

**CITY OF JORDAN
ORDINANCE 2020-05**

**AN ORDINANCE AMENDING CITY CODE CHAPTER 113 TOBACCO AND
ELECTRONIC DELIVERY DEVICE REGULATIONS
BY AMMENDING SECTIONS 113.01 - 113.03, 113.05 – 113.08, and 113.99**

Subdivision 1. Purpose. The Minnesota Legislature revised various Minnesota Statutes associated with the Minnesota Legislature’s increase to the minimum age to purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products. The City Council for the City of Jordan, Minnesota finds that an amendment to Chapter 113 of the Jordan City Code is necessary to make it consistent with the revisions made by the Minnesota Legislature.

Subdivision 2. Amendment. NOW BE IT ORDAINED AND ENACTED by the City Council of the City of Jordan that Sections 113.01 - 113.03, 113.05 – 113.08, and 113.99 of the Jordan City Code are hereby amended to read as follows:

§ 113.01 PURPOSE.

(A) The city recognizes that many persons under the age of 21 years purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, electronic delivery devices, and nicotine or lobelia delivery products and such sales, possession and use are violations of either state or federal laws or both.

(B) The purpose of this chapter is to protect the health, safety and general welfare of the people of the city pursuant to powers granted under M.S. § 144.414(b) and M.S. § 461.19 and subsequent recodifications and/or amendments, as amended and other applicable legislation, as may be adopted from time to time. Further, the purpose of this chapter is to:

- (1) Regulate the sale of tobacco, tobacco products and tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products for the purpose of enforcing and furthering existing laws;
- (2) Prevent and protect underage individuals against the health harms from the use of tobacco, tobacco products and tobacco related devices, electronic delivery devices, and nicotine or lobelia delivery products;
- (3) Further the official public policy of the State of Minnesota, as stated in Minn. Stat., § 144.391, in regard to preventing underage individuals from starting to smoke;
- (4) Prevent second hand tobacco exposure and its adverse health effects on employees, patrons and the general public while in public indoor areas and places of employment;
- (5) Protect, in particular, the health of vulnerable populations including children and those with chronic health conditions;
- (6) Maintain consistency in enforcement of clean air in public indoor areas, and in the use of products that simulate combustible tobacco products.

(Prior Code, § 6.32) (Am. Ord. 2, Second Series, passed 2-12-1998; Am. Ord. 2015-09, passed 7-6-2015)

§ 113.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. A person as defined herein, who completes or signs an application for a license to sell tobacco, tobacco products or tobacco-related devices individually or on behalf of a business.

BUSINESS. The business of selling tobacco, tobacco products or tobacco-related devices.

ELECTRONIC DELIVERY DEVICE. Any product containing or delivering nicotine, lobelia, or any other substance, whether natural or synthetic, intended for human consumption through inhalation of aerosol or vapor from the product. **ELECTRONIC DELIVERY DEVICE** includes, but is not limited to, devices manufactured, marketed, or sold as electronic cigarettes, electronic cigars, electronic pipe, vape pens, modes, tank systems, or under any other name or descriptor. **ELECTRONIC DELIVERY DEVICE** includes any component part of a product, whether or not marketed or sold separately. **ELECTRONIC DELIVERY DEVICE** excludes drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

INDOOR AREA. Shall have the same meaning as set forth in M.S. § 144.413, subd.1a, as may be amended from time to time.

LICENSE HOLDER. The owner of the business licensed to sell tobacco, tobacco products or tobacco-related devices.

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

LOOSIES. Common term used to refer to a single or individually wrapped cigarette, cigar and any other licensed product that have been removed from their original retail packaging and offered for sale. Loosies do 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.

MOVABLE PLACE OF BUSINESS. A business whose physical location is not permanent or is capable of being moved or changed.

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 or an electronic delivery device as defined herein. It 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.

PERSON. One or more natural persons; a partnership, limited liability company; corporation, including a foreign, domestic or nonprofit corporation; a trust; a political subdivision of the state; or any other business organization.

PUBLIC MEETING. Shall have the same meaning as set forth in M.S. § 13D.01, as may be amended from time to time.

PUBLIC PLACE. Shall have the same meaning as set forth in M.S. § 144.413, subd. 2, as may be amended from time to time.

PUBLIC TRANSPORTATION. Shall have the same meaning as set forth in M.S. § 144.413, subd. 5, as may be amended from time to time.

SELF-SERVICE MERCHANDISING. A method of displaying tobacco, tobacco products or tobacco-related devices so that they are accessible to the public without the intervention of an applicant, license holder or their agents or employees.

