



## Request for Council Action

**TO:** Mayor and City Council  
**THROUGH:** Tim Murray, City Administrator  
**MEETING DATE:** March 24, 2020  
**SUBJECT:** Ordinance 2020-7 Amending Chapter 14, Article II, Tobacco and Tobacco Related Devices and Products (First Reading)

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### Background:

On December 20, 2019, the President signed legislation to amend the Federal Food, Drug, and Cosmetic Act, and raise the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product – including cigarettes, cigars and e-cigarettes – to anyone under 21.

Both the City Code of Ordinances (Ch. 14, Art. II) and State Statutes (Sec. 609.685) currently establish the minimum age to purchase, possess, and use tobacco products as 18 years old. This inconsistency results in some questions, including enforcement of the law among other things.

At the Joint Committee meeting on February 4, 2020 the Committee supported updating the City Code of Ordinances, changing the minimum age from 18 to 21. Per state statute, Staff notified all tobacco licensees of the proposed updates to the ordinance as well as the meeting date, location and time as required by state statute.

Staff has not received any comments regarding the proposed updates to the ordinance

### Recommendation:

Approve Ordinance 2020-7 Amending Chapter 14, Article II, Tobacco and Tobacco Related Devices and Products on First Reading

### Attachments:

- City Ordinance – Ch. 14, Article II

**CITY OF FARIBAULT  
ORDINANCE No. 2020-7**

Amending Chapter 14, Article II, Tobacco and Tobacco Related Devices and Products

**THE CITY OF FARIBAULT ORDAINS:** The City Code of Ordinances, shall be as follows:

Section 1. Chapter 14, Article II of the Code of Ordinances of the City of Faribault is hereby amended by adding the double-underlined language and deleting the ~~stricken~~ language as follows  
Sec. 14-17. - Purpose and intent.

Because the city recognizes that many persons under the age of ~~eighteen (18)~~ twenty-one (21) years purchase or otherwise obtain, possess, and use tobacco, tobacco products, tobacco-related, 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 ~~eighteen (18)~~ twenty-one (21) years and that those persons who reach the age of ~~eighteen (18)~~ twenty-one (21) 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 Minnesota Statutes, Section 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 Center for Disease Control in its study entitled "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997," and of the following medical professionals in these medical journals: Khuder S.A., et al., "Age at Smoking Onset and its Effect on Smoking Cessation," Addictive Behavior 24 (5): 673-7, September-October 1999; D'Avanzo B., et al., "Age at Starting Smoking and Number of Cigarettes Smoked," Annals of Epidemiology 4 (6): 455-59, November 1994; Chen, J. & Millar, W.J., "Age of Smoking Initiation: Implications for Quitting," Health Reports 9 (4): 39-46, Spring 1998; Everett

S.A., et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," Preventative Medicine, 29 (5): 327-33, November 1999, copies of which are adopted by reference.

(Ord. No. 2012-06, § 1, 7-10-12)

Sec. 14-18. - 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 terms shall have the definitions given to them:

*Compliance checks* shall mean the system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related, 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* shall mean the practice of selling any tobacco or tobacco product wrapped individually for sale. Individually packaged 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* shall mean all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether opened or closed, covering more than fifty (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* shall mean 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 two (\$2.00) dollars per cigar.

*Minor* shall mean any natural person who has not yet reached the age of ~~eighteen (18)~~ twenty-one (21) years.

*Movable place of business* shall mean and refer to 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* shall mean 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 purchase.

*Retail establishment* shall mean 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. Retail establishments shall include, but not be limited to, grocery stores, convenience stores, restaurants, and drug stores.

*Sale* shall mean any transfer of goods for money, trade, barter or other consideration.

*Self-service merchandising* shall mean 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* shall mean 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* shall include 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; pipe tobacco; hookah tobacco, snuff; fine cut, dipping tobacco, moist snuff, snus and other chewing tobacco; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready-

rubbed, and other smoking tobacco; snuff flour; cavendish; bidis, kreteks, shorts, plug and twist tobaccos; dipping tobaccos; refuse scraps, clippings, cuttings, and sweepings of tobacco; and all other kinds and forms of tobacco. This term 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* shall mean any tobacco product as well as pipes, water pipes, hookahs, rolling papers, ashtrays, or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, or smoking of tobacco or tobacco products.

*Vending machine* shall mean 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. 2012-06, § 1, 7-10-12)

Sec. 14-19. - 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.

- (1) *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 council for action at its next regularly scheduled council meeting. If the 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.
- (2) *Action.* The council may either approve or deny the license, or it may delay action for such reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the council approves the license, the administrator shall issue the license to the applicant. If the 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 council's decision.

- (3) *Term.* All licenses issued under this article shall expire on December 31 of the year of issuance.
- (4) *Revocation or suspension.* Any license issued under this article may be revoked or suspended as provided in section 14-27 of this article.
- (5) *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 council.
- (6) *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 article.
- (7) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.
- (8) *Renewals.* The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least thirty (30) days but no more than sixty (60) days before the expiration of the current license.
- (9) *Issuance as privilege and not a right.* The issuance of a license issued under this article 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.
- (10) Each license issued under this article is subject to all of the following conditions:
  - a. The licensee must post signs in visible locations that prohibit loitering inside or near the front entrance of the retail establishment.
  - b. The licensee must fully light the interior of the retail establishment during business hours such that every part, corner, aisle, room, and section of the retail establishment is illuminated wholly.
  - c. The sales counter, store entrance, and interior of the retail establishment shall be visually recorded with a videotape or similar device at a quality level that allows the visual identification of patrons and employees. The recordings shall be maintained and made available to the police for five (5) calendar days before being reused.

- d. The licensee must post a sign at front entrance of the retail establishment that prohibits minors from entering the retail establishment.
- e. The licensee must fully cooperate with representatives from the City of Faribault when present at the retail establishment for city business purposes.
- f. The licensee must maintain clean and clear front and rear entrances of the retail establishment.
- g. The licensee must not make sales of items commonly used by drug users and drug dealers, including, but not limited to glass pipes, "dug-outs", one-hitters, grinders, measuring scales, and small bags.
- h. The licensee may not supply matches to non-purchasing customers.
- i. Each day of business, the licensee must inspect the parking lot and entrances of the retail establishment for litter and properly dispose of such litter.
- j. The front windows of the retail establishment must be clear, untinted, and unobstructed, except that the signage required by this subsection must be posted in the windows. The licensee must also comply with the applicable provisions of chapter 9 of the Unified Development Ordinance of the City of Faribault.
- k. The licensee must promptly remove any graffiti on the exterior of the retail establishment.

(Ord. No. 2012-06, § 1, 7-10-12; Ord. No. 2014-004, § 1, 4-8-14)

Sec. 14-20. - Same—Fees.

No license shall be issued under this article until the appropriate license fee is paid in full. License fees shall be set by the city council by resolution. License fees will not be prorated.

(Ord. No. 2012-06, § 1, 7-10-12)

Sec. 14-21. - Basis for denial.

Grounds for denying the issuance or renewal of a license under this article include, but are not limited to, the following:

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

- (2) The applicant has been convicted within the past five (5) years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco, tobacco products, tobacco-related, or nicotine or lobelia delivery devices.
- (3) The applicant has had a license to sell tobacco, tobacco products, tobacco-related, or nicotine or lobelia delivery devices revoked within the preceding twelve (12) months of the date of application.
- (4) The applicant fails to provide any information required on the application, or provides false or misleading information.
- (5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding such a license.
- (6) Nonpayment by the applicant or the owner of the premises of any fees or charges owed to the city or county for the premises, including, but not limited to, utility charges and property taxes.

However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license. If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this section.

(Ord. No. 2012-06, § 1, 7-10-12)

Sec. 14-22. - Prohibited sales.

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 ~~eighteen (18)~~ twenty-one (21) 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. A license holder who operates an establishment that sells only tobacco-related products may utilize self-service methods if the license holder prohibits anyone under ~~eighteen (18)~~ twenty-one (21) years of age from entering the establishment, unless accompanied by a parent or legal guardian, and the license holder conspicuously displays a notice prohibiting persons under ~~eighteen (18)~~ twenty-one (21) years of age



from entering the establishment unless accompanied by a parent or legal guardian.

- (4) By means of loosies, as defined in section 14-18 of this article.
- (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, or in any other manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

(Ord. No. 2012-06, § 1, 7-10-12)

Sec. 14-23. - Compliance checks and inspections.

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging minors over the age of fifteen (15) years but less than ~~eighteen~~ (18) twenty-one (21) years, with the written consent of their parents or guardians, to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices. Minors used for the purpose of compliance checks shall be supervised by city-designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices when such items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or trading purposes, or required for the enforcement of a particular state or federal law.

(Ord. No. 2012-06, § 1, 7-10-12)

Sec. 14-24. - Other illegal acts.

Unless otherwise provided, the following acts shall be a violation of this article:

- (1) *Illegal sales.* It shall be a violation of this article for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device to any minor.
- (2) *Illegal possession.* It shall be a violation of this article for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This subsection shall not apply to minors lawfully involved in a compliance check.
- (3) *Illegal use.* It shall be a violation of this article for any minor to smoke, chew, sniff, or otherwise use any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device.
- (4) *Illegal procurement.* It shall be a violation of this article for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device, and it shall be a violation of this article for any person to purchase or otherwise obtain such items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This subsection shall not apply to minors lawfully involved in a compliance check.
- (5) *Use of false identification.* It shall be a violation of this article for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.
- (6) *Smoking.* It shall be a violation of this article for a person to smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco-related products is also prohibited.

(Ord. No. 2012-06, § 1, 7-10-12)

Sec. 14-25. - Violations and penalties.

- (a) *Responsibility for employees' actions.* All licensees under this article shall be responsible for the actions of their employees with regard to the sale of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices on the licensed premises, and the sale of such an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the employee to whatever penalties are appropriate under this article, state or federal law, or other applicable law or regulation.

(b) *Penalties.*

- (1) *Licensees and employees.* Any licensee, and any employee of a licensee, violating this article shall be charged an administrative fine of seventy-five (\$75.00) dollars for a first violation of this article; two hundred (\$200.00) dollars for a second offense at the same licensed premises within a twenty-four-month period; and two hundred fifty (\$250.00) dollars for a third or subsequent offense at the same location within a twenty-four-month period. In addition, after the third offense, the license shall be suspended for not less than seven (7) days. In lieu of the imposition of any of the above penalties, the city administrator may recommend to the city council that the license of the violator, or the violator's employer, be suspended or revoked.
  - (2) *Other individuals.* Other individuals found to be in violation of this article, shall be charged an administrative fine of fifty (\$50.00) dollars, with the exception of minors.
  - (3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community service, or another penalty that the city council believes would be appropriate and effective. The administrative fine or other penalty shall be established by the city council in its fee ordinance upon its consultation with interested parties consisting of the courts, educators, parents, and minors to determine an appropriate penalty for minors in the city.
  - (4) *Statutory penalties.* If the administrative penalties authorized to be imposed by Minnesota Statutes, Section 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.
- (c) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking misdemeanor prosecution for any violation of this article.
- (d) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(Ord. No. 2012-06, § 1, 7-10-12)

Sec. 14-26. - Notice of violation; hearing; appeals.

- (a) *Notice.* Upon report of a violation, the violator shall be issued, either personally or by mail, a notice that sets forth the violation and the penalty therefor under section 14-25, and which shall inform the alleged violator of his or her right to a hearing on the matter. The notice shall state that a

request for a hearing must be made to the city administrator within ten (10) business days of the date of notice.

- (b) *Hearings.* If a person accused of violating this article so requests, a hearing shall be scheduled, the time and place of which shall be published and provided to the accused violator. If no request for a hearing is received by the city administrator within ten (10) working days of the date of the notice, the right to a hearing shall be deemed waived and the penalty shall be final.
- (c) *Hearing officer.* If a hearing is requested, the city council shall appoint a hearing officer. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.
- (d) *Decision.* A decision shall be issued by the hearing officer within ten (10) business days of the date of the hearing.
- (e) *Record of decision.* If the hearing officer determines that a violation of this article did occur, that decision, along with the hearing officer's reasons for finding a violation together with the penalty to be imposed, shall be recorded in writing, a copy of which shall be provided to the accused violator by personal delivery or mail. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, such findings shall be recorded and a copy provided to the acquitted accused violator by personal delivery or mail. The hearing officer may modify the penalty previously imposed.
- (f) *Costs.* If the violation is upheld or modified by the hearing officer, the city's actual expenses incurred in holding the hearing up to a maximum of one thousand (\$1,000.00) dollars shall be paid by the person requesting the hearing.
- (g) *Appeals.* The decision of the hearing officer is final. Appeals of any decision of the hearing officer shall be made to the district court within ten (10) business days.

(Ord. No. 2012-06, § 1, 7-10-12)

Sec. 14-27. - Exceptions and defenses.

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

(Ord. No. 2012-06, § 1, 7-10-12)

Secs. 14-28—14-41. - Reserved.

Section 2. This ordinance amendment shall take effect and be in force after its passage and publication in accordance with Section 3.05 of the City Charter.

First Reading: March 24, 2020

Second Reading:

Publication Date:

**Faribault City Council**

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Kevin F. Voracek, Mayor

**ATTEST:**

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Timothy C. Murray, City Administrator