth access to, and advertisements for, these products.

Many jurisdictions in Minnesota, municipalities across the U.S., and the states of Massachusetts and California have totally ended the sale of flavored tobacco products. In addition to improving public health and advancing health equity, complete prohibitions on the sale of flavored tobacco products are clear, easy to understand, and remove much of the guesswork and frustration associated with the tobacco industry's response to flavored tobacco sales regulations. Communities interested in enacting a complete prohibition on the sale of flavored tobacco products can review how these policies are legally defensible in our publication *Regulating Flavored Tobacco Products*.

Villanti, A. C., Johnson, A. L., Ambrose, B. K., Cummings, K. M., Stanton, C. A., Rose, S. W., Feirman, S. P., Tworek, C., Glasser, A. M., Pearson, J. L., Cohn, A. M., Conway, K. P., Niaura, R. S., Bansal-Travers, M., & Hyland, A. (2017). Flavored Tobacco Product Use in Youth and Adults: Findings from the First Wave of the PATH Study (2013-2014). *American Journal of Preventive Medicine*, 53(2), 139-151; Harrell M. B., Loukas, A., Jackson, C. D., Marti, C. N., & Perry, C. L. (2017). Flavored Tobacco Product Use among Youth and Young Adults: What if Flavors Didn't Exist?. *Tobacco Regulatory Science*, 3(2), 168-173; Truth Initiative. (2021). Flavored Tobacco Use Among Youth and Young Adults, <https://truthinitiative.org/research-resources/emerging-tobacco-products/flavored-tobacco-use-among-youth-and-young-adults>.

(D) **Cigars.** No person shall sell or offer to sell:

- (1) Any cigar unless it is within a package containing a minimum of [five] cigars; and
- (2) Any package of cigars for a sales price of less than [\$15.00] per package, after any discounts are applied and before sales taxes are imposed.

This provision does not prohibit the sale of a single cigar with a sales price of at least [\$4.00], after any discounts are applied and before sales taxes are imposed.

Individual Low-Cost Cigars

Tobacco retailers frequently sell low-cost cigars, often candy or fruit-flavored, individually or in small packages (e.g., containing two or three cigars). Inexpensive cigars are more accessible to all users but are especially appealing to price-sensitive youth who might be experimenting with different licensed products. Low price is the most common reason for smokers to purchase small packages of cigars, especially among those who purchased single cigars. Setting a minimum package size will discourage the purchase by reducing the appeal of cheaper, smaller packages. A growing number of Minnesota communities have adopted laws that increase the price of these appealing and addictive products. The language above (1) sets the minimum price of a single individually packaged cigar at a deterrent price (e.g., \$4.00) and (2) requires that any pack of cigars contains at least five cigars, priced at a total of no less than \$15.00 (or a similarly deterrent price) per pack. Recall from [Prohibiting the Sale of Single Cigarettes on page 9](#), this model prohibits the sale of cigars that have been removed from their original packaging, except for a premium cigar as defined by state law. Jurisdictions may choose to adopt the entirety of the provision above, one of the two above policies (e.g., minimum price for single cigars), or some combination.

King, J. L., Bilic, A., & Merten, J. W. (2021). Reasons for Pack Size Purchase Among US Adults Who Purchase Cigars. *International Journal of Environmental Research and Public Health*, 18(15), 7790.

Minimum Price of Other Tobacco Products

Although Minnesota law prohibits retailers from selling cigarettes to consumers at a price that is below a retailer's cost, the law only applies to cigarettes and does not address price discounting by manufacturers or retailers. Also, some laws in other jurisdictions that restrict in-store value-added promotions reference a base price that may still be manipulated. New York City closed this loophole by raising its minimum price for cigarettes and cigars and setting the first-ever price floors for other types of commercial tobacco products (i.e., smokeless tobacco, snus, shisha, and loose tobacco) as a companion to its restriction on price discounting. Minnesota local governments can go further than state law to address price discounting by setting a minimum price for all, or specific types of, tobacco products. This would prohibit tobacco retailers from selling those products below the established minimum price. The price could also be automatically increased over time by a fixed amount annually or by indexing the increase to

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inflation. The City of St. Paul enacted a minimum price law for cigarettes and smokeless tobacco products in 2021. A minimum price law could be combined with minimum pack size and restriction on the redemption of coupons and price discounts to ensure the industry cannot undermine the price floor. A number of localities in Minnesota have taken this combined approach with cigars. For more information, see our publication [Setting a Minimum Price and Package Size for Cigars \(2022\)](#).

- (E) **Imitation tobacco products.** No person shall sell or offer to sell any imitation tobacco products within the city.
- (F) **Liquid packaging.** No person shall sell or offer to sell any liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in child-resistant packaging. Upon request by the city, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.
- (G) **Coupon and price promotion.** No person shall accept or redeem any coupon, price promotion, or other instrument or mechanism, whether in paper, digital, electronic, mobile, or any other form, that provides any licensed products to a consumer at no cost or at a price that is less than the non-discounted, standard price listed by a retailer on the item or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale, including all applicable taxes.

Product Discounts

The price of tobacco products directly affects consumption levels, particularly among price-sensitive consumers, such as people with lower incomes, including youth and young adults. The commercial tobacco industry devotes billions of dollars per year to these innovative pricing strategies to entice new customers to purchase their products, to discourage current users from quitting, and to reduce the effectiveness of tobacco tax increases in decreasing tobacco sales and increasing users' quit attempts. These pricing strategies include coupons or in-store price promotions that offer "buy-one-get-one" offers, cents- or dollar-off promotions, and multi-pack

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offers, and pairing of different tobacco products or other tobacco “freebies” which are often marketed and redeemed at the point-of-sale. Jurisdictions can prohibit the redemption of these price promotions and coupons to negate the sophisticated discount marketing strategies of the commercial tobacco industry. Approximately two-thirds of Minnesota smokers take advantage of price-minimization strategies, compared to only about half of smokers nationally, demonstrating the impact of tobacco prices on Minnesota smokers and the potential that prohibiting product discounts can have on Minnesota smoking rates. Please see our publications *Coupons and Other Price Discounting Policy Options (2022)* and *Death on a Discount: Regulating Tobacco Product Pricing*, for more information on product pricing.

Ribisl, K. M., Golden, S. D., Huang, J., & Scollo, M. (2022). Addressing Lower-Priced Cigarette Products Through Three-Pronged Comprehensive Regulation on Excise Taxes, Minimum Price Policies and Restrictions on Price Promotions. *Tobacco Control*, 31(2), 229-234; Xu, X., Pesko, M. F., Tynan, M. A., Gerzoff, R. B., Malarcher, A. M., & Pechacek, T. F. (2013). Cigarette Price-Minimization Strategies by U.S. Smokers. *American Journal of Preventive Medicine*, 44(5), 472-476.

Section 7. Responsibility.

All licensees are responsible for the actions of their employees regarding the sale, offer to sell, and furnishing of licensed products on the licensed premises. The sale, offer to sell, or furnishing of any licensed product by an employee shall be considered an act of the licensee.

Section 8. Compliance Checks and Inspections.

- (A) All licensed premises must be open to inspection by authorized city officials or their designees during regular business hours.
- (B) From time to time, but at least [twice] per year, the city will conduct compliance checks to ensure compliance with all provisions of this ordinance.
- (C) In accordance with state law, the city will conduct a compliance check that involves the participation of a person at least 17 years of age, but under the age of 21 to enter the licensed premises to attempt to purchase licensed products. Prior written consent from a parent or guardian is required for any person under the age of 18 to participate in a compliance check. Persons used for the purpose of compliance checks will be supervised by law enforcement or other designated personnel.

Compliance Checks

State law requires every local licensing authority to conduct at least one compliance check each year. This state-mandated compliance check “must involve persons at least 17 years of age, but under the age of 21” as of August 1, 2020. For retailer education purposes, and to identify and cite repeat offending retailers, the model language above requires at least two compliance checks per year.

Along with the state minimum requirements for underage compliance checks, the city should adopt inspection and compliance check procedures that test for retailer compliance with all provisions of the ordinance. For example, if a city has prohibited the sale of all flavored tobacco products, the city should inspect each retailer to ensure compliance with that prohibition. For more information on compliance and enforcement, see our publication *[Compliance and Local Enforcement Programs \(2022\)](#)*.

Penalizing Underage Purchase, Use, and Possession and the Use of a False Identification

Neither state nor federal law penalizes the attempted or actual possession, use, and purchase (PUP) of licensed products by underage persons. State law prohibits the use of false ID to purchase tobacco products, but only provides non-criminal, non-monetary penalties for the use of false IDs. (Minn. Stat. § 609.85 subd. 2 and subd. 2a). This model ordinance does not include penalties for underage PUP nor penalties for the use of false IDs for the following reasons.

At its core, a licensing ordinance is intended to regulate the behavior of licensees. Penalizing underage persons detracts from the focus of the licensing code and siphons enforcement resources away from the licensees to young consumers, many of whom are addicted to nicotine. A *[2020 Minnesota Annual Synar Report](#)* on youth access enforcement found that underage persons were cited 4.6 times, and assessed fines 2.2 times, more often than owners and clerks (see page 7). It is important to note that retailers have the authority to ask underage persons to leave the premises if they attempt to purchase products.

There is no strong evidence to support an assertion that PUP penalties are effective in significantly reducing youth smoking. Historically, these laws were lobbied for by the commercial tobacco industry to punish youth users while the industry simultaneously targeted, and continues to target, youth to replace a dying consumer base and maintain profits in a dwindling market.

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Furthermore, many advocates are concerned that PUP penalties open the door to selective enforcement against youth from certain racial, ethnic, and socio-economic groups. Evidence suggests that youth of color in Minnesota are disproportionately over-represented in similar status-level offenses, increasing their interactions with law enforcement and resulting in their introduction to the criminal justice system. Jurisdictions that currently have PUP penalties no longer aligning with state law should consider removing those penalties from their ordinance.

For further reading on the history of PUP laws and the discriminatory enforcement of laws against youth of color and Indigenous youth, please see our publication *Youth Purchase, Use, or Possession Penalties (PUP) (2022)*, Minnesota Juvenile Justice Advisory Committee's report, *2016 Annual Report to Governor Mark Dayton and the Minnesota State Legislature (2016)*, and Wakefield, M., & Giovino, G. (2003). Teen Penalties for Tobacco Possession, Use, and Purchase: Evidence and Issues. *Tobacco Control*, 12(suppl 1), i6-i13.

Section 9. Exceptions and Defenses.

- (A) **Religious, Spiritual, or Cultural Ceremonies or Practices.** Nothing in this ordinance prevents the provision of tobacco or tobacco-related devices to any person as part of an indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.
- (B) **Reasonable Reliance.** It is an affirmative defense to a violation of this ordinance for a person to have reasonably relied on proof of age as described by state law.

Section 10. Violations and Penalties.

(A) Violations.

- (1) **Notice.** A person violating this ordinance may be issued, either personally or by mail, a citation from the city that sets forth the alleged violation and that informs the alleged violator of their right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.
- (2) **Hearings.**
 - (a) Upon issuance of a citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within

10 business days of the issuance of the citation and delivered to the City Clerk or other designated city officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The City Clerk or other designated city officer will set the time and place for the hearing. Written notice of the hearing time and place will be mailed or delivered to the accused violator at least 10 business days prior to the hearing.

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

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

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

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

(7) **Continued violation.** Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(H) Administrative penalties.

(1) **Licensees.** Any licensee cited for violating this ordinance, or whose employee has violated this ordinance, will be charged an administrative fine of [\$300] for a first violation; [\$600] for a second offense at the same licensed premises within a 36-month period; and [\$1,000] for a third or subsequent offense at the same

location within a 36-month period from the first violation. Upon the third violation, the license will be suspended for a period of not less than [30] consecutive days and may be revoked. Upon a fourth violation within a 36-month period from the first violation, the license will be revoked.

Minimum Fine Schedule

As of August 1, 2020, state law set a minimum fine schedule for underage sales or other ordinance violations by licensed tobacco retailers at: \$300 for a first violation, \$600 for a second violation within 36 months, and \$1,000 for a third or subsequent violation within 36 months. Upon the third or subsequent violation within 36 months of the first violation, state law requires a suspension of at least seven days and allows for license revocation. (Minn. Stat. § 461.12, subd. 2). The sample language provided above includes a longer suspension period for a third violation (30 days) and requires license revocation for repeat offenders (four violations) within 36 months from the first violation. Jurisdictions may enact stronger penalties with higher fines, longer lookback periods, earlier and longer suspension periods, and earlier revocation.

- (2) **Employees of licensees and other individuals.** Individuals 21 years of age and older who are found to be in violation of this ordinance may be charged an administrative fine of no more than [\$50] or required to attend an instructional program regarding the requirements of the tobacco retail licensing ordinance.
- (3) **Statutory penalties.** If the administrative penalty for violations against licensed retailers under Section 10(B)(1) authorized to be imposed by Minn. Stat. § 461.12, as it may be amended from time to time, differ from that established in this section, then the higher penalty will prevail.

Violations and Penalties

To be effective, public health policies need a means of enforcement, including a way to assess appropriate penalties. When penalties are effective and appropriate, compliance rates increase and reduce the need for costly enforcement actions. Penalties are effective if they curb undesired behavior and are appropriately tailored to the individual, considering social and environmental factors. For more information on violations and penalties for tobacco retail licensing, see our publication *Violations and Penalties (2022)*.

Section 11. Severability.

If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision.

Section 12. Effective Date.

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

Special note about regulation of other substances: This model policy specifically addresses the licensing and regulation of commercial tobacco products. It should not be used as a substitute to regulate other products, such legal THC edibles in Minnesota. If you need assistance with developing local regulations for other substances, please contact Public Health Law Center and we may be able to assist you or refer you.