TOBACCO or TOBACCO PRODUCT. Any substance, item, or 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 flower, cavendish, plug and twist tobacco; fine cut and other chewing tobaccos; shorts, refuse scripts, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing, sniffing, or smoking in a pipe, rolling paper or other tobacco-related devices. TOBACCO and TOBACCO PRODUCT excludes drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

TOBACCO-RELATED DEVICES. Cigarette papers or pipes for smoking or other devices intentionally designed or intended to be used in a manner which enables the chewing, sniffing, smoking, or inhalation of aerosol or vapor of tobacco or tobacco products. The term TOBACCO-RELATED DEVICE(S) includes electronic delivery devices and components of tobacco-related devices, which may be marketed and sold separately.

VENDING MACHINE. Any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses licensed products and including vending machines equipped with manual, electric or electronic locking devices.

§ 113.03 LICENSE REQUIRED.

No person shall, directly or indirectly, keep for retail sale, sell or offer to sell at retail or otherwise dispense any licensed product at any place in the city without first obtaining a license from the city and paying a license fee.

(A) Application. An application for a license to sell licensed products shall be made on a form provided by the city. The application shall include, but is not limited to requiring the full legal name of the applicant, the applicant's residential and business address and telephone numbers, the name of the proposed license holder, the business location for which the license is sought, and a copy of the materials the applicant intends to use to educate employees about unlawful sales to violation of the City Code. The completed application along with the license fee shall be submitted to the City Administrator or his or her designee for approval. If the City Administrator determines that an application is incomplete, he or she shall return the application to the applicant with notice of the deficiencies.

(B) Action. The City Administrator may either approve or deny the license, nor may delay action for such reasonable period of time to permit the city to complete any investigation of the application or the applicant as deemed necessary. If the City Administrator approves the license, a license shall be issued to the applicant. If the City Administrator denies the application for any reason, including the reasons set forth in Section 113.03 (I) herein, a notice of denial shall be sent to the applicant at the business address provided on the application along with the reasons for the denial. The notice shall also inform the applicant of the right to appeal the City Administrator's decision to the City Council. If a license is mistakenly issued or renewed to an applicant or license holder, it shall be revoked by the City Administrator upon the discovery that the person, applicant or license holder was ineligible for the license under this section.

(C) Term. All licenses are issued for a period of 1 year. The license period is from January 1 to December 31. The initial license term will expire at the end of the calendar year during which the license was issued.

(D) Revocation or suspension. Any license issued under this section may be revoked or suspended as provided in § 113.99, pursuant to the process set forth.

(E) Transfers. All licenses issued under this section shall be valid only on the business premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Administrator.

(F) Display. Every license shall be conspicuously posted at the place of business for which the license is issued and shall be exhibited to any person upon request. At each location where licensed products are sold, the licensee shall display a sign in plain view to provide public notice that selling any of these products to any person under the age of 21 is illegal and subject to penalties. The notice shall be placed in a conspicuous location in the licensed establishment and shall be readily visible to any person who is purchasing or attempting to purchase licensed products. The sign shall provide notice that all persons responsible for selling licensed products must verify, by means of photographic identification containing the bearer's date of birth, the age of any person under 30 years of age.

(G) Renewals. The renewal of a license under this section shall be handled in the same manner as the original application. The request for renewal shall 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 chapter 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.

(H) Instructional program. No person shall be issued a license or renewal license to sell tobacco-related products unless an applicant or license holder has an approved program for instructing all employees at the business premises for which the license was issued, in the legal requirements pertaining to the sale of tobacco, tobacco products and tobacco-related devices, including, but not limited to, reviewing the law on the sale of tobacco, tobacco products and tobacco-related devices, providing information on the health risks of using tobacco or tobacco products, and requiring employees to request identification from every customer who appears to be under 30 years of age. No license shall be issued unless the applicant or license holder has received training and instruction on the sale of tobacco, tobacco products and tobacco-related devices and the date the training occurred. The

training shall include information that the sale of tobacco, tobacco products and tobacco-related devices to minors is illegal, explains what proof of age is legally acceptable, and that a sale to a minor can subject the applicant or license holder and their employees to criminal and/or civil liability.

(I) Denials. The following shall be grounds for denying the issuance or renewal of a license under this section. The following list is not exhaustive or exclusive:

- (1) The applicant is under the age of 21 years;
- (2) That applicant has been convicted within the past 5 years of a violation of any provisions of this chapter or a violation of a federal, state or local law, ordinance provision or other regulation relating to tobacco or tobacco products or tobacco-related devices;
- (3) The applicant or license holder has had a license to sell tobacco, tobacco products or tobacco-related devices revoked within the preceding 12 months of the date of application;
- (4) The applicant fails to provide any information required on the city license application, or provides false or misleading information; and
- (5) The applicant or license holder has outstanding fines, penalties or property taxes owed to the city.

§ 113.05 PROHIBITED SALES.

(A) No person shall sell, offer to sell, give away, furnish or otherwise deliver any licensed product:

- (1) To any person under the age of 21 years (this does not apply to a parent or legal guardian of a person under the age of 21 who obtained or provided to the person under the age of 21 such licensed product if the licensed product has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for cessation, harm reduction or for other medical purposes, and is being marketed and sold solely for the approved purpose);
- (2) By means of any type of vending machine;
- (3) By means of loosies;
- (4) By means of self-service merchandising or any means whereby the customer may have access to such items without having to request the item from the license holder, their agents or employees. All licensed products shall be stored behind a counter or other area not freely accessible to customers;
- (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;
- (6) By any other means, or to any other person, prohibited by federal, state or other local law, ordinance provisions, or other regulation.

(B) Exception. A license holder who operates an establishment that sells only licensed products is exempt from the self-service merchandising provision if the license holder prohibits anyone under 21 years of age from entering the establishment, unless accompanied by a parent, and the license holder conspicuously displays a notice prohibiting persons under 21 years of age from entering the establishment, unless accompanied by a parent.

(C) At each location where licensed products are sold, the licensee shall verify, by means of government-issued photographic identification containing the bearer's date of birth, that the purchaser or person attempting to make the purchase is at least 21 years of age. Verification is not required if the purchaser or person attempting to make the purchase is 30 years of age or older. It shall not constitute a defense to a violation of this chapter that the person appeared to be 30 years of age or older.

§ 113.06 MOBILE SALES.

No license shall be issued for the sale of a licensed product at a movable place of business, including but not limited to motorized vehicles, mobile sales kiosks or trailers.

§ 113.07 COMPLIANCE CHECKS.

(A) All premises where licensed products are sold 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 calendar year, the city shall conduct compliance checks by engaging a person at least 17 years of age, but under the age of 21, who, with prior written consent of a parent or guardian if the person is under the age of 18, to enter the premise to attempt to purchase one or more licensed products. Persons used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Persons used for compliance checks shall not be guilty of an unlawful attempt to purchase a licensed product or use a false identification misrepresenting the person's age, and all persons lawfully engaged in a compliance check shall answer all questions about the person's age asked by the licensee, business owner or his or her employee and shall produce an identification if any exists, for which he or she is asked.

(B) Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research or training purposes, or required for the enforcement of a particular state or federal law.

(C) Results of compliance checks will be provided in writing to each license holder.

§ 113.08 PROHIBITED ACTIONS.

(A) In addition to violations specified elsewhere in this chapter, the following acts are prohibited and shall be a violation of this chapter.

- (1) It shall be a violation of this chapter for any person under the age of 21 to purchase or attempt to purchase or otherwise obtain any licensed product. This subdivision shall not apply to persons lawfully involved in a compliance check.
- (2) It shall be a violation of this chapter for any person to purchase or otherwise obtain licensed products on behalf of a person under the age of 21.
- (3) It shall be a violation of this chapter for any person to coerce or attempt to coerce a person to illegally purchase or otherwise obtain or use any licensed product. This subdivision shall not apply to persons lawfully involved in a compliance check.
- (4) It shall be a violation of this chapter for any person 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 presenting the identification.

- (5) It shall be a violation of this chapter for a person to 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, that is not contained in "child-resistant packaging" as the term is defined and is required in Minn. Stat. § 461.20.

(B) The use of electronic cigarettes including the inhaling or exhaling of vapor from any electronic delivery device and any other use of electronic delivery devices are prohibited in:

- (1) All public meetings and public places except a retail establishment with an entrance door opening directly to the outside that derives more than 90% of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, e-cigarettes, pipes, and related smoking or vaping devices and accessories and in which the sale of other products is merely incidental.

- (2) All health care facilities and clinics, except as provided in M.S. § 246.0141, relating to smoking by patients in locked psychiatric units.

- (3) All public transportation vehicles. Nothing in this section shall prevent the proprietor or other person in charge of any place including, without limitation, any residence, motor vehicle or outdoor space, from prohibiting use of electronic cigarettes or electronic delivery devices in any such place.

§ 113.99 PENALTY.

(A) In addition to the administrative penalties applicable under this chapter, any person 21 years of age or older who sells, gives, or otherwise furnishes a licensed product to a person under the age of 21 is guilty of a petty misdemeanor for the first violation and is guilty of a misdemeanor for each violation occurring within five years of the previous conviction.

Upon discovery of a suspected violation of this chapter the police may issue a citation to the suspected violator.

(B) The license holder shall be responsible for the conduct of its agents or employees while on the licensed premises. Any violation of this chapter shall be considered an act of the license holder for purposes of imposing an administrative penalty, license suspension or revocation. Each violation, and everyday in which a violation occurs or continues, shall constitute a separate offense.

- (1) Notice of violation. Upon the occurrence of a suspected violation, the Police Department shall inform the City Administrator of the suspected violation. The City Administrator shall then send to the license holder or violator a written notice of the civil violation. The notice shall advise the license holder of the penalty and the license holder's right to request a hearing regarding the violation of this chapter pursuant to the section on the hearing on denial or violation.

- (2) Administrative penalties.

(a) Each license issued hereunder shall be subject to administrative penalty, and/or license suspension or revocation for violation of any provisions of this chapter or the laws of the State of Minnesota as follows:

- (i) The first violation of this chapter shall be punishable by a civil penalty of \$300.
- (ii) A second violation of this chapter at the same location within 36 months shall be punishable by a civil penalty of \$600.
- (iii) A third or subsequent violation of this chapter at the same location within 36 months after the initial violation shall be punishable by an administrative penalty of \$1000 and suspension of the license for not less than 7 days and may be revoked.

No suspension, revocation, or other penalty may take effect until the licensee has received notice, served personally or by mail, of the alleged violation and an opportunity for hearing pursuant to § 113.99 (C)(1) herein.

(b) Any individual who sells, gives, or otherwise furnishes tobacco, tobacco products or tobacco-related devices to any person under the age of 21 years may be charged an administrative penalty of \$50. No penalty may be imposed until the individual has received notice, served personally or by mail, of the alleged violation and an opportunity for a hearing pursuant to § 113.99 (C)(1) herein.

(3) Any administrative penalty under § 113.99 (B)(2) herein, license suspension or revocation or combination thereof does not preclude criminal prosecution under this chapter or M.S. § 609.685. If criminal prosecution under this chapter is sought, a civil penalty shall not be imposed.

(4) Any person who purchases or attempts to purchase tobacco, tobacco products or tobacco-related devices and is under the age of 21 years may be charged an administrative penalty of \$50. The City Council may also send notice of such violation to the violator's parents or school or order the violator to attend tobacco free education programs or other court diversion programs or to perform appropriate community service.

(C) Penalties for use of false identification and/or purchase or attempts to purchase a licensed product by a person under the age of 21 shall be subject to a civil penalty determined by law enforcement and court system representatives from time-to-time pursuant to Minn. Stat. §§ 609.685-.6855 and 461.12, subd. 4.

(D) (1) Hearing. Following receipt of a notice of denial issued under notice of a violation and penalty, an applicant or license holder may request a hearing before the City Council. A request for a hearing shall be made by the applicant or license holder in writing and filed with the City Administrator within 20 days of the mailing of the notice of denial or alleged violation. Following receipt of a written request for hearing, the applicant or license holder shall be afforded an opportunity for a hearing before the Council. If a committee of the Council conducts the hearing, it shall report its findings and make a recommendation to the full Council.

(2) Findings. If after the hearing the applicant or license holder is found ineligible for a license, or in violation of this chapter, the Council may affirm the denial, impose a fine, issue a suspension or revocation, or impose any combination thereof as set forth in the section

on violations and penalties. The findings shall be set forth in writing and provided to the individual, applicant or license holder.

(3) Default. If the applicant or license holder has been provided written notice of the denial or violation and if no request for a hearing is filed within the 20 day period, then the denial, penalty, suspension or revocation shall take immediate effect by default. The City Administrator shall mail notice of the denial, fine, suspension or revocation to the applicant or license holder. The City Police shall investigate compliance with the suspension or revocation.

(E) It is an affirmative defense to a charge under this chapter if the license holder proves by a preponderance of the evidence that the license holder reasonably and in good faith relied on proof of age as described in M.S. Chapter 340A.503, subd. 6, in making the sale.

Subdivision 3: Effective Date. This ordinance is effective immediately following its publication in the official newspaper of the City.

ORDAINED by the City Council of the City of Jordan, Scott County, Minnesota this ____ day of _____, 2020.

Tanya Velishek, Mayor

ATTEST:

Tom Nikunen, City Administrator