

ORDINANCE 3.2-2023

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

The City Council of the City of Kasson does hereby ordain and establishes an ordinance relating to the sale of tobacco, tobacco products, tobacco related devices, electronic delivery devices, and nicotine lobelia delivery devices in the City.

Title XI

Add Section 115

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§ 115.01 PURPOSE.

Because the city recognizes that many retailers sell tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products to persons under the age of 21; and because sales to person under the age of 21 are a violation Federal and state law; and because studies have shown that most people who use commercial tobacco products begin before they have reached the age of 21 years and that those person who reach the age of 21 years without having started using commercial tobacco products are significantly less likely to ever begin; and because the use commercial tobacco products has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale of tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws and to further the official public policy of the State of Minnesota in regard to preventing young people from starting to use commercial tobacco products as stated in [Minn. Stat. § 144.391](#).

§ 115.02 DEFINITIONS.

Except as may otherwise be provided or clearly implied by context, all terms are given their commonly accepted definitions. The singular shall include the plural and the plural shall include the singular. The term “shall” mean mandatory and the term “may” means permissive. The following terms shall have the definitions given to them:

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.

COMPLIANCE CHECKS. The system the city, or other government agency, uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this ordinance. Compliance checks involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. 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 federal, state, or local laws and regulations relating to licensed products.

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 any component part of such a product, whether or not marketed or sold separately. Electronic delivery device shall not include any product that has been authorized by the U.S. Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes and is being marketed and sold solely for that approved purpose.

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. A standard window screen (.0011 gauge with an eighteen (18) by sixteen (16) mesh county is not considered a wall.

LICENSED PRODUCTS. The term that collectively refers to any tobacco or 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.

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 not a fixed address store front or other permanent type of structure authorized for sales transactions.

NICOTINE OR LOBELIA DELIVERY PRODUCT. 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 authorized by the U.S. Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold for that approved purpose.

RETAIL ESTABLISHMENT. Any place of business where licensed products are available for sale to the general public. Retail establishments shall include, but is not limited to grocery stores, tobacco products 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 in order 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. 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 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 tobacco. Tobacco does not include any product that has been authorized by the U.S. 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 approved purposes.

TOBACCO-RELATED DEVICE. Any rolling papers, wraps, pipes, or other device intentionally designed or intended to be used with tobacco products. Tobacco related device shall include 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 the insertion of money, tokens, or other form of payment into

or onto the device by the person seeking to purchase the licensed product.

§115.03 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 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 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 the Violations and Penalties Section at §112.11.

(F) **License Not Transferable.** 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) **Movable 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 ordinance.

(H) **Display.** All licenses must be posted and displayed at all times in plain view of the general public in the retail establishment.

(I) **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. The issuance of a license under this ordinance 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.

(J) **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.

(K) **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.

(L) **Proximity to youth-oriented facilities.** No license will be granted to any person for a retail establishment location that is within 200 feet of a youth-oriented facility, as measured by the distance from entrance of the space to be occupied by the proposed licensee to the entrance of a youth-oriented facility. This restriction does not apply to an existing license holder who has been licensed to sell licensed products in that same location for at least one year before the date this section was enacted into law.

§115.04 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.

§115.05 BASIS FOR DENIAL OF LICENSE. 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 convicted within the past five years of 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 federal, state, or other local law, ordinance, or other regulation from holding a license.

(B) 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, 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.

§115.06 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 unless person under the age of 21 are at all times prohibited from entering the licensed establishment.
- (2) By means of loosies as defined in Section 112.02.
- (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.
- (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. Any retailer selling licensed products at the time this ordinance is adopted must comply with this section within 90 days of the effective date of this ordinance.
- (5) 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.
- (6) By means of liquid, whether or not such liquid contains nicotine, which is intended for human consumption and use in an electronic delivery device, in packaging that is not child-resistant. Upon request by the city, a licensee shall provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.

(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 must be posted in a manner that is clearly visible to anyone who is or is considering making a purchase.

§115.07. 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. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this Ordinance, State or Federal law, or applicable law or regulation.

§115.08. COMPLIANCE CHECKS AND INSPECTIONS.

All licensed premises must be open to inspection by law enforcement or other authorized government officials during regular business hours. From time to time, but at least once per year, the city, or its designee, will conduct compliance checks. In accordance with state law, the city, or its designee, 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.

§115.09. OTHER PROHIBITED ACTS

Unless otherwise provided, the following acts are a violation of this ordinance:

- (A) **Use of false identification.** It is a violation of this ordinance for any person to use any form of false identification, whether the identification is that of another person or has been modified or tampered with to represent an age older than the actual age of the person using that identification.

§115.10. 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.

§115.11 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 30 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 30 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 11, paragraph (A)(5) of this section.
- (5) **Appeals.** Appeals of any decision made by the hearing officer must be filed in Dodge County district court within 30 days of the date of the decision.
- (6) **Misdemeanor prosecution.** Any person over the age of 21 years or retailer who violates any of the provisions of this ordinance may be subject to a misdemeanor.
- (7) **Continued violation.** Each violation, and every day in which a violation occurs or

continues, shall constitute a separate offense.

(B) 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. Upon the third violation, the license will be suspended for a period of not less than 7 consecutive days and may be revoked.
- (2) **Employees of licensees and other individuals.** Individuals, 21 years of age and older found to be in violation of this ordinance shall be charged an administrative fine of \$50.
- (3) **Suspension or Revocation.** Any violation of this ordinance may be grounds for suspension or revocation of a license. The City Council may attach reasonable conditions to the reinstatement of a suspended or revoked license. There shall be no license fee refund upon suspension or revocation of a license.
- (4) **Persons under the age of 21.** Persons under the age of 21 who use a false identification to purchase or attempt to purchase licensed products may only be subject to non-criminal, non-monetary civil penalties or remedies such as tobacco-related education classes, diversion programs, community services, or another non-monetary, civil penalty that the city determines to be appropriate. The City Council shall consult with educators, parents, guardians, persons under the age of 21, public health office court personnel, and other interested parties to determine an appropriate remedy for persons under the age of 21 in the city in the best interest of the underage person. The remedies for persons under 21 who use a false identification to purchase or attempt to purchase licensed products may be established by ordinance and amended from time to time.
- (5) **Statutory penalties.** If the administrative penalty for violations against licensed retailers 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.

§115.12 SEVERABILITY.

If any section or provision of this ordinance shall be found unconstitutional or otherwise invalid or unenforceable by a court of competent jurisdiction, that finding shall not serve as an invalidation or effect the validity and enforceability of any other section or provision of this ordinance.

§115.13 EFFECTIVE DATE.

This ordinance becomes effective 30 days after publication in the official newspaper.

Adopted this 22th day of March, 2023.

Published April 6, 2023

SIGNED:

ATTEST:

Chris McKern, Mayor

Timothy Ibisch, City Administrator

Motion:

Second:

Aye Nay

Dan Egger _____ _____

Ryan Christensen _____ _____

Melissa Ferris _____ _____

Paul Johnson _____ _____

Chris McKern _____ _